Freedom of Movement within the Social and Labour-market Area in the Nordic Countries

Summary of obstacles and potential solutions

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Expert Group under ÄK-A/ÄK-S

Nord 2012:002

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Nord 2012:014

ISBN 978-92-893-2437-3

<http://dx.doi.org/10.6027/Nord2012-014>

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Layout: Hanne Lebech/NMR

Cover photo: Karin Beate Nøsterud/norden.org

Photo: p.8 Johannes Jansson/NMR; p.12 Johannes Jansson/NMT; p.22 Johannes Jansson/NMR;

p.32 Image Select; p.40 Ojo Images; p.48 Image Select; p.56 Image Select; p.68 Magnus Fröderberg/NMR;

p.70 Ojo Images; p.78 Johannes Jansson/NMR; p.84 Magnus Fröderberg/NMR

Translation: Tam McTurk

This publication has been published with financial support by the Nordic Council of Ministers. However, the contents of this publication do not necessarily reflect the views, policies or recommendations of the Nordic Council of Ministers.

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Foreword by Nordic Council of Ministers

Working to remove obstacles to cross-border freedom of movement has long been a priority for the Nordic countries, and a number of analyses and reports have addressed the issue. At their meeting in Punkaharju, Finland, in 2007 the Nordic prime ministers decided to adopt a more operational approach to the issue and set up the Nordic Freedom of Movement Forum. In addition to safeguarding the rights of Nordic citizens, the point of the co-operation is to support economic growth and improve the competitiveness of the Nordic countries.

One of the key elements in ensuring an open and flexible labour market in the Nordic countries, a market that benefits both citizens and businesses, is to ensure access to the labour market, access to social security systems and to make sure that social services – for people inside and outside the labour market – operate smoothly and efficiently and Nordic citizens do not feel trapped between the different systems of the different countries. Membership of the EU and the EEA Agreement provide new opportunities and pose new challenges. Earlier Nordic

agreements on social security and the joint labour market were very much based on individuals receiving benefits in their countries of residence. Social security, etc. is now co-ordinated by EU rules, and this requires a very high degree of co-ordination and co-operation between the various countries to ensure that citizens do not end up in unintended situations.

This report highlights a number of the obstacles to cross-border freedom of movement that exist in the social and labour-market sectors and suggests how they can be overcome. The work was commissioned by two committees of senior officials, the ÅK-A and the ÅK-S. One of the reasons was that the Nordic countries would like to see this work securely embedded in all of the sectors of Nordic co-operation. The report has been drawn up by a group of experts from official bodies in the Nordic countries. The report and its conclusions will hopefully serve as a useful source of information for Nordic civil servants and politicians in their quest to find solutions to the obstacles outlined.

Halldór Ásgrímsson
Secretary General
Nordic Council of Ministers

Foreword

To the Nordic Committee of Senior Officials for Labour and the Nordic Committee of Senior Officials for Health and Social Affairs

The Expert Group operated under the auspices of the Nordic Committee of Senior Officials for Health and Social Affairs (ÄK-S) and the Nordic Committee of Senior Officials for Labour (ÄK-A). The Group was commissioned to examine the obstacles that people moving between the Nordic countries encounter with regard to the labour market, social security and social services. Its work was based on a list of obstacles drawn up by the Nordic Council of Ministers' Secretariat.

The remit of the Expert Group was to find out why these obstacles arose and propose potential solutions to the two committees of senior officials so that they could decide on further measures. Solutions proposed by the Group will also be considered by the Nordic Council of Ministers' Freedom of Movement Forum.

The Group was asked to set out a proposal on how Nordic work to improve freedom of movement should be organised in the future. It was also given the task of discussing models for dealing with problems that arise when an individual moving from one Nordic country to another, or commuting between Nordic countries, does not receive compensation on fair terms despite it being clear to which countries' legislation the individual concerned has to adapt.

The Expert Group commenced work with a meeting in Copenhagen in September 2010.¹ ÄK-A and ÄK-S appointed experts from the five Nordic states, and representatives of Greenland, the Faroe Islands and Åland were also invited. Representatives from national ministries also participated as needed in the work of the Expert Group.

The Expert Group members on labour-market issues were:

Lis Witsø-Lund and Marie Beck Jensen (from 1 August 2011) (Danish Ministry of Employment)

Liisa Heinonen (Finnish Ministry of Employment and the Economy)

Hildur Sverrisdóttir Röed and Bjarnheidur Gautadóttir (Icelandic Ministry of Welfare)

Mona Martinsen (Norwegian Ministry of Labour)

Stina Sterner (until 31 August 2011) and *Mona Karlsson* (from 1 September 2011) (Swedish Unemployment Insurance Board IAF)

Martin Sandblom (until 31 August 2011) and *Åsa Bergqvist* (from 1 August 2011) (Swedish Public Employment Service)

The Expert Group members on social security and services were:

Eva Ejdrup Winther and Karin Møhl Larsen (Danish Ministry of Social Affairs and Integration)

Essi Rentola (the Social Insurance Institution of Finland)

Hildur Sverrisdóttir Röed and Bjarnheidur Gautadóttir (Icelandic Ministry of Welfare)

Christiane Sørby Hansen (Norwegian Ministry of Labour)

Ann-Kristin Robertsson and David Grenabo (Swedish Social Insurance Agency)

¹ The Group held seven meetings in Helsinki and two video conferences. These took place on 8 December 2010, 15–16 March 2011, 24–25 May 2011, 31 August 2011, 9 November 2011, 15 December 2011, 7–8 February 2012, 8 March 2012 and 29 March 2012.

Essi Rentola chaired the Group and Mona Martinsen was the vice-chair. One representative, Jakob Schmidh from the Nordic Council of Ministers Secretariat, attended Group meetings as an observer. The Group also relied on external support staff to help with its work. Heli Mäkipää was the Group's first secretary and Anna Leino its second. Both are from the Nordic Association in Finland.

The Group collaborated with various ministries, authorities and other bodies in the Nordic Region. These have added texts to the Overall List², which is part of the working materials, and have also commented on the work of the Expert Group, both in the list and in the final report. In January 2012, the Group also sent a draft final report to these ministries, authorities and bodies for comment.

Helsinki, March 2012

Essi Rentola

Mona Martinsen

Åsa Bergqvist

Bjarnheidur Gautadottir

David Grenabo

Christiane Sørby Hansen

Liisa Heinonen

Mona Karlsson

Marie Beck Jensen

Karin Møhl Larsen

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Ann-Kristin Robertsson

Hildur Sverrisdottir Röed

Eva Ejdrup Winther

Jakob Schmidh

Heli Mäkipää

Anna Leino

Appendices:

Appendix A: Overall List

Appendix B: The Expert Group's
mandate

Appendix C: List of the work done by
the Expert Group

² See Appendix A.

↑ ↑ Terminal 2 & 3 ↑ ↑

↑ ↑ Terminal 2 & 3 ↑ ↑

Check-in Information

Destination	Check-in Counter	Gate
Amsterdam	1	1
Barcelona	2	2
Berlin	3	3
Birmingham	4	4
Birmingham	5	5
Birmingham	6	6
Birmingham	7	7
Birmingham	8	8
Birmingham	9	9
Birmingham	10	10
Birmingham	11	11
Birmingham	12	12
Birmingham	13	13
Birmingham	14	14
Birmingham	15	15
Birmingham	16	16
Birmingham	17	17
Birmingham	18	18
Birmingham	19	19
Birmingham	20	20

Introduction

Expert Group to examine obstacles to freedom of movement

In 2010, both the Nordic Freedom of Movement Forum and the Danish Presidency of the Nordic Council of Ministers expressed a wish for the sectors within the Council of Ministers to play a more active role in the identification and elimination of obstacles to freedom of movement within their spheres of interest. The Nordic Committee of Senior Officials for Health and Social Affairs (ÅK-S) and the Nordic Committee of Senior Officials for Labour (ÅK-A) took up the challenge and proactively entered into co-operation on freedom of movement by establishing a cross-sectoral Expert Group.

The Expert Group has taken decisions about the list of obstacles to freedom of movement drawn up by the Nordic Council of Ministers (NMR) in the summer of 2010. In its final report the Group chose to deal with all in all 35 obstacles³ that affect social security, the labour market and social services. Obstacles in the original list that have been omitted include actual entry into countries, matters purely concerning labour

law and recognition of foreign educational qualifications.

Many of the obstacles dealt with in this report arise from EU regulations, not just between the Nordic countries but also in relation to other EU/EEA countries and Switzerland. However, the Group has chosen to use the formulation 'Nordic country' or 'resident in a Nordic country'. The precise expression varies depending on the question in hand, and it is the relationship between these countries that was the theme of the Group's work.

Issues dealt with have been grouped as follows:

- Issues concerning social assistance and social services covered by EU regulations 492/2011⁴ and 1612/68⁵ and the Nordic Convention on Social Assistance and Social Services.
- Issues concerning social security regulated by EU regulations on the co-ordination of social security systems, 883/2004⁶, 987/2009⁷, 1408/71⁸, 574/72⁹ and the Nordic Convention on Social Security.

³ See Appendix C: The Expert Group's working lists.

⁴ European Parliament and Council of Ministers' EU Regulation 492/2011 of 5 April 2011 on free movement for workers within the EU.

⁵ Council of Ministers' EEC Regulation 1612/68 of 15 October 1968 on free movement for workers within the Community.

⁶ European Parliament and Council of Ministers' EC Regulation 883/2004 of 29 April 2004 on co-ordination of social security systems.

⁷ European Parliament and Council of Ministers' EC Regulation 987/2009 of 16 September 2009 laying down the procedure for implementing EC Regulation 883/2004 on co-ordination of social security systems.

⁸ Council of Ministers' EEC Regulation 1408/71 of 14 June 1971 on application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

⁹ Council of Ministers' EEC Regulation 574/72 of 21 March 1972 on application of EEC Regulation 1408/71 fixing the procedure for implementing Regulation (EEC) No 1408/71 on application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

- a. Issues relating to which country's legislation should apply
- b. Issues relating to benefits during sickness maternity/paternity and equivalent
- c. Issues relating to benefits
- d. Issues relating to unemployment benefits
- e. Issues relating to pre-retirement benefits
- f. Issues relating to family benefits
- Issues relating to the labour market covered by EU regulations 492/2011 and 1612/68 and/or EU regulations on the co-ordination of social security systems 883/2004 and 987/2009 and 1408/71 and 574/72.

The Group commenced its work by mapping all of the obstacles to freedom of movement that stem from legislation and practice in each Nordic country. Despite the fact that most of the original freedom of movement issues were presented as relating to a particular country or two countries, the Group found grounds for a more comprehensive mapping exercise, which also includes the perspectives of the other countries. Many of the original obstacles had also been described in such a way that it was difficult to see what the problem actually was. The Group has therefore described the situation in relation to each obstacle in terms of legislation and practice in every Nordic country, resulting in a background memo known as the Overall List. The Overall List also specifies which obstacles relate to all of the Nordic countries and which relate to a particular country's legislation and interpretations thereof.

Final report with proposed solutions

In this final report, the Group has summarised obstacles to freedom of movement and put forward proposals as to how they can be removed. It has only considered how the various obstacles might be removed from a technical perspective. Within its framework, the Group has not debated or reviewed all of the potential consequences to which its proposed solutions might lead under different circumstances. Furthermore, it has not been possible to analyse the administrative or financial costs or the consequences in terms of EU legislation that these solutions might involve. The Group's proposals are therefore a summary of possible solution models that might deal, in whole or in part, with particular obstacles to freedom of movement. The possible solutions proposed should not be regarded as statements of national positions or expressions of support for particular proposed solutions.

Nor has the Group made any evaluation as to whether the various countries should make such amendments, for example in national legislation or administrative practices, which would remove these obstacles to freedom of movement. Studies may also be underway in the various countries that involve certain of the obstacles dealt with in this report.¹⁰ Decisions on how particular obstacles should be removed ought to be taken at national level.

In accordance with the nature of Nordic co-operation, it is not the intention that the Expert Group's report should propose or prepare any harmonisation of the Nordic countries' social systems.

¹⁰ See, for example, the interim report of the Swedish parliament's social insurance investigation: 'I gränslandet – Social trygghet vid gränsarbete (In the border country – social security and cross-border working)' (SOU 2011:74).

Proposed solutions can be categorised as follows:

- Issues that require amendments to national legislation
- Issues that require a different approach to interpretations of EU legislation in relation to regulations contained in national legislation
- Issues that arise from inadequate information and can be resolved with the help of improved information and training
- Issues that can be resolved by bilateral agreements
- Issues that require amendments to EU legislation or improved information exchanges between EU countries

With regard to some of these issues, the Group found that the problem has already been resolved or that it does not, in the opinion of the Expert Group, constitute an obstacle to freedom of movement.

With regard to many of these issues, the proposed solutions contain elements of all the items listed above. The fundamental problem often arises because the legislation of several countries applies to people who move between these countries. Issues of social security are dealt with primarily within national decision-making processes, and in most areas national legislation has not been harmonised. Each country is entitled to provide benefits in accordance with its own legislation. On the other hand, the countries must treat everyone exercising their right to freedom of movement equally with those who are covered by social insurance within its own borders. One of the most difficult issues is the provision in Article 5 of Regulation 883/2004 on the equal treatment of another country's 'equivalent benefits, in-

come, facts or events'. A broader interpretation of this provision would permit the removal of certain obstacles to freedom of movement.

Challenges faced in the work

The Expert Group divided issues into three categories: issues relating to social assistance and social services; issues relating to social security; and issues relating to the labour market.

A general observation made by the Group was that the descriptions of the various obstacles to freedom of movement were in many cases highly schematic. In many cases, it was therefore a challenge to establish which regulations gave rise to the obstacle and which countries were affected by the obstacle in question. The overview of obstacles to freedom of movement did not provide information on the extent of the various obstacles. This made it difficult to assess the breadth of the problem and determine which obstacles should be prioritised.

The Group also noted that, with regard to many of the obstacles to freedom of movement, it seemed that the agencies responsible had little awareness of their existence. The level of awareness varies, of course, between countries and obstacles.

With regard to issues relating to social assistance and social services, the challenge has been the scarcity of information about how common the obstacle actually is. In the course of its work, the Group has found it difficult to acquire information on these obstacles from both the Nordic Council of Ministers and from other agencies. A new version of the Nordic Convention on Social Assistance and Social Services has been drawn up but

not approved. In fact, it looks as if work may have to start on a new convention.

Issues relating to social security make up the major part of the report, and the authorities in the Nordic countries that deal with this work have a great deal of experience of the issues involved. With regard to issues relating to social security, one challenge has been their relation to EU legislation. It might be said that only a minority of the issues now treated as Nordic obstacles to freedom of movement are purely Nordic in origin. Rather, they concern several of the countries that apply EU legislation on the co-ordination of social security (regulations 883/2004 and 987/2009 and regulations 1408/71 and 574/72). In order to establish understanding of the basic principles of the EU legislation on the co-ordination of social security and facilitate a discussion of various alternative solutions, the following chapter contains a short explanation of the principles inherent in EU co-ordination legislation that apply between the Nordic countries.

One consequence of the Nordic countries not having identical benefits is that individuals who move from one Nordic country to another and become covered by a new country's social security system may receive benefits that are better or worse than they had a right to previously. Such situations will arise as long as the Nordic countries have different systems, which have not been harmonised.

Some of the issues relating to the labour market are well-known obstacles to freedom of movement and Nordic institutions have some practical experience of dealing with them. Other obstacles were not familiar to the institutions,

and in relation to these it has been difficult to acquire information from the Nordic Council of Ministers about why the obstacles appeared on their list and how widespread the problem is.

Co-ordination of social security within the EU¹¹

The objective of regulations 883/2004 and 987/2009 (together with regulations 1408/71 and 574/72) is to co-ordinate the rights to social security of individuals who move between member states. The aim is that those who exercise their right to freedom of movement should not lose their social security rights. Within the EU, social security is a matter to be decided by individual member states, but where there is a conflict between national legislation and the co-ordination regulations, the latter have priority over national legislation. These regulations are directly applicable in member states and, unlike EU directives, do not need to be transposed in national legislation.

The primary legal basis for the co-ordination regulations is Article 48 of the EU Treaty and Article 29 of the EEA Agreement dealing with measures within the area of social security. Regulations 492/2011 and 1612/68¹² on the free movement of labour within the Union were drafted on the basis of Article 45 of the Treaty, which ensures the free movement of labour.

The basic principles of Regulations 883/2004 and 987/2009 are as follows:

¹¹ The Nordic Region includes EU member states as well as non-members that are covered by the EEA agreement. Since the New EU regulations 883/2004 and 987/2009 were not yet applicable in Norway and Iceland during the course of the Expert Group's work, the Group has also dealt with the older EU regulations 1408/71 and 574/72, which have been applicable in parallel. Since the majority of obstacles to freedom of movement relate to the application of EU regulations on the co-ordination of social security in the EU and EEA, the Group has described the fundamental principles of the co-ordination regulations. The aim is to give the reader of the final report a general picture of how co-ordination of social security in the EU works.

¹² Regulation 492/2011 has not yet been incorporated into the EEA agreement. Regulation 1612/68 is, however, still applicable to Norway and Iceland.

- Equality of treatment and a ban on discrimination based on citizenship
- Determination of applicable legislation – a binding principle of the application of national legislation from one single state only, which rules out simultaneous application of another member country's legislation
- Principle of the country of employment's legislation being applicable (*lex loci laboris*)
- Aggregation of periods of social insurance and employment, periods of self-employment and periods of residence from multiple member states
- Exportability principle, i.e. the assurance that benefits will be paid irrespective of where a person is living.
- Extension of the area of coverage to include the economically inactive, i.e. people who are not employed or self-employed
- Strengthening of the principle of good governance
- The new provisions about legislation that is to be applied provisionally and the provisions about benefits that are to be paid provisionally
- Electronic exchange of information between social security and unemployment benefit institutions in the member countries (EESSI).¹³

These principles permeate the application of the regulations. Specifically, application of the regulations ought to be governed by the ban on direct or indirect discrimination, together with the requirement for 'equal treatment of benefits, income, facts or events' in Article 5 of Regulation 883/2004. To date, little experience of the application of this provision has been accumulated. A person who exercises the right to freedom of movement should not be placed in a worse position than a person who has always participated in social insurance in only one member state.

New regulations 883/2004 and 987/2009 came into force on 1 May 2010, replacing previous regulations 1408/71 and 574/72 in EU states. The basic principles of the regulations remain unchanged. The most important changes introduced by the new regulations were as follows:

For Iceland and Norway, co-ordination regulation 1408/71 continues to apply for the time being, but regulations 883/2004 and 987/2009 will probably take effect during 2012.

In the co-ordination regulations, social security is an EU-wide concept that may not necessarily fit exactly with the way in which social security is understood at national level. The co-ordination regulations apply to all legislation that affects any of the risks or benefit groups defined in Regulation 883/2004. According to Article 3 of the Regulation, these are as follows:

- Sickness benefits
- Maternity and equivalent paternity benefits
- Invalidity benefits
- Old-age benefits
- Survivors' benefits
- Benefits in respect of accidents at work and occupational diseases
- Death grants
- Unemployment benefits
- Pre-retirement benefits
- Family benefits.

¹³ Stands for Electronic Exchange of Social Security Information.

Each member state submits a written notification to the EU Commission on its benefits, i.e. stating which branches of national social security are within the scope of application of the co-ordination regulations. Member states must also report changes to the EU Commission. However, the European Court determines the precise boundary between legislation covered by the co-ordination regulations and legislation outside their scope of application.

The Administrative Commission,¹⁴ on which all Nordic countries are represented, interprets the co-ordination regulations.

Future options for work on freedom of movement

The mandate of the Expert Group stated that it should also put forward proposals for the future organisation of work to ensure cross-border freedom of movement.

The Group takes the view that the institutions and current forms of activity should be strengthened. Institutions dealing with social security are actively co-operating within their sector to deal with obstacles to freedom of movement and problems of interpretation that are linked to international legislation. It is also important that states ensure that there are sufficient exchanges of information between the institutions involved and the relevant authorities.

In addition, the Social Insurance and Social Assistance groups that were set up and mandated by ÅK-S ought to work hard to overcome obstacles to freedom of movement. It is important to make the work done by these and other working groups more visible. Their work and

measures should be systematically followed up.

At its meeting of 25 January 2012 in Oslo, the Freedom of Movement Forum proposed that the Expert Group should consider either:

- becoming permanent and meeting once a year to describe, analyse and propose solutions to any new obstacles to freedom of movement that have arisen,
- or
- naming another forum in which new obstacles can be described and analysed, for example the Nordic Social Insurance Group or a permanent working group operating under its auspices.

However, the Expert Group does not believe the proposal by the Freedom of Movement Forum is the appropriate course of action. The Expert Group takes the view that the Committees of Senior Officials on Labour and Health and Social Affairs (ÅK-A and ÅK-S) should, based on this report, prioritise and bring forward proposals for the continuation of this work. It is the view of the Expert Group that the work of achieving freedom of movement should be mainstreamed into the normal operations of existing institutions and groups.

The Group would like to emphasise the importance of organisations, institutions and others ensuring that the information on obstacles to freedom of movement they receive from individuals is sufficiently detailed for the nature of the problem to be identified. Without

¹⁴ Administrative Commission for the Coordination of Social Security Systems.

sufficient information, the agencies responsible at national level will be unable to adequately evaluate the potential for removing the reported obstacles.

According to its mandate, the Group was also to discuss models for dealing with problems that arise when people move from one Nordic country to another and do not receive compensation on fair terms, despite it being clear to which countries' legislation the individual concerned has to adapt. It has not been possible for the Group to develop a model that could meet the need defined. In the view of the Expert Group, such a model could be more appropriately developed in connection with a revision of the Nordic Convention on Social Security and/or be discussed within the Nordic Social Insurance Group. The work of this group is focused primarily on individual obstacles to freedom of movement.

In the work on individual obstacles, it has become clear that a whole series of these obstacles arise because, when drawing up new national legislation, countries do not adequately analyse what their proposed changes might mean for individuals moving between the Nordic countries. In the view of the Expert Group, the co-ordination of na-

tional legislation across the Nordic countries ought to be facilitated by improved mutual consultation and impact assessments during the preparatory stages.

It was also discovered that in some situations the obstacle was a consequence of inadequate information on the part of responsible authorities and institutions. In this context, it might be considered whether it would be possible for the Nordic Council of Ministers Secretariat to publish a Nordic newsletter on social security in order to:

- track major changes at national level to social and unemployment insurance in the Nordic countries, and generally provide regular descriptions of how the systems work in the different countries,
- follow up on Nordic co-operation and Nordic working groups within the area of social security, and disseminate the most important conclusions from their meetings to the public and to responsible officials, and
- track developments at EU level and disseminate them.

A newsletter of this type could, for example, be published twice yearly.

A. Issues relating to social assistance and social services

Covered by Article 7.2 of EU Regulation 492/2011, 1612/68 and the Nordic Convention on Social Assistance and Social Services of 14 June 1994

→ Via hisshall

Kuratorer

Pla

Läkarexpeditioner

Pla

Lasaretsrestaurang

Pla

Mammografi

Pla

Medicintekniska avd

Pla

Neonatalavd

Pla

Neurolog mott.

Pla

Obstetrisk mott.

Pla

Onkologisk behandlingsenhet

Pla

Operationsavd

Pla

Pacemakermott.

Pla

Postoperativ avd

Pla

Psykiatrisk klinik-stab

Pla

Rehabilitering öppenvård

Pla

kon exp

Pla

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Social assistance and social services

A1 Sending home of Nordic citizens who seek social assistance or social services

Nordic citizens in need of social assistance or social services have, in certain instances, been sent back from one Nordic country to another, despite their links to the country of residence. Under Article 7 of the Nordic Convention on Social Assistance and Social Services, a Nordic citizen may not be sent home because of his/her need for social assistance or social services if his/her family circumstances, links to the country of residence or other circumstances in general indicate that the person should remain there, and not under any circumstances if he/she has resided lawfully in the country for the previous three years.

Background

It follows directly from Article 7 of the Nordic Convention on Social Assistance and Social Services of 14 June 1994 that it is possible to send a Nordic citizen home as a result of their need for social assistance if the person has not legally resided in the country for the previous three years and if his/her family circumstances, connections to country of residence and other circumstances in general do not indicate that he/she should be allowed to remain.

Denmark takes the view that the Danish practice of sending Nordic citizens home if they are in continuous need of social services or social assistance fully accords with the Nordic Convention on Social Assistance and Social Services. It is also Denmark's view that its regulations and practice do not constitute an obstacle to freedom of movement as defined within the framework of Nordic co-operation.

Nordic citizens who are covered by EU/EEA regulations on freedom of movement may not be sent home. Immigration authorities make a concrete assessment in each individual case as to whether the person involved is covered by the EU/EEA regulations on freedom of movement.

Finland, Iceland, Norway and Sweden take the view that Article 7 of the Nordic Convention on Social Assistance and Social Services in practice prevents sending home Nordic citizens who have spent even a short time in the country where they seek assistance. The connection requirement is weak and the three-year limit is absolute, irrespective of the other criteria for connection. Denmark's interpretation and application of the article is seen as deviating from the interpretation and application in the other Nordic countries.

The issue of Denmark's interpretation of the provision has been raised by the Nordic Council during its 62nd Ses-

sion and by the Nordic Association in a letter to the Nordic prime ministers on 1 October 2011.

Proposed solution

A majority on the Expert Group believes this obstacle can be solved by a change in Danish practice. Denmark does not see its practice as an obstacle.

The Nordic Convention on Social Assistance and Social Services will probably be revised over the next few years, and this may also have an impact on the regulations for sending people home.

A2 Guide dogs when travelling to other countries

People who travel with guide dogs within the EU are currently treated on a par with tourists with accompanying pets. This involves high costs and long waiting times for vaccinations and certification for dogs.

Background

All the Nordic countries have the same requirements for admittance of working dogs (e.g. rescue, bomb- or drug-search dogs and guide dogs for people with limited sight, hearing or movement) as they have for pets.

In Finland, Denmark, Norway and Sweden, EU Regulation 998/2003 applies. The basic EU requirements are for ID marking, rabies vaccination and an EU pet passport. The regulation does not provide for any exceptions to these rules. Certain countries have additional requirements for other vaccinations/

medicines. Rules for how vaccinations should be administered, e.g. quarantines and checks, can also vary.

Iceland has an exemption from the EEA agreement appendices (Chapter 1, Section 1.1, item 10, EU Regulation 998/2003). All dogs entering the country are required to undergo four weeks' quarantine. Dogs must also be ID-marked and vaccinated against leptospirosis, distemper and parvovirus. They must also be tested for brucellosis and salmonella and treated for ectoparasites and endoparasites. Except for dogs brought from Denmark, rabies vaccinations are forbidden by law in Iceland. It is also necessary to seek a dispensation when dogs are taken out of Iceland.

The rules listed above involve costs that vary between countries. The costs represent a minor part of the total costs of keeping a dog and require trips to be planned far in advance.

Most Nordic mass-transit companies (air, train, boat and bus) permit guide dogs to travel free of charge.

Proposed solution

The Expert Group stresses that these requirements are based on veterinary considerations. It is therefore hardly possible or desirable to grant guide dogs exemption from EU veterinary rules when they are brought in or out of a country.

Good, easily accessible information on vaccination and quarantine requirements in the Nordic countries is important.

The Group notes that the status of a guide dog as an individual aide could be stressed. Consideration should also be given to whether people travelling with guide dogs within the EU should receive

assistance with the cost of vaccination and certification for the dogs.

A3 Personal carers when moving between countries

People with serious disabilities who have personal carers have encountered difficulties in bringing their carers with them when they move across borders. Some countries assess rights to a carer at national level, and employment terms and conditions for personal carers vary from country to country.

Background

The right to an individual carer is linked to the country in which the individual resides. Countries have differing terms and conditions for personal carers, the extent of assistance provided and how it should be managed. In all of the Nordic countries, the levels and forms of assistance depend on how the individual's needs are assessed. Assessments are made of how much support an individual needs, based on the degree of disability and whether the person lives in an institution or in his/her own home.

None of the Nordic countries has regulations stating that carers must move or take work far from their place of residence in the event that the individual they care for moves. This means that a carer normally ceases work if the individual receiving the care moves far away. The consequence of this is that the person in need of personal care may face problems with an interruption to their care provision during the period just after a move.

The rules for personal care on short-term trips vary, and availability also depends on whether the carer is prepared to accompany the individual concerned on the trip.

Proposed solution

Opportunities could be introduced in national legislation to apply for short-term care provision during a move, or for prior approval of personal care ahead of a move. This would depend on feasibility being determined by closer analysis of the financial and administrative consequences.

The Expert Group proposes that this issue should be raised in connection with any revision of the existing Nordic Convention on Social Assistance and Social Services.

A4 Movement of institutionalised individuals

According to the Nordic Convention on Social Assistance and Social Services, responsible authorities should co-operate to make it possible for elderly or institutionalised individuals to move to the country where they have the strongest personal ties. This does not happen in practice due to lack of clarity in relation to payment and responsibility.

Background

That it should be possible for people in need of long-term care and treatment to move from one Nordic country to another is based on Article 9 of the Nordic

Convention on Social Assistance and Social Services from 1994. Local authorities are responsible for providing such care in all of the Nordic countries. Article 9 makes the local authority, in collaboration with other agencies, responsible for assisting the individual concerned before their arrival in the other country. Article 9.1-2 gives the local authority power and responsibility to assist in the move to another Nordic country and, if needed, to reach agreement on the allocation of costs for care and treatment between the two countries.

The motivation for reaching agreement is that such a move should always be voluntary and based on the wishes of the person concerned. It is not sufficient that relatives favour the idea. The move should have a clearly positive effect on the care and rehabilitation of the person concerned and should lead to improved living conditions. It is a precondition that the person should have particular ties to the country to which he/she is moving. A need for care is not sufficient grounds for application of this provision.

Local authorities and their corresponding regional or local agencies in both countries should work together to facilitate the move if it improves the living conditions of the person concerned. This might apply, for example, to an individual who has moved from Finland to Sweden. With increasing age, the person may have forgotten the Swedish he/she learned and would now like to return to his/her land of origin. The responsible authorities in each country can agree to share moving and care costs.

There is thought to be a lack of information about the possibilities for agreements between local authorities

in the Nordic Region. This was raised at a meeting of the Nordic Social Assistance Group in Helsinki on 8 November 2011. Some took the view that this does not constitute an obstacle to freedom of movement because so little information is available on tangible cases. On the other hand, the individual cases reported to the authorities are demonstrably complicated.

Proposed solution

The Expert Group proposes that this issue should be addressed in connection with any revision of the current Nordic Convention on Social Assistance and Social Services. The Group believes that the Nordic Social Assistance Group should collaborate more closely on the collection of data about the number of cases involved. There should also be a study of the kinds of cases that are involved.

Relevant authorities/institutions¹⁵ should provide information on their duty to collaborate on people moving, for example via the Nordic Social Insurance Portal.¹⁶ This would require further development of the portal.

A5 Transportation for people with disabilities

People who are unable to use public transport due to disability and who temporarily move between Nordic countries do not have access to mobility services. If they require specialised transport, they have to book it themselves and pay market prices on arrival in another country. This gener-

¹⁵ In Finland, the Ministry of Social Affairs and Health is responsible for information; in Denmark, the Ministry of Social Affairs and Integration; in Norway, the Ministry of Health and Care Services; in Iceland, the Ministry of Welfare; and in Sweden, the National Board of Health and Welfare.

¹⁶ See www.nordsoc.org.

ally makes it expensive and complicated for people of disability to travel.

Background

The Nordic countries have different transportation systems for people of disability. The common element in these systems is that they should contribute to people of disability being able to participate in education, employment and leisure activities.

Denmark has a range of transportation systems, depending on the purpose of the transport. The most widely used are provided by local authorities, and these are subject to limitations of cost per trip. The systems in Finland, Iceland and Sweden are run by the local authorities. Mobility services are not a statutory right in Norway, but are run and funded by county councils. Some of the countries have rules limiting the geographic area in which the service can be used.

A project on transportation was run in 2008–2010 in Copenhagen, Oslo, Reykjavik and Stockholm by the Nordic Federation of Associations for Disabled People. The project found that an individual of disability visiting these communities could use available transportation. The project got a positive response from users but there were difficulties with administrative routines and booking between local authorities.

Proposed solution

The Expert Group believes that general disability-friendly design of public transport can reduce the need for special mobility services.

Where special services are required, the Group envisages a range of possible solutions. Changes can be made in national regulations to make it possible to use local transportation during short visits to other countries. National rules can be adapted to allow for agreements in individual cases to use local mobility services in the place visited, possibly with a regulated system of repayment. The project that was tested in 2008–2010 ought to be analysed in greater depth.

The Expert Group proposes that this issue should be taken up in connection with any revision of the current Nordic Convention on Social Assistance and Social Services.

A6 Moving to another country with a disability vehicle

People with disability vehicles (e.g. a car) are not allowed to take the vehicle with them when they move across a border, and have to apply for a new vehicle in their new country of residence. The length of the application-processing times can mean that moving becomes impossible for people who have a heavy day-to-day dependence on this type of transport.

Background

National rules on disability vehicles differ greatly across the Nordic countries. There are wide variations between countries in terms of who is responsible for acquisition, terms and conditions for funding, the support provided and the proportion of the cost covered. This means that an individual who has the right to support for the acquisition, upgrading and maintenance of a disability

vehicle in one country will not necessarily have the same right in another country.

Finland, Iceland and Sweden have broadly the same rules for moving to another country with a disability vehicle as for any other vehicle. On moving from another country, an individual may bring his/her disability vehicle in the same way as any another vehicle they might own. After the move, as with other vehicles, the vehicle must be tested and registered according to the regulations of the new country of residence. After the move, the person does not have any right to support for new adjustments, etc. from the country which he/she has left, but must follow the rules and regulations of the new country of residence.

Terms and conditions relating to payment for the vehicle, or to paying off loans made for its purchase, can make it difficult to export the vehicle, particularly from Denmark, Iceland and Norway.

The levels of charges for importing, testing and registering vehicles vary between the countries. This can be significant for whether it is worthwhile in financial terms to bring a vehicle from

another country or whether it would be advantageous to apply for support for a new one after making the move.

Proposed solution

The Expert Group believes it is important to provide people with good information on the rules so they are able to plan properly before moving.

The Expert Group takes the view that amendments should be considered to national rules that prevent or complicate the export of disability vehicles.

The option of using the vehicle for a fixed period post-relocation, combined with shorter processing times for applications for support for the purchase of a vehicle in the new country of residence, should facilitate the process in cases where it is neither possible nor desirable to export the vehicle when moving.

B. Issues relating to social security

**Covered by EU Regulations 883/2004 and 987/2009
(and 1408/71 and 574/72) and the Nordic Convention on
Social Assistance of 18 August 2003**

Applicable legislation

General information about conflict-of-law provisions when working in two or more member states

Some of the reported problems arise in situations where an individual works or has worked in more than one Nordic country. The provisions that regulate which country's legislation applies in such cases are laid out in Regulation 883/2004.¹⁷

In the EU, negotiations are being conducted in a working group on social insurance with a view to amending the current provisions. Proposals for amendments are initiated by the EU Commission and submitted to the Council of Ministers and the European Parliament after they have been discussed by the Administrative Commission.

The proposals currently under negotiation deal with the requirement of a substantial amount of work undertaken in the country of residence before that country's legislation is applicable. Currently, this restriction is applied only when the individual in question works for the same employer in all of the countries involved. If work is carried out for different employers, it is always the legislation of the country of residence that applies. This limitation was not foreseen when the current provisions were nego-

tiated, and it is now thought appropriate to adjust the text to reflect the original intention.

Given the current wording, even limited work in the country of residence can mean that the choice of applicable law moves to that country when work is carried out for another employer in the other country. This can have negative consequences for the main employer, who has to pay social insurance contributions in accordance with the legislation of the country of residence, and for the employee's relationship with the main employer. Since the level of social insurance contributions differs sharply between the countries in some cases, the issue of which country's legislation should apply can have major significance.

The Commission will also submit a proposal to the Council and Parliament to clarify the applicable legislation for an unemployed person who takes a part-time job in another country. The proposal would mean that the legislation in the country that pays out unemployment benefit would continue to apply even after the person begins work in another country.

Due to the fact that the whole applicable legislation issue is being discussed and changes will be made at EU level, the Nordic countries should not undertake further measures of their own in

¹⁷ In Iceland and Norway, these situations are currently regulated by Regulation 1408/71. Regulation 883/2004 is scheduled to come into force in Iceland and Norway in 2012.

this area, but rather wait and see how far amendments at EU level affect the reported problems.

B1 Differences in national levels of employer contributions

The differences in the national levels of employer contributions can make it difficult for an individual living in a country with higher contributions to find employment in a country with lower contributions if the provisions on legislation applicable determine that the legislation of the country of residence should apply. For example, an employer can insist that an employment relationship in a country with lower charges is conditional on the employee not simultaneously working in his/her country of residence.

Background

An individual who lives in a country and simultaneously works there and in another member state should, according to EU co-ordination regulations in Regulation 883/2004 – and subject to certain conditions – be subject to the legislation of the country of residence. This means that an individual living in Sweden and working in both Sweden and Denmark should, in certain cases, be covered by Swedish legislation. In such cases, the Danish employer must pay employer contributions according to Swedish law. Swedish employer contributions are significantly higher than the corresponding Danish ones. To avoid such a situation, many Danish employers require that employees living in Sweden should undertake not to take up any employment in Sweden. A similar problem exists be-

tween Norway and Sweden, because Norway has geographically differentiated employer contributions.

In COM(2010)794 final, 2010/0380, the EU Commission put a proposal to the European Parliament and Council of Ministers for amendment of article 13.1 of Regulation 883/2004, which regulates the applicable legislation in the event of employment in two or more member states. The amendment proposal has been processed by the Council's working group and has now been sent for further debate in the Council and the European Parliament.

The proposal provides that the condition that an individual must carry out a substantial part of his/her work in the country of residence for that country's legislation to apply will also extend to individuals who have different employers in two or more member states. As grounds for putting the proposal forward, the Commission states that the current provision does not reflect the intentions expressed when the provision was debated in the Council.

Since 2001, Denmark and Sweden have bilaterally agreed in principle to seek exemptions from the provisions concerning applicable legislation under Article 17 of Regulation 1408/71 in cases where an individual works in both countries. The situations envisaged in their agreement are when an individual has the same employer in both countries and no more than 50% of the work is in the country of residence. The legislation to be applied should then be that of the country in which the employer is located. Another situation is where an individual has a position of trust in his/her country of residence, in which case it can be agreed that the legislation of the employer's country will apply. The two

countries have agreed that their previous agreement, which refers to Regulation 1408/71, will have corresponding application to Regulation 883/2004 until such time as a new agreement is concluded.

Over the last few years, dialogue has been ongoing with a view toward updating the agreement to make it possible to let the other country's legislation apply rather than that of the country of residence if the individual concerned has different employers in the two countries. Since the matter of the financial impact of such an agreement on the countries has also been raised, it has not yet been possible to conclude a new agreement.

Proposed solution

The Expert Group takes the view that any further development of a proposed solution should await the coming into force of the amended regulation. Once the amendment takes effect, it should lead to fewer situations in which the legislation of the country of residence applies where an individual works in two or more member states. The Expert Group believes that this obstacle to freedom of movement could also be resolved by bilateral agreements.

B2 Social insurance for Nordic students in Sweden

With regard to the rights of students from the other Nordic countries to be covered by social insurance in Sweden, the Swedish Social Insurance Agency's position is

that the national legislation to be applied depends on what the student was doing in his/her homeland before moving to Sweden and whether Regulation 1408/71 or Regulation 883/2004 applies.

Background

Regulation 883/2004 came into force in EU member states on 1 May 2010. When Norway and Iceland begin to apply regulations 883/2004 and 987/2009, the same co-ordination regulations will apply between all of the Nordic countries.

According to Article 11.3e of Regulation 883/2004, the legislation of the country of residence is applied to economically inactive individuals, which includes students who are covered by the legislation of the country in which they are living. In the regulation, 'residence' refers to permanent residence, and is primarily decided by national legislation. The reasons for this are clarified in 17a of the preamble to Regulation 883/2004. Article 11 of Regulation 987/2009 sets out, as mentioned, certain criteria for determining place of residence if member states' institutions adopt different positions on where they consider an individual to be living. Civil registers are not decisive in determining country of residence. An evaluation must be made of where the person has his/her main interests. The evaluation should be made with the help of the list in Article 11 of Regulation 987/2009. Article 11.1 b iv states that a determining element is 'in the case of students, the source of their income'. This is one of many issues in this non-exhaustive list of which account must be taken if two countries cannot agree on an individu-

al's country of residence. The EU regulations take precedence over bilateral and multilateral agreements between member states. As a result, it is no longer acceptable, as of 1 May 2010, to apply the current Nordic Convention's rules about which legislation is appropriate to students moving between EU member states. Regulation 883/2004 and Implementing Regulation 987/2009 are applicable.

A student who moved to Sweden before 1 May 2010 and had not worked in his/her home country prior to the move could be covered by social insurance in Sweden, in accordance with Article 5.1 of the Nordic Convention. A student who had previously worked in his or her home country before moving to Sweden, or who moved to Sweden (from Denmark or Finland) after 1 May 2010 is not covered by the provisions of the convention and is therefore not covered by Swedish social insurance unless the conditions for the national provisions are fulfilled. The Swedish Social Insurance Agency has applied national provisions after 1 May 2010. Article 11.1 b of Implementing Regulation 987/2009 lists the factors to be considered in determining residence where institutions in member states disagree. It is noted that 'source of income' can be an important factor for students. If a student receives student funding from his/her home country, the Social Insurance Agency regards this as an indication that he or she has the strongest ties there.

Regulations 1408/71 and 883/2004 specify the definition of people active in the labour market. For these groups, it is mainly the rules of the country in which the work is done that apply. In the event

that an individual has worked before moving to another country, it is the national legislation in the country in which they most recently worked that regulates how long the person can be regarded as retaining the right to benefits on the basis of the previous work.

Students are included in the personal scope of application listed in Regulation 1408/71 but the regulation does not specify definitively which legislation applies to students or the economically inactive. The regulation provides that country of residence's rules will apply to those covered by the regulation if none of the special applicable legislation rules cover the situation in question. Each country determines who is considered to be a resident there. The Nordic Convention on Social Assistance provided rules on applicable legislation for those who are not or have not been economically active. The provision in Article 5.1 states that for individuals who are neither employed nor self-employed as envisaged in Regulation 1408/71, the legislation of the country of residence should apply. The Nordic Convention takes precedence over national legislation and, according to the convention, the legislation applicable for students and other individuals who are not or who have not been economically active is determined based on the population register. As far as students' social security rights are concerned, Finland, Iceland, Norway, Sweden and to a certain extent Denmark insure 'their' students studying in other countries according to different formulae and terms.

Regulation 1408/71 and the Nordic Convention on Social Assistance and Social Services still apply between Iceland and Norway and the other Nordic coun-

tries, while Regulation 883/2004 applies between the other Nordic countries. Both Norway and Iceland have made adaptations to Regulation 1408/71 in respect of students' social insurance. The amendment to the EEA agreement is expected to come into force during 2012, which means that Norway and Iceland will also begin to apply Regulation 883/2004 instead of Regulation 1408/71. The Nordic countries have also drawn up a proposal for a new Nordic Convention on Social Security. The Norwegian and Icelandic adaptations in Regulation 1408/71 with regard to students' social security have not been made in respect of Regulation 883/2004, partly because the latter regulation contains rules about applicable legislation for the economically inactive. According to these rules, the legislation of the country of residence applies.

Since many social services in the Nordic countries depend on place of residence, this assessment is of great significance for economically inactive people and students moving between the Nordic countries. Nor do the different Nordic countries have the same national rules on social insurance for students, or how long they may continue to be insured in the countries from which they came.

Even if the same co-ordinating rules were applied to all of the Nordic countries, the assessment of who is deemed to be resident in a country would still be done on an individual basis. This would make the situation more complicated than it is today, and it would take longer to reach a decision on residence than to make a change to the population register. Some students could also be con-

sidered to be residing in the country to which they have moved, while others would not. For those not regarded as residing in the country where they are studying, their social insurance protection would depend upon the country from which they came. The problem then arises that the country from which the student came may regard him/her as no longer being insured there, while at the same time the student may be regarded as not residing or being insured in the country to which they have moved.

Since regulations 883/2004 and 987/2009 have still not come into force in Iceland and Norway, it remains to be seen whether all of the Nordic countries will take the same view of how the rules should be applied to students. It should also be pointed out that the regulation has only been in force for around two years in the EU countries, including Denmark, Finland and Sweden. The EU countries will evaluate and discuss their experiences with its application and possibly make amendments. Given the experiences already noted by Finland and Sweden, the problem is likely to be less severe under Regulation 883/2004. However, Iceland takes the view that problems may still arise under the new regulation.

Proposed solution

In the first instance, the Expert Group points to the duty of Nordic institutions to co-operate in order to avoid people moving between the Nordic countries falling between two stools if the agencies responsible are unable to agree where an individual has his/her main

interests and should be regarded as residing. Furthermore, under Regulation 987/2009 the institutions can make a provisional decision on legislation applicable, as well as a provisional payment of benefits. If needed, the options for exemptions from Regulation 883/2004 can also be utilised. The Expert Group believes that it would be better to wait until Regulation 883/2004 has come into force in all of the Nordic countries before considering further solutions.

B3 Finland's four-month rule

Prior to the EU enlargement in 2004, Finland introduced rules on residence-based benefits that mean that individuals who are not resident in Finland and whose employment has lasted less than four months are not insured in respect of certain benefits that require permanent residence in Finland. This particularly affects Nordic seasonal workers in the tourism industry in northern Finland.

Background and example

When an individual moves to Finland, the Social Insurance Institution decides whether he/she is covered by the Finnish residence-based social security provided by the Institution. The decisions are based on the Act on the Application of Residence-based Social Security Legislation, also known as the Implementation Act (1573/1993). This act covers the following benefits: national pension, child benefit, maternity allowance,

general housing allowance, housing allowance for pensioners, disability allowance, front-veteran's supplement, guarantee pensions and child maintenance allowance. Rights to benefits under sickness insurance legislation and the Social Insurance Institution's rehabilitation benefits and rehabilitation allowances are also based on residence under the Implementation Act. It should also be noted that local authorities are also responsible for certain residence-based benefits and public health care.

When an individual moves to Finland with the intention of living there permanently, he/she is normally covered by Finnish social security from the date of arrival and is therefore entitled to the benefits administered by the Social Insurance Institution. Intention of permanent residence might, for example, consist of returning to Finland, at least two years' work in Finland, or marriage or other close family relationship to an individual who is a permanent resident of Finland. Decisions are made on the basis of the individual's overall situation.

If an individual arriving in Finland does not fulfil the requirements for permanent residence in the country, the right to benefits administered by the Social Insurance Institution is to be based on work. Individuals covered by EU Regulations 883/2004 and 1408/71 can be insured on this basis if they work at least 18 hours a week and receive pay that is at least equal to that stipulated under the collective agreements in the relevant sector. If there is no collective agreement in the sector, the pay must be at least €1,103 per month (2012) for full-time work. This requirement is usually

known as the four-month rule. It is not a waiting period, as the insurance begins on the first day of work if the requirements are fulfilled.

An individual living in a country other than Finland and working fewer than 18 hours per week in Finland does not fulfil the minimum requirement of the Finnish Implementation Act. The requirement for 18 hours per week is the main rule, but this requirement can be met through variable working times with an average of 18 hours per week. Since the individual does not live in Finland, he or she cannot be covered by the Finnish legislation on the basis of permanent residence. However, such an individual is covered for earnings-related pension, accidents at work and occupational diseases. He or she is entitled to use the public health service but has no right to benefits as defined according to the Implementation Act, such as child benefit or sickness insurance (sickness allowance, parental allowance).

According to the applicable legislation provisions in Regulation 883/2004, an individual working part-time in Finland but living in Sweden is covered by the legislation of the country of employment, i.e. Finnish legislation. The provisions also stipulate that an individual can only be covered by the legislation of one country in any given case. The Swedish social insurance code also contains a provision (chapter 4, paragraph 5 of the social insurance code) that is based on the principle of a single country's legislation applying, which means that an individual who is covered by another country's legislation via the EU co-ordination regulations is not insured

in Sweden in respect of the benefits covered by the co-ordination regulations. The individual concerned is therefore not entitled to residence-related benefits in Sweden. If the individual is not working in either Sweden or Finland, however, he/she is entitled to residence-related benefits as a permanent resident of Sweden.

The four-month rule has been identified as an obstacle to freedom of movement, even in Finland. It should be noted that the four-month rule only applies to the listed benefits administered by the Social Insurance Institution of Finland. It does not apply to either the Institution's child home-care allowance or to unemployment insurance, nor does it apply to earnings-related pensions, accidents at work or occupational disease insurance, nor to the public health service or to earnings-related unemployment benefit.

Proposed solution

The Expert Group takes the view that amendments to Finnish legislation are needed to remove this obstacle. The Finnish Ministry of Social Affairs and Health has set up a working group, SOLMU IV, to examine the issue by 30 June 2012. SOLMU IV will put forward proposals for amendment of the Implementation Act.

Sickness, maternity and equivalent paternity benefits

B4 Health insurance for Finnish students

Finnish students studying in other Nordic countries do not receive social security benefits from Finland in the event of long-term illness.

Background

A Finnish student with a long-term illness is entitled to sickness benefit from Finland under Finnish national legislation. It is the national legislation in each Nordic country that determines whether students are entitled to sickness and social security benefits. This means that a Finnish student who would have been paid sickness benefit from Finland if he/she had been studying in Finland, may receive no benefits in the country where he/she is studying, where he/she is registered in the population register and is covered by social insurance under Article 5.1 of the current Nordic Convention on Social Security. According to articles 1.1.6 and 5.1, the legislation of the country where the individual is registered applies to those who are not and have not been employed or self-employed as defined by Regulation 1408/71.

Students belong to the personal scope covered by Regulation 1408/71 but the regulation does not have specific applicable legislation provisions for

them or the economically inactive. According to the regulation, the rules of the country of residence apply to those covered by the regulation if none of the specific applicable legislation rules defined in the regulation apply in the particular case. Each country determines who should be regarded as resident in the country. Article 5.1 of the Nordic Convention on Social Security includes a regulation on applicable legislation for economically inactive individuals, such as students studying in another Nordic country. The Nordic Convention takes precedence over national legislation, and according to the convention, inclusion in the population register determines which legislation is applicable to students and others who are not economically active.

All the Nordic countries regard individuals in the population register in any given Nordic country as being covered by health insurance and entitled to health care. Students and other economically inactive people therefore receive health care on the same terms as others residing in and in the population register of the country concerned. In Nordic countries other than Finland, students' loss of income during illness is compensated for by the student financial aid system. Finland and, to a certain extent, Iceland have systems in which students receive ordinary sickness benefit when ill. Finnish students covered by the leg-

isolation of the country of study under Article 5.1 of the Nordic Convention are not entitled to sickness benefit from Finland, because Finnish law is not applicable. When they have received student financial aid from Finland, they are not entitled to the compensation available to students in the country of study.

Proposed solution

This obstacle to freedom of movement has been solved by the implementation of Regulation 883/2004. Since Regulation 883/2004 contains applicable legislation provisions for the economically inactive, Finland takes the view that students studying in the other Nordic countries can still be regarded as resident in Finland under Regulation 883/2004. They therefore also receive sickness benefit from Finland during illness. In relation to Norway and Iceland, the obstacle will be solved when regulations 883/2004 and 987/2009 also become applicable in these countries.

B5 Vocational rehabilitation in country of residence

An individual who lives in one country and works in another and is injured or otherwise incapable of work for a longer period may, following medical treatment, find it difficult to receive vocational rehabilitation in their country of residence. He/she may need to travel daily to the country of work to undergo rehabilitation, which can be a heavy burden for an individual who is unwell.

Background

According to the EU regulations 1408/71 and 883/2004, rehabilitation comes under Title III, Chapter 1: 'Sickness, maternity and equivalent paternity benefits'.

When it is a question of whether an individual who lives in (or returns to) a country other than the country whose legislation applies to him/her, the country of work is responsible for cash benefits (i.e. rehabilitation benefits, sickness benefits, etc.) while the country of residence is responsible for benefits in kind. In relation to rehabilitation, benefits in kind include rehabilitation measures, vocational training, retraining, etc. In practice, it is extremely difficult to apply these provisions, even where EU legislation takes precedence over national legislation. The reason is that national legislation varies so much, which means it can be complicated to co-ordinate cash benefits and benefits in kind in rehabilitation cases even within the same country. Great difficulties can arise when the different systems of two countries have to be co-ordinated.

Because of changes in national legislation it is difficult to implement EU regulations in cross-border situations pertaining to individuals living in one Nordic country and working in another.

For example, the Swedish health insurance reform has led to problems for people who work or most recently worked in Sweden but now live in another Nordic country. Norway has raised its activity requirements for people on sick leave to receive benefit. Norwegian employers have also been required to do more to follow up and adapt workplaces. Another example of rule changes leading to difficulties is that in both Sweden and

Norway it is no longer possible to receive time-limited sickness benefit/disability benefit, while the other countries have retained the option. The Danish rehabilitation system (revalidering) is regarded as a benefit in kind, so cannot be exported.

There have been bilateral pilot projects involving Sweden's Värmland region and Norway, and involving Sweden and Finland in the north. In the proposal for the new Nordic Convention on Social Security, which has still not come into force, rehabilitation issues are dealt with in Section III, Chapter 5, Article 12. It states that the relevant institutions in the countries concerned should co-operate on support and activation measures with a view to providing opportunities for entry into or return to work. The proposal also provides that if such efforts involve the transfer of insurance cover, the countries involved should, as far as possible, resolve the situation to the advantage of the individual concerned.

The administrative agreement accompanying the Convention will deal with rehabilitation in articles 9 and 10. Article 9 states that the countries should bilaterally agree administrative routines for rehabilitation within two years of the Convention and agreement coming into effect. Article 9.2 states that where the rehabilitation circumstances in a particular country affect entitlements to pension or other benefits in another country, the latter country should be informed of measures that have commenced, been completed or even contemplated as feasible. Article 10.2 states that in specific cases, countries should work together, as far as possible, to resolve the situation to the advantage of the individual. The options for exemp-

tions under EU Regulation 883/2004 can be used as needed, and the article notes that this applies particularly to vocational rehabilitation, in accordance with Article 9.

The proposal for a new Nordic Convention on Social Security, and the associated administrative agreement including the provision on the requirement to reach bilateral agreements between countries, has been debated. The work of preparing proposals for agreements has begun.

It is clear that there is insufficient knowledge of the opportunities that exist in the provisions for vocational rehabilitation. The fact that seemingly similar concepts in fact have differing content contributes to misunderstandings about opportunities in the other countries.

Proposed solution

It is important that relevant institutions and case officers are aware of the rights of the individual to care in his/her country of residence, and at the same time to cash benefits from the previous country in which he/she worked, as per the EU regulations. The Expert Group also takes the view that clarification is needed about what national concepts and benefits entail.

The Group believes that the Nordic rehabilitation group should continue its work on bilateral agreements on rehabilitation, as these are needed irrespective of whether the new convention is established or not.

B6 An individual on part-time sick leave in one country who takes a part-time job in another country

According to EU Regulation 883/2004 an individual is covered by the legislation of a single country, which as a rule will be the legislation of the country in which the individual works. The applicable legislation provisions also regulate situations in which an individual normally works in two or more member states. If the individual concerned takes a part-time job in another country, this can lead to problems in determining which legislation is applicable and whether the individual has the right to continued payments of cash benefits.

Background

If somebody who previously received a full-time cash benefit transfers to part-time compensation in one country and simultaneously takes up a part-time post in another country, this may lead to problems in determining which legislation is applicable. There is also a risk that part-time benefits relating to the previous job might cease. In addition to the reference to the legislation of the country of work, there are also provisions that state that an individual who receives a cash benefit related to his/her work must be seen as continuing that work activity. In its guidelines on applicable legislation, the EU Commission states that an individual is regarded as carrying out his/her work in two countries if he/she receives payment from one country and starts to work part-time in another.

The applicable legislation provisions relating to work in two or more countries differ depending on whether the work carried out in the different countries is on behalf of a single employer or not. Even if the previous employment has ended, assessment should be based on whether cash benefits relate to the previous employer and the extent of the previous employment.

If the work is for the same employer, a substantial proportion of it (25%) must be carried out in the country of residence for that country's legislation to be applicable, otherwise the legislation of the country in which the employer is registered or based will apply.

If the work is done for different employers, it is always the legislation of the country of residence that applies.

In the event that the applicable legislation falls to a country other than the one that pays the cash benefit, a change of applicable legislation means that the entitlement to payment ceases, since the country making the payment no longer is the competent one. Nor is there any co-ordination regulation to enable the country now providing insurance cover to take over responsibility for the part of the payment exceeding that which is related to the new part-time work.

If the individual is still employed in the country making the payment, and if the new competent state is determined as the one in which the new part-time job is based, then the social insurance in that country ought also to cover the original employment.

As with other situations involving rules on applicable legislation and work in two or more countries, the great differences in the level of social security contributions from country to country mean that an employer in a country with

low charges can choose alternatives other than employing someone, as this would involve higher contributions than apply in the employee's home country.

New regulations have been negotiated within the EU, which mean that the condition that a substantial portion of the work must be carried out in the country of residence will also apply to people working for different employers. Proposed amendments to Article 13.1 of Regulation 883/2004 will be decided on by the Council of Ministers and European Parliament, but it is unclear when they might come into force.

This problem also has an impact on simultaneous part-time sick leave in one country and part-time work in another, but the same situation can also arise with other kinds of cash benefit, since the applicable legislation provisions are the same.

Proposed solution

Where it is to the advantage of the individual, countries can agree to apply the legislation of a country other than that stated in the applicable legislation provisions: see Article 16 of Regulation 883/2004 and Article 17 of Regulation 1408/71. Such agreement also requires that the employer(s) concerned must pay social security contributions in the agreed country.

The Nordic countries should also wait to see what the consequences are of the proposed amendments to applicable legislation provisions.

B7 Norwegian fathers' quota

Men who work in Norway but whose wives or partners do not work or live in Norway have no independent entitlement to the fathers' quota during parental leave. Entitlement derives from the mother's entitlement. The father's independent right to benefit during parental leave requires that the mother is prevented from looking after the child because of illness, full-time work or full-time study.

Background

In Denmark, Finland, Iceland and Sweden, both fathers and mothers accumulate entitlement to parents' allowance independently of each other. In Norway, there is a fathers' quota in the benefit period, if both the father and the mother have accumulated entitlement to parental allowance. When the father exercises the quota, there is no activity requirement on the mother: they can both stay at home at the same time. In cases where only the mother has accumulated entitlement to parental allowance, there is no father's quota and the mother is entitled to the full benefit period.

Where only the father has accumulated entitlement to parental allowance, there are activity requirements on the mother if the father is to be paid parental allowance. The mother must be working full-time or part-time, studying full-time or combining work and study that adds up to full-time. The father can also receive the parental allowance if the mother cannot take care of the child due to illness or injury. There are also activity requirements on the mother if the father is to receive parental allow-

ance over and above the father's quota in the event that both have accumulated entitlement to parental allowance. There is no corresponding activity requirement on the father when the mother receives parental allowance.

The Norwegian rules mean that if the father works in Norway while the mother works in another Nordic country before the birth, the father cannot receive parental allowance unless the mother goes out to work and/or study or is prevented from taking care of the child on health grounds.

Proposed solution

This problem could be solved by interpretation of Article 5a of Regulation 883/2004 when it is implemented in Norway. This provision requires that the state responsible should consider similar benefits in another state's legislation or income under another state's legislation as if these had been obtained according to the responsible state's own legislation or within that state. The mother's right to parental allowance in another Nordic country should therefore have the same weight as the mother's right to parental allowance under Norwegian legislation.

B8 Lower payments during parental leave due to student support from the 'wrong' country

Part of Swedish parental allowance is linked to sickness cash benefit based income known as SGI. Under certain conditions, parents' SGI can be protected during periods of unemployment or study. It

is a condition of protection during study periods that the parents received student support from Sweden during their studies. Finnish legislation makes it possible to receive parental benefit during parental leave after studying, if the student was in receipt of students' financial support from Finland in the four months prior to parental leave.

Background

In Denmark, Iceland and Norway, entitlement to benefit during parental leave is dependent on participation in the labour market and previous income. There are no regulations about periods of study not being taken into account in calculating benefit. In Denmark, students can receive extra students' financial support during parental leave. In Norway, people who have children during their education can receive a special parental grant and one-off payment from the study-grant authorities (Lånekassen). Under Icelandic law, students in Iceland and people who are outside the labour market have a residence-based entitlement to a fixed monthly payment during parental leave. In Finland, students who were in receipt of Finnish study grants in the four months prior to parental leave are entitled to parental allowance. If the student financial support was paid out by a country other than Finland, it is not used as the basis for benefit calculation. In Finland, an individual who is without income can also receive residence-based parental allowance at a minimal level.

Parental allowance in Sweden is partly residence-based and partly employment-based. Sickness cash benefit-based income (SGI) forms the basis for

calculation for a range of Swedish social insurance benefits, including part of parental allowance. SGI is linked to ongoing income from gainful employment. However, in certain circumstances, an insured person may be entitled to have an SGI even if they were not working. The SGI of parents is protected during periods of study in which they were in receipt of student support under student-support legislation (1999:1395).

It is a principle in all of the Nordic countries that income prior to the birth governs the amount of benefit paid out during parental leave. In Iceland, Sweden and Finland, however, residence can also confer entitlement to parental allowance to a certain extent. However, national systems differ greatly from each other in terms of entitlement to or calculation of benefit for people who had no income immediately prior to the birth.

With regard to cash benefits for sickness, maternity and equivalent paternity benefits, Article 21 of Regulation 883/2004 provides that the institution responsible should only take account of income relating to periods completed under their legislation. This means that it does not violate the regulation to refuse to take account of student financial support from another country when the extent of parental allowance is being calculated in Finland.

The Swedish and Finnish regulations are not discriminatory according to Article 21 of Regulation 883/2004, although they do mean that students who

received student financial support from different Nordic countries are treated differently in calculating benefit. In the case of Sweden, the question might be raised whether a period of study with some form of foreign student support should not be taken into account in determining an individual's SGI under Article 5a of Regulation 883/2004. However, this would mean that the foreign student support did not fulfil the condition that support must be paid under the Swedish student-support legislation.

Proposed solution

Implementation of Article 5a of Regulation 883/2004 would mean that student financial support received by an individual under the legislation of another country would be treated as equivalent to student financial support from his or her own home country. The provision states that if benefits from a country's social insurance system or other income have certain legal effects, the relevant provisions should also be applied to equivalent benefits acquired under the legislation of another member state or income acquired in another member state.

Invalidity benefits

B9 The Nordic countries have different provisions for entitlement to and calculation of invalidity benefits

People who move between the Nordic countries and are affected by illness or disability can face difficulty supporting themselves. Qualifying conditions for the payment of invalidity benefits vary and the benefits are designed in different ways in the different Nordic countries. This can lead to people receiving higher or lower benefits than those who have worked in just one country.

In accordance with regulations 883/2004 and 1408/71, invalidity benefits¹⁸ are as follows:

Denmark	Early retirement pension	Permanent
Finland	Rehabilitation support	Time-limited
	Disability/sickness benefit	Permanent
Iceland	Disability pension from social insurance	Permanent
	Occupational pension from pension fund	Permanent
Norway	Disability pension	Permanent
Sweden	Sickness benefit (guarantee or income-related benefit)	Permanent
	Activity benefit (guarantee or income-related benefit)	Time-limited

Background

All of the Nordic countries pay benefits that provide an individual with income during such time as he/she is unable to work due to illness or injury. Benefits are paid both to people who are regarded as permanently incapable of working and people who are participating in treatment, rehabilitation or other measures to enable them to return to work.

In addition to invalidity benefits, there are also cash benefits for illness, such as sickness benefit, rehabilitation benefit and similar. These benefits have different titles in the different countries but their purposes are broadly the same. Similar medical conditions can mean entitlement to sickness benefit in one country and invalidity benefit in another. There are no co-ordination regulations covering such situations.

Sweden (for people over 30 years of age), Denmark and Norway do not pay out invalidity benefits to people who are regarded as potentially able to return to work with the help of treatment and rehabilitation measures or labour-market policy measures. Finland, on the other hand, does. There, an individual is only entitled to sickness benefits for a maximum of 300 days. If incapacity to work due to illness or injury continues beyond

¹⁸ Disability benefits are recognised as one of the benefit categories in the Regulation, see Article 3.1c of Regulation 883/2004 and Article 4.1.b of Regulation 1408/71.

300 days, Finland may grant time-limited rehabilitation support or a permanent disability pension. Rehabilitation support is granted if it is considered that the person could return to work after treatment and/or rehabilitation. A disability pension is granted if rehabilitation is not seen as appropriate and the incapacity is regarded as permanent. Both of these Finnish benefits are pensions.

A common feature for the Nordic countries is the emphasis on not granting invalidity benefits to an individual indefinitely if there is any prospect of him/her returning to work. The core of the problem is that the Nordic countries have different regulations for sickness and invalidity benefits, which means that the benefits are classified in different ways in relation to the regulations.

Problems can arise in cross-border situations because:

1) Co-ordination provisions within the EU are different for invalidity benefits and for cash benefits in the event of illness

As far as disability benefit is concerned, each Nordic country grants its own share of payment in proportion to how long an individual has been insured in the country and/or which benefit-based income he/she has received. The idea is that when countries' shares are settled, the person will receive a benefit based on all the years for which he/she was insured. Each country makes a decision on entitlement to benefit based on its own national regulations.

For sickness benefits, the whole amount is paid by the country in which the person was insured when he/she became incapacitated. The amount of benefit does not depend on the length of

the period insured. Countries in which the person was previously insured pay nothing.

Example of the problem:

- A 50-year-old is insured in Finland when she becomes incapacitated. She was previously insured in Sweden for 10 years.
- During the first year, she receives Finnish sickness benefit and then Finland grants her a time-limited pension benefit, i.e. rehabilitation support for the period in which she is undergoing treatment or rehabilitation. The extent of the rehabilitation support depends on how many years she has been insured in Finland and her level of income there. The 10 years of insurance in Sweden do not confer any entitlement to pension in Finland.
- Sweden also takes the view that the individual is incapable of work for a certain period and is in principle entitled to sickness benefit. However, since, under the EU co-ordination regulations, cash benefits are normally paid by the country in which the individual is insured, Sweden is not able to pay the benefit. Nor can Sweden pay disability benefit for the 10 years in Sweden, since under Swedish law there are no time-limited invalidity benefits for people over 30.
- The person incapable of work therefore only receives rehabilitation support from Finland, calculated solely on the basis of the period insured in Finland.

This problem affects mainly people resident in Finland who are insured in Finland when they become incapable of work and who were previously insured in Swe-

den, Norway or Denmark, which do not have time-limited invalidity benefits.

2) Different conditions for permanent disability benefit

All of the countries have different regulations for the granting of disability benefit on an indefinite basis. The account taken of social factors such as age, previous work experience, qualifications and aspects of labour-market policy varies from country to country. The consequences can be the same as under point 1) above, i.e. that an individual does not receive compensation for periods of employment in other countries. He or she may therefore be paid less benefit than if the individual involved had worked in only one country.

Example of the problem:

- An individual who works and lives in Finland becomes incapable of work due to illness and applies for benefit from Finland. The Finnish authorities find that the individual is permanently incapable of work and that rehabilitation is no longer appropriate. The Finnish authorities therefore grant her a permanent disability pension based on her Finnish insurance period. An application for benefit is forwarded to Sweden, where the person worked for eight years in the 1970s and 1980s.
- The Swedish authorities find that the information received from Finland is insufficient for the person to be entitled to long-term disability benefit (sickness benefit) according to Swedish regulations. The applicant is not permanently incapable of work in terms of all the kinds of work avail-

able on the ordinary labour market. She ought therefore to participate in support programmes in order to be able to return to work, and in the meantime her income should be guaranteed in the form of cash benefits for illness, such as sickness benefit and rehabilitation benefit and, if necessary, activity benefit or unemployment benefit. Since Finland is her country of insurance for cash benefits, Sweden provides nothing for the periods during which she was insured in Sweden.

- Nor can the Finnish authorities provide cash benefits, since the individual has already been declared permanently incapable of work and granted a disability pension. The Finnish authorities no longer seek to rehabilitate people, since studies done in Finland have shown that rehabilitation does not lead to a return to the workforce. The final result is that the individual receives a disability pension from Finland, calculated on the basis of period during which she was insured in Finland. The eight years of insurance in Sweden generate no payments.

This problem can apply to any of the Nordic countries if one country rejects an application and the other approves disability benefit. However, the example above does not apply to Swedish income-related sickness benefit and income-related activity benefit. This is because these benefits are not governed by the length of the insurance period (this is referred to as Type A legislation).

If the person in the example above had been insured in Sweden, her income-related benefit would have been

calculated firstly according to national legislation and secondly according to the pro rata temporis principle. A comparison is then made between the two amounts and the greater amount is paid out. Guarantee benefit (non-income related), on the other hand, is based on Type B legislation, and depends on the length of the insurance period.

Proposed solution

Proposed solutions that have been submitted for discussion and comment in the Nordic countries include the following:

Obstacles under Item 1)

Since several Nordic countries have converted their time-limited invalidity benefits to cash benefits, Finland should consider converting its rehabilitation support into a cash benefit. The other possibility is that rehabilitation benefit continues as a pension, but one that is granted as a theoretical amount if the other country does not have a time-limited disability benefit and does not provide permanent benefit. (Since there are also freedom of movement problems with sickness benefit and even rehabilitation, this could lead to new obstacles arising, but at least the co-ordination regulations would be the same.)

Obstacles under Item 2)

With regard to situations where the country in which an individual is resident and insured provides a permanent disability benefit while the other country takes the view that a permanent disability benefit cannot be granted, there would seem to be the following possibilities:

1. The decision of the insuring country also applies in the other country
2. The insuring country grants the benefit at a theoretical amount
3. The other country calculates a theoretical benefit and the insuring country pays it together with its own benefit
4. The countries harmonise their provisions for granting permanent disability benefit.

All four proposed solutions described above would require amendments to national legislation, as well as political debate on the purpose and consequences of such amendments. In terms of funding the benefits systems, the proposed alternatives might lead to imbalances in the distribution of costs, if the country granting disability benefit should also be forced to pay benefit in respect of periods when the person has been insured in the other country.

First and foremost, however, EU regulations 883/2004 and 1408/71 fail to take sufficient cognisance of the fact that national eligibility conditions for temporary or permanent invalidity benefit vary from country to country. In order to remove this obstacle to freedom of movement, discussions should be instigated at EU level.

Rehabilitation co-operation

Rehabilitation co-operation – in which one Nordic country is responsible for rehabilitation measures while another is responsible in whole or in part for payment of pension/cash benefit – is a topical issue that is under discussion in the Nordic Social Insurance Group. Bilateral rehabilitation agreements between

the Nordic countries are being planned in the context of the upcoming Nordic Convention on Social Security. However, co-operation on rehabilitation cannot solve the problem, the root of which is that countries have different legislation and systems and benefits are either paid or not.

If Finland should, at Sweden's request, refer the person in example 2) above for a new examination of her rehabilitation potential, Sweden would still not pay either disability benefit or sickness benefit for the period during which the investigation and any resulting rehabilitation measures are taking place in Finland. The person would still be paid nothing in respect of the eight years of insurance paid in Sweden.

If the rehabilitation measures do not lead to a return to work, it is possible that Sweden would come to the view that the person is entitled to sickness benefit (disability pension) for the eight years spent in Sweden. However, it is also quite possible that Sweden would not take this view but rather see it more or less as a labour-market issue that the person has no work. Age, previous work experience and qualifications may not be taken into account when granting sickness benefit in Sweden, but they are taken into account in Finland.

B10 Calculation of invalidity benefit for individuals who have worked in more than one Nordic country

An individual lives in one Nordic country and works for several years in another. He or she is therefore insured in the country of work. Should the person later begin to work in the country of res-

idence, he/she will instead be insured there. If, shortly after beginning work in the country of residence, he/she becomes incapable of work due to illness or injury and is granted disability benefit in the country of residence, the benefit received may be significantly lower compared to an individual who has not worked in another country.

Background

The rules about entitlement to disability benefit have not been harmonised within the EU. Each member state determines its own conditions for entitlement within the framework of its own jurisdiction. However, the fundamental EU legal principle of non-discrimination must be observed. EU co-ordination regulations do apply to the calculation of disability benefit.

An individual who has worked in more than one country and who has had a short period of insurance in the country in which he/she becomes incapable of work may receive higher or lower benefit than an individual who has not exercised his/her right to freedom of movement. Even where an individual has only worked in one country, the disability benefit paid out can be low if the person only worked for a short period before he/she became incapable of work.

Swedish income-related sickness benefit and activity benefit are unrelated to the length of the insurance period (Type A legislation). The equivalent legislation in several other Nordic countries is related to the length of previous periods of insurance (Type B legislation). When an individual is covered by both Type A and Type B legislation, the provisions of Chapter 5, Regulation 883/2004

and Chapter 3, Regulation 1408/71 apply. Benefit should be calculated to the higher amount in a comparison between a calculation under national legislation and a pro rata calculation. A pro rata calculation should, however, not be made in circumstances covered in Appendix VIII of Regulation 883/2004.

The Nordic countries' rules on disability benefit are relatively different from each other, which can have major consequences for those who are covered by the social security systems of two different Nordic countries.

Proposed solution

The Expert Group believes this is a European obstacle to freedom of movement and it requires a European solution. An alternative way to solve this issue would be to seek amendments in national legislation. It would require comprehensive

amendments and co-ordination at Nordic level during the legislative process to avoid new obstacles to freedom of movement arising.

However, the Nordic countries could, individually or collectively, produce information about their implementation of the rules in order to ensure that EU co-ordination regulations are being applied correctly and in the interests of the insured party. It is important to disseminate information on the differences between the systems in the Nordic countries,¹⁹ for example through the Nordic Social Insurance Portal.²⁰ This would require further development of the portal.

The website of the EU Commission's Directorate General for Employment, Social Affairs and Inclusion²¹ provides country-specific social insurance information (EFTA countries included). The information includes a descriptive overview of the EU rules.

Issues deemed not to constitute obstacles to freedom of movement

B11 Supplementary support to individuals with Icelandic pensions

Additional support for Icelandic pensioners to cope with expenses relating to illness or disability, or because a pensioner's total income is below a certain level, cannot be exported. However, pensioners who have moved to other countries have complained that they are not

able to have these benefits paid from Iceland in addition to their old-age and occupational pensions.

Background

Entitlement to the Icelandic social pension is based on residence periods and it is paid at a flat rate, which is regulated (downwards) depending on the pen-

¹⁹ In Denmark, the Social Affairs and Integration Ministry is responsible for information; in Iceland, the Social Insurance Administration; in Finland, the Social Insurance Institution and the Finnish Centre for Pensions, in Norway the Labour and Welfare Service and in Sweden, the Social Insurance Agency.

²⁰ See www.nordsoc.org.

²¹ See <http://ec.europa.eu/social/main.jsp?langId=en&catId=858>.

sioner's other income for the same period, e.g. occupational pension, wages or capital gains. All of the social pension to which the individual is entitled can be exported to other countries if there is a bilateral or multilateral agreement on social insurance with the country in question, e.g. the Nordic Convention on Social Security and the European co-ordination regulations. Occupational pensions from compulsory pension funds can also be exported.

An Icelandic pensioner who has special expenses because of illness or disability and whose income is under a certain level can apply for additional/supplementary assistance, which is means-tested, to cover these expenses. Further support can also be provided to pensioners whose total income (including social pension, occupational pension, wages and capital gains) lies below a level of minimum subsistence determined by the Ministry and who cannot provide for themselves without this extra aid. These benefits, which are based on so-

cial and living conditions in Iceland, are regarded as separate and are not covered by the co-ordination regulations in the EEA agreement or by the Nordic Convention on Social Security. They cannot, therefore, be exported.

The Expert Group finds that this situation reflects the reality that pension systems are not identical in the various countries, which have different laws and regulations. Pensioners who cannot provide for themselves in their country of residence on their combined income and pension from the country of residence and from other countries where they may have accumulated entitlement, must apply to the social authorities of their country of residence.

Proposed solution

The Expert Group takes the view that the terms of entitlement for the Icelandic benefit do not constitute an obstacle to freedom of movement.

Unemployment benefits

B12 Requests to be transferred to the unemployment insurance system in another country without delay to avoid the risk of receiving lower unemployment benefit

An individual who is resident in one country and works in another and who does not sign up to an unemployment insurance fund from the first day of employment can, on becoming unemployed, receive lower unemployment benefit due to breaks in the period insured.

Background

Sweden has a two-part unemployment insurance system. The general element, basic insurance, covers employees and the self-employed. The voluntary element, loss-of-income insurance, covers those who have been members of an unemployment insurance scheme for at least 12 months. According to Swedish practice, entitlement to this income-related unemployment benefit requires 12 months' continuous membership of a Swedish unemployment insurance fund or an equivalent period of insurance from work in another Nordic country.

From the Swedish viewpoint, this obstacle to freedom of movement impacts on people covered by loss-of-income insurance who start working in another

country without becoming covered by unemployment insurance there. To be eligible for unemployment insurance upon starting work in Denmark, which in contrast to Sweden has a totally voluntary unemployment insurance system, an individual must apply to a Danish unemployment insurance fund. If the person did not immediately become a member of a Danish unemployment insurance fund after he/she left the Swedish fund, on subsequent assessment in Sweden the individual risks only being granted basic insurance benefit due to the break in insurance cover.

In cases where the so-called five-year rule in the Nordic Convention on Social Security applies, an individual can be re-admitted to a Nordic country's unemployment insurance system provided an application is made within eight weeks of that person leaving another Nordic country's system. The risk of a break on re-entering the Swedish unemployment insurance system is therefore reduced in cases where the Nordic Convention applies. However, the Nordic Convention has no effect on uninsured periods at the beginning of employment in Denmark.

Current case law in Sweden means that an individual who retains membership of a Swedish unemployment insurance fund without being covered by unemployment insurance in their country of work can be entitled to income-related benefit pursuant to the

unemployment insurance fund's subsequent assessment in Sweden. This is in conflict with the principle in Regulation 883/2004 that an individual should only be covered by the legislation of one country, generally the legislation of the country in which he/she is working.

In Denmark, in addition to the eight-week rule in the Nordic Convention, breaks of up to eight weeks within 12 months of insurance cover are accepted from another Nordic country. These might, for example, be breaks related to transfer from one unemployment insurance fund to another. When an individual applies for unemployment benefit in Denmark, breaks totalling two times eight weeks are accepted when calculating insurance periods in another Nordic country.

In Finland, an individual arriving from an EU/EEA country who applies for membership of an unemployment insurance fund in Finland must sign up within a month of the unemployment insurance income protection in the EU/EEA country expiring. Between two Nordic countries, the transition period is eight weeks. This means that where the Nordic Convention applies, an individual can have a break of eight weeks in his/her insurance period (unemployment insurance fund membership) without it affecting his/her insurance cover and right to benefit.

In Norway, this obstacle to freedom of movement is not relevant because an individual working or resident in Norway is automatically covered by the compulsory National Insurance Scheme, and as such is included in Norwegian unemployment insurance from their first day of work.

In Iceland, the unemployed person must have worked full-time for the 12 months prior to becoming unemployed to be entitled to full unemployment benefit. If an individual has not worked full-time for the previous 12 months but fulfils the minimum requirement of three months' employment, he/she will receive reduced unemployment benefit.

Proposed solution

In order to remove this obstacle, the Expert Group believes there is a need for clarification of the legislation regarding the requirement to have 12 months' continuous membership of an unemployment insurance fund in order to be entitled to benefit from loss of income insurance in Sweden. Such clarification would also mean that a period would be regarded as unbroken even if a certain proportion of it was de facto uninsured. The eight-week rule operated by Danish unemployment insurance might provide guidance.

B13 A frontier worker who falls ill and loses his or her job receives no benefits on regaining the partial capacity to work

A frontier worker who loses the capacity to work because of illness becomes unemployed. If the individual concerned subsequently regains partial capacity to work, he or she does not receive benefits proportional to his/her capacity to work. This applies in all countries

Background

The main principle according to Article 13.1 of Regulation 1408/71 and Article 11.1 of Regulation 883/2004 is that an individual can only be covered by the social security system of one country at a time. An individual who receives sickness benefit from their country of work cannot therefore simultaneously receive unemployment benefit from his/her country of residence covering the extent to which he/she is capable of work. Such situations can arise in all of the Nordic countries.

In regard to this obstacle, the Expert Group has worked on the basis of the definition of frontier worker in regulations 1408/71 and 883/2004. The regulations define a frontier worker as an individual who works in one country and lives in another, but generally returns to the country of residence daily or at least once a week (see Article 1b in Regulation 1408/71 and Article 1f in Regulation 883/2004). Similar situations can also arise for individuals who are not defined as frontier workers but who still live in one country and work in another. The Expert Group is not proposing any solution for these individuals.

As long as an individual works in a country other than their country of residence, that person is not covered by the legislation of the country of residence, but by the legislation of the country of work. However, when an individual becomes totally unemployed, the legislation of the country of residence does apply. Individuals other than frontier workers who live in one country and work in another can, if they become wholly unemployed, choose to apply

for benefits under the legislation of the country of residence. However, an individual who lives in one country and becomes partially or periodically unemployed in another country will, according to Article 65.1 of Regulation 883/2004 and Article 71.1a of Regulation 1408/71, be directed to seek unemployment benefit in the country of employment.

An individual on sick leave from a post and in receipt of sickness benefit is, according to EU Court rulings in respect of Regulation 1408/71, still regarded as in employment and still covered by the legislation of the country of work. This principle is set out in Regulation 883/2004. According to Article 11.2 of Regulation 883/2004, the individual, through his/her receipt of sickness cash benefit, is still regarded as carrying out the work that provided the basis for providing the benefit.

Should the individual concerned regain a proportion of the capacity to work, then that person is not wholly but partially unemployed. A frontier worker who becomes partially or periodically unemployed is therefore covered by the legislation of the country in which he/she continues to be regarded as in employment. He/she must therefore place himself/herself at the disposal of that country's employment service and be evaluated for entitlement to benefits. A frontier worker is regarded as covered by the legislation of the country of work as long as the employment relationship persists or the person concerned is in receipt of sickness benefit on the basis of that relationship. The country of work must also pay unemployment benefit proportional to the extent to which the individual concerned regains the capacity to work.

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

However, the country of work should not impose residence conditions for the payment of unemployment benefit.

Proposed solution

In the opinion of the Expert Group this obstacle has arisen due to incorrect application of the rules. With regard to this, the institutions²² responsible should look again at their application and the information that they provide to the public.

B14 Entitlement to unemployment benefit after period of, e.g. Norwegian work assessment allowance

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

Background

Periods worked and covered by social insurance in another Nordic country can, under certain circumstances, be credited in applications for unemployment benefit in another member state, in accordance with the EU co-ordination regulations for social security. Where regulations 1408/71 and 574/72 apply, the periods are certified on Form E301; and where regulations 883/2004 and 987/2009 apply, on PDU1 (portable document) or the corresponding SED (structured electronic document).

Countries have different rules for which periods should be compared and which therefore, depending on national practice, should be backed up with forms E301/PDU1/SED U002/SED U017. For example, Norway does not include periods of work-assessment allowance on Form E301, since according to Norwegian national rules such periods do not provide entitlement to unemployment benefits in Norway. According to Danish national rules, periods of Danish social insurance cover can only be entered on E301/PDU11 if the person has been a member of a Danish unemployment insurance fund. Periods that, for this reason or on other grounds, cannot be stated on the relevant form or SED mean a break in the insurance cover period, which can affect entitlement to benefits. This can occur in several countries.

The concept of the insurance period is defined in Article 1r of Regulation 1408/71 and Article 1t of Regulation 883/2004. Classification of a period is determined according to the legislation ‘... under which they were completed or considered as completed, and all periods

²² In Denmark, the Ministry of Employment is responsible for this area; in Iceland, the Directorate of Labour and Icelandic Health Insurance are responsible for administration. In Finland, the Social Insurance Institution and the unemployment insurance funds are responsible for this area; in Norway, the Labour and Welfare Service is responsible. In Sweden, regulations on entitlement to unemployment benefit are administered by the unemployment insurance funds, while entitlement to sickness benefit is administered by the Social Insurance Agency.

treated as such, where they are regarded by the said legislation as equivalent to periods of insurance’.

This obstacle also has to do with the responsibility to assess entitlement to unemployment benefit on the part of the institutions concerned.

Some countries have regulations on periods that can be disregarded, i.e. periods of particular kinds of activity that are ignored when setting the reference period for assessment of entitlement to unemployment benefit. Information on these periods must be sought by other means if details are not included on forms E301, PDU1 or corresponding SED. It may then be necessary to rely on the other countries assisting with confirmation/documentation of the periods concerned.

Proposed solution

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

The agencies should also take account of articles 5 and 6 of Regulation 883/2004, and the Administrative Commission’s Decision no. H6 of 16 December 2010 on aggregation of periods. If a period of illness can be disregarded in the country assessing entitlement to unemployment benefit, application of

Article 5 means that such a period, if it occurred in another country, should be taken into account as if it had occurred in the country making the assessment.

The Nordic countries should also raise this issue within the framework of the EU review of the chapter on unemployment benefit in the regulations to be implemented in 2012. In this review, the countries could also work together to have relevant SEDs looked at again.

One possible way of facilitating the application of the co-ordination regulations would be the preparation of joint Nordic information materials on national rules for unemployment insurance, perhaps via the Nordic Social Insurance Portal.²³ This would require further development of the portal.

The website of the EU Commission’s Directorate General for Employment, Social Affairs and Inclusion²⁴ publishes country-specific social insurance information (EFTA countries included), as well as a descriptive overview of EU regulations.

B15 Unemployment insurance regulations for hourly-paid frontier workers are complicated

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

²³ See www.nordsoc.org.

²⁴ See <http://ec.europa.eu/social/main.jsp?langId=en&catId=858>.

Background and example

This obstacle to freedom of movement relates to two situations:

- An individual who lives in one country and works in another is made unemployed. Depending on whether he/she is regarded as being fully unemployed or partially/periodically unemployed, he/she should seek benefit in the country of residence or the country of work. If two countries disagree, this can lead to difficulties claiming benefits from either.
- An individual who is living in a country and is fully unemployed there takes a series of short-term, full-time jobs in another country. A currently unclear legal position in Sweden, together with systems that have not been adapted for this type of labour-market mobility, means that the individual concerned may receive conflicting information about which rules apply and that unemployment insurance funds may have difficulty dealing with the case.

If an individual lives in one country and has a series of short, hourly-paid jobs in another, with periods of unemployment in between, he/she will be in and out of different systems in different countries. It is difficult to supply uniform, accurate information to the person seeking work as to which regulations apply. This obstacle can arise between all countries but is most frequent between Sweden and Denmark, which have different rules for membership of unemployment insurance funds.

According to Swedish case law, an individual can retain membership of a Swedish unemployment insurance fund

while working in another country. This means that the individual concerned may retain entitlement to income-related benefit in Sweden despite the fact that he/she is not covered by the unemployment insurance system of the country in which he/she works. This conflicts with the principle of Regulation 883/2004 that an individual can only be covered by the legislation of one country, generally the legislation of the country in which he/she works. This ambiguity means that it is difficult to supply clear and correct information to individuals.

There is also the risk that two countries will make different assessments as to whether the individual should be regarded as fully or partially/periodically unemployed.

An individual who is employed part-time in Finland after he/she has had his or her working hours cut receives proportionately adjusted unemployment benefit.

This obstacle to freedom of movement is not about working simultaneously in two countries, nor is it about receiving unemployment benefit (or other cash benefits) in one country while working part-time in another. See obstacles B1 and B6 for descriptions of these problems.

Proposed solution

The Expert Group finds that the administrative difficulties in cases of this type, which involve transfers between different countries' systems, are hard to solve in practice. The obstacle may be solved through proposed amendments that the EU Commission will put before the Council of Ministers and European Par-

liament in 2012. The issue could also be affected by the review of the unemployment chapter in the regulation that is to be implemented.

Another possible solution would be to amend Swedish law.

The Expert Group also feels there should be a discussion within the Nordic Region on definitions of partial/periodical unemployment in contrast to full unemployment in respect of agency workers and short-time employees in general. A uniform Nordic view of such definitions would facilitate dealing with this type of case.

B16 Age limit for admittance to a Swedish unemployment insurance fund

In Sweden, an individual cannot be admitted to an unemployment insurance fund once he/she has reached the age of 64. This can create problems for people who have worked in another country and been made unemployed. An individual who is 64 cannot therefore receive unemployment benefit from loss-of-income insurance in Sweden.

Background

An individual lives and works in Sweden. That person has been a member of a Swedish unemployment insurance fund for less than six months when he or she is offered a job in Norway. He or she continues to live in Sweden while working in Norway but gives up his or her membership of the Swedish unemployment insurance fund. After six months he or she is made unemployed and has by that point turned 64. The individu-

al concerned applies for unemployment benefit in Sweden and membership of a Swedish unemployment insurance fund. He/she is refused admittance to a Swedish unemployment insurance fund on the grounds of having reached the age of 64. The person cannot therefore be credited with completed insurance periods that provide entitlement to unemployment benefit from loss-of-income insurance in Sweden (six months' membership in Sweden plus six months of national insurance in Norway = 12 months). The person is granted only unemployment benefit based on the Swedish basic insurance.

If a frontier worker is made fully unemployed after working in another country, this means that, under the special provisions of Article 71 of Regulation 1408/71 (corresponding to Article 65 of Regulation 883/2004), the frontier worker should receive unemployment benefit in the country of residence.

In addition to countries having different upper age limits for entitlement to unemployment benefits, they also have different pension ages. Cases can arise where an individual is too old to be entitled to unemployment benefit in the country of residence. People who have reached the upper limit for unemployment benefit can receive the old-age pension.

According to Article 13.2a of Regulation 1408/71 (corresponding to Article 11.3 of Regulation 883/2004), an individual living in Sweden and employed in Norway should be covered by Norwegian legislation. This rule means that frontier workers ought to leave their Swedish unemployment insurance fund while working in Norway.

According to Article 71.1a ii of Regulation 1408/71 (corresponding to Article

65.2 of Regulation 883/2004) a frontier worker who is fully unemployed should receive unemployment benefit according to legislation in the member state in which he or she resides, as if he or she had been covered by that country's legislation when last employed. This means that Swedish legislation should be applied in assessing entitlement to unemployment benefit for a frontier worker living in Sweden who has been made fully unemployed from a job in Norway.

Unemployment benefit linked to Sweden's voluntary loss-of-income insurance is paid to those who have been members of an unemployment insurance fund for at least 12 months, provided they, following their most recent admittance to the fund, fulfilled the necessary work conditions (see paragraphs 7 and 12 of the law on unemployment insurance (1997:238)). In assessing the membership criteria, credit is given for insurance periods completed in another Nordic country on the basis of Article 67 of Regulation 1408/71 (corresponding to Article 61 of Regulation 883/2004).

Swedish unemployment insurance has a rule that an individual who has reached the age of 64 cannot become a member of an unemployment insurance fund. This can be an obstacle to freedom of movement for an individual who has worked in another country.

Proposed solution

The Expert Group believes that removal of this obstacle would require amendments to national legislation in Sweden. This has already been suggested by a Swedish parliamentary investigation into social insurance in its interim report: 'I gränslandet – Social trygghet vid

gränsarbete (In the border country – social security and cross-border working)' (SOU 2011:74).

In a proclamation on unemployment insurance while working in the EEA and abroad in general, with accompanying guidelines, Denmark has stated that if an individual who is a fully unemployed frontier worker takes up membership of an unemployment insurance fund, this is regarded as a transfer.

The Expert Group finds that the Nordic countries have different age limits for an individual taking up an old-age pension, and they have different upper age limits for receiving unemployment benefit. The Expert Group does not find that this in itself constitutes an obstacle to freedom of movement.

B17 Further work requirements in order to aggregate work and insurance periods from another country when applying for unemployment benefit

When aggregating periods of work and social insurance from another Nordic country, several countries have additional requirements that an individual must have worked for a certain period in that country.

Background

It is a precondition for aggregating periods of work and social insurance under Article 67.2 of Regulation 1408/71 and Article 61.2 of Regulation 883/2004 that an individual worked most recently in the country in which he/she is seeking unemployment benefit. There are exceptions to the work requirement for fron-

tier workers and 'non-genuine frontier workers', and in cases where the five-year rule in the Nordic Convention on Social Security applies.

In order to aggregate periods of work and social insurance from other EEA countries, Denmark, Finland and Iceland additionally require that an individual must have worked for a certain period in the country when applying for unemployment benefit. In Denmark, the requirement is that an individual must have applied for membership of a Danish unemployment insurance fund not later than eight weeks after the person was no longer covered by the other country's unemployment insurance. It is also a requirement that the person has worked in Denmark for 296 hours in the course of a period of 12 weeks/three months (148 hours for part-time insurance). In Iceland, the requirement is that the applicant should have worked in Iceland for at least four weeks immediately before the application, and in Finland the requirement is that the applicant should have worked in Finland for at least four weeks immediately before becoming unemployed.

Sweden has no additional work requirement. This means that an individual who becomes unemployed in Sweden can aggregate work and social insurance periods from other Nordic countries after having worked in Sweden.

In Norway, in addition to the requirement on minimum income, it had been a condition that individuals who wish to aggregate periods of work and social insurance under Article 67 of Regulation 1408/71 must have worked full-time in Norway for at least eight weeks within a 12-week period before becoming unemployed. In addition, the work had to have begun within 12 weeks of arriving in

Norway ('the work requirement'). This requirement was repealed on 12 October 2011. This means that EEA citizens who take jobs in Norway are allowed to aggregate periods of work and social insurance from other EEA countries even if they are made unemployed after only working in Norway for one day.

On its own initiative, the EFTA Surveillance Authority (ESA) assessed the Norwegian and Icelandic work requirements and came to the conclusion that the requirement for a minimum period of employment prior to becoming unemployed is in conflict with Article 3 and Article 67 of Regulation 1408/71. In a well-documented statement, ESA points out that one of the fundamental principles of the EEA agreement is equality of treatment. Article 3 of Regulation 1408/71 asserts that an individual who lives in the territory of one member state and is covered by the regulation shall have the same rights and responsibilities as the member state's own citizens. The right to equal treatment is absolute, i.e. it does not depend on a stay of particular duration. The ESA also states that according to the regulation, an individual who moves to an EEA country is covered by the regulation from the moment at which he or she is covered by the social insurance system in that country. This position is based on the decision of the European Court in the case C-39/76 *Mouhaan*.

In the light of this ESA statement, the legislation on unemployment insurance in Iceland has been amended. The amendment means that an individual who becomes unemployed after having worked in Iceland and applies for unemployment benefit must have completed at least one month's work in Iceland within the previous 12 months. When an

individual who has worked for less than month in Iceland applies for unemployment benefit, the Unemployment Directorate must assess whether the applicant can be regarded as having worked within the Icelandic labour market within the meaning of the law on unemployment benefit. If the applicant is regarded as having worked in the Icelandic labour market immediately before becoming unemployed, credit can be given for work periods from other EEA countries.

Proposed solution

The Expert Group takes the view that national regulations would need to be amended in order to remove this obstacle. There is currently no obstacle in Sweden, Norway and Iceland.

This issue may also be affected by the review of the unemployment chapter in Regulation 883/2004, which will commence in 2012.

Issues deemed not to constitute obstacles to freedom of movement

B18 Unemployment benefit for contract workers in personnel agencies

An individual who lives in Sweden and takes work with a personnel agency in Denmark risks not receiving unemployment benefit for periods between contracts.

Background

The Nordic countries have different labour law rules and agreements governing forms of employment in personnel agencies.

An individual who lives in Sweden and takes work with a Danish personnel agency risks not receiving any unemployment benefit in Sweden while he/she is between contracts.

According to Article 65.2 of Regulation 883/2004 (Article 71 of Regulation 1408/71), a fully unemployed frontier worker should receive benefits from his or her country of residence. There is entitlement in all Nordic countries to unemployment benefit for an individual who is fully unemployed following employment with a personnel agency.

According to Article 65.1 of Regulation 883/2004 (Article 71 of Regulation 1408/71), a partially or periodically unemployed frontier worker should receive benefits from the country in which he or she had a job from which he or she was made partially or periodically unemployed. National laws on entitlement to benefits diverge on the issue of partial or periodical unemployment from personnel agencies. In addition, the legal situation is currently unregulated in Sweden.

In its Decision no. U3 of 12 June 2009, the Administrative Commission commented on the meaning of “partially employed” in relation to frontier workers under Article 65.1 of Regulation 883/2004. The decision states that assessment of whether a link to employment exists or is maintained shall be made solely in accordance with the national legislation of the country of work. Furthermore, the assessment should be based on whether a contractual employment link exists or is maintained between the parties.

Proposed solution

The Expert Group does not regard it as an obstacle to freedom of movement that labour law rules and employment contracts are different in different countries. In any event, legislation prescribes that everyone should receive equal treatment irrespective of country of residence. The issue touches upon another general problem, which is the lack of a joint Nordic view of what constitutes partial or periodical unemployment. This problem is dealt with in B15, in relation to hourly paid frontier workers.

Early retirement benefits

Issues deemed not to constitute obstacles to freedom of movement

B19 Entitlement to Danish early retirement benefit while living outside Denmark

Entitlement to early retirement benefit from Denmark is tightly regulated and can only be established if the special conditions set out in the Danish regulations, including 26 weeks of work in Denmark before the transfer to early retirement benefit, are fulfilled.

Background

In December 2007, the Danish employment minister and the Swedish labour minister jointly produced a report called 'Two countries – one labour market'. The report stated that entitlement to Danish early retirement benefit is a specifically Danish rule that cannot be classified as an obstacle to freedom of movement.

Individuals entitled to Danish early retirement benefit belong to the personal scope covered by Regulation 883/2004. This gives such individuals

rights to social insurance benefits, e.g. health care, on the same basis as other employees. Individuals with entitlement to early retirement benefit are, on the other hand, not covered by the rules in Regulation 1408/71 and therefore are not entitled to social security benefits if, for example, they live in Norway. Members of a Danish unemployment benefit fund living in Norway can receive early retirement benefit under the Danish regulations. When Denmark begins to apply 883/2004, those who receive Danish early retirement benefit while living in Norway will be entitled to other Danish social security benefits.

Proposed solution

The Expert Group takes the view that the terms and conditions for entitlement to Danish early retirement benefit do not constitute an obstacle to freedom of movement.

Family benefits

B20 Co-ordination of Swedish parental allowance

Swedish parental allowance was previously regarded as a family benefit and was therefore co-ordinated with other countries' family benefits. However, the corresponding benefits in the other Nordic countries are not regarded as family benefits.

Background

All Nordic countries now categorise their parental allowances as benefits in the event of sickness, maternity and equivalent paternity, as per Chapter 1, Title III. Previously, Swedish parental allowance was classified as a family benefit according to EU co-ordination regulations.

From 1 September 2011, Swedish parental allowance has been reclassified as a benefit in the event of sickness, maternity and equivalent paternity, in accordance with the list of legislation submitted by the Swedish government to the EU Commission. With effect from that date, parental allowance in Sweden has been dealt with on the same basis as corresponding benefits in the other Nordic countries.

According to the proposal for a new Nordic Convention, however, Article 11.1 will be retained. This provision states that in calculating differential supplements to family benefits, no account will be taken of benefits that compensate for loss of income due to parenthood. The reason for

proposing that this provision should be retained is that the Nordic countries want to ensure that benefits such as the parental allowance are excluded from calculations of differential supplements, even if there are future changes in classifications of family benefits in some Nordic countries under EU law.

Proposed solution

The Expert Group takes the view that this obstacle has been removed with effect from 1 September 2011.

B21 The special allowance in Swedish housing benefit ceases when individuals take work abroad

An individual who lives in Sweden and takes work in another Nordic country, and is covered by the other country's legislation, loses entitlement to Swedish social insurance benefits covered by EU co-ordination regulations, including the special allowance in housing benefit. The special allowance can account for up to half of the total housing benefit for families with children. The individual concerned will not always be entitled to corresponding benefits in the country of work. Other Nordic countries have other systems to compensate family expenses for housing, for example through the tax system.

Background

Swedish housing benefit for families with children is composed of three elements. One part is a contribution to housing costs related to the number of children. A second consists of a special allowance for children at home, and a third is a visitation allowance for children who periodically live in the household. The extent of the special allowance and the visitation allowance varies according to the number of children in the family. The special Swedish allowance is subject to EU co-ordination regulations and is regarded as a family benefit. The allowance is part of Swedish housing benefit, which is a residence-based benefit.

According to Article 11.1 of Regulation 883/2004, an individual should only be covered by the legislation of one country, which in general should be the legislation of the country of work. A similar provision is found in Article 13.1 of Regulation 1408/71. When an individual is covered by specific legislation, it means that, according to the legislation concerned, he or she is insured for certain benefits that are covered by EU co-ordination regulations. In line with this, Swedish national legislation states in Chapter 4, Paragraph 5 of the social insurance code that any person who is covered by the legislation of another country as a consequence of EU co-ordination regulations is not insured in Sweden for benefits covered by those co-ordination regulations. An individual who lives in Sweden and starts working in another Nordic country therefore no longer has any entitlement to the special allowance element of housing benefit.

Denmark, Norway and Finland have systems that permit assistance with housing costs by means other than fami-

ly benefits. These include tax allowances or other forms of subsidies for housing costs that are not covered by the co-ordination regulations.

There are two different aspects to this issue. On the one hand, there is the issue of Sweden being the only Nordic country to have the special allowance in housing benefit within the area in which the regulations are implemented. This means that the allowance can be exported if the person works in Sweden and lives in another Nordic country. In the other Nordic countries, this type of housing benefit is regarded as being outside the area in which the regulations are implemented, and the benefit cannot therefore be exported. On the other hand, in respect of benefits covered by the regulations, Swedish social insurance cannot apply if the EU regulations specify another country's legislation as applicable. The other Nordic countries have no corresponding restriction (see also the example cited in connection with Obstacle B3).

Proposed solution

If it is desirable that the Swedish special allowance should be paid out even though another country's legislation is applicable, and even though it is covered by the co-ordination regulations, one solution could be to abolish the above-mentioned provisions in the Swedish social insurance code in respect of the case concerned, or to abolish them altogether. Other Nordic countries have other methods of compensating family housing costs, for example through the tax system. One consequence can be that an individual is compensated for housing costs from two countries without co-or-

dination. The Expert Group was unable to examine the consequences of changes to the above-mentioned regulations of the social insurance code for other benefits.

B22 Loss of parental allowance due to temporary employment

It is not possible to temporarily suspend a maternity/paternity benefit period if a person takes a job (full-time or part-time) in another Nordic country. This is due to the principle in the EU regulations that the social insurance of the country in which you work applies. The consequence of a break in parental leave is that entitlement to maternity/paternity benefit reverts to basic level when the job ends, i.e. entitlement to the benefit in the country of work ceases and is replaced by benefit at the basic level in the country of residence.

Background

According to regulations 1408/71 and 883/2004, the legislation of the country of work applies. This means that if an individual begins full- or part-time work during parental leave, he or she must be insured in the country where the work is being done.

All Nordic countries except Finland stop paying maternity/paternity benefit when an individual starts working in another EU country. According to the Finnish interpretation, in a situation in which a parent in receipt of benefit begins working in another member state where Regulation 883/2004 applies, the decision as to which legislation applies should be made according to the regulations on employment in the two countries. If the entitlement to benefit from

Finland prevails (i.e. Finnish legislation applies), benefit at a minimum rate can be paid for the period of employment, as if the employment had taken place in Finland. In Sweden, a woman can regain entitlement to parental allowance after working in another country if she signs off in the other country after the child's first birthday and thereafter is insured in Sweden, provided she has the right to a special basis for calculation (until the child's second birthday).

The interpretation of Article 11.2 in Regulation 883/2004 is unclear: 'For the purposes of this Title, individuals receiving cash benefits because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing the said activity.' It is not clear whether an individual who receives cash benefits from a country is still an 'employee' in that country even if living in another country.

Proposed solution

The Expert Group believes that it is possible to reach agreement according to Article 16 of Regulation 883/2004 or Article 17 of Regulation 1408/71. This would require the person and the countries concerned agreeing that the legislation of the country paying maternity/paternity benefit should continue to apply during periods of temporary work in another country. This would, however, also require the employer to accept that social contributions should be paid according to the legislation of that country.

The Expert Group also believes that a common interpretation of Article 11.2 of Regulation 883/2004 is needed at EU level.

Issues that do not involve obstacles to freedom of movement

B23 Different concepts of the family

The Nordic countries have different views of what constitutes a family and who should be considered a family member. This can lead to difficulties in relation to payment of child benefit, maintenance allowances, etc. in cases where the biological parents have separated and live in different Nordic countries.

Background and example

According to EU legislation, the basis for the concept of the family is the one set out in national legislation. This national concept is also used in granting benefits under EU regulations, as defined in Article 1 of Regulation 883/2004 and Article 1f of Regulation 1408/71. If there is entitlement to family benefits in more than one member state, the payments should be co-ordinated, and the country that does not have primary responsibility according to the co-ordination regulations can pay a differential supplement if its benefits are higher than in the country with primary responsibility for paying benefit.

In Finland and Norway, the concept of the family does not consider a divorced parent a family member under the regulations.

Example: A Finnish woman and her child are covered by Swedish social insurance by virtue of residence. She is not working. The child's biological father lives and works in Finland and is covered

by Finnish social insurance. From a social insurance viewpoint, Finland takes the view that the child should not be regarded as a member of the biological father's family, since it is not part of the same household. The biological father's residence and work in Finland do not therefore provide entitlement to family benefits under Regulation 883/2004 or Regulation 1408/71. Family benefits are instead paid out from Sweden.

The issue of family concepts has been raised at EU level and will be debated at future meetings within the EU.

Proposed solution

The Expert Group does not regard this issue as an obstacle to freedom of movement in itself, but it could become a problem if case officers are not aware of the differences between the Nordic countries. What can lead to obstacles to freedom of movement is that national agencies do not always have knowledge of the concepts of the family that are applied in other Nordic countries. This can lead to long waiting times for families in instances where case officers in one country regard an answer from the other country as incomplete. This problem could be avoided through improved information for case officers.²⁵

Under the EU regulations, where there are two countries of work, the family primarily receives family benefits from the child's country of residence. The issue of whether or not the child is

²⁵ In Denmark, the Danish Pensions Agency is responsible for information; in Iceland, the Internal Revenue Directorate is responsible for information on entitlements to family benefits/child allowance/child support, while the Social Insurance Administration deals with information on entitlement to advance payment of maintenance benefit. In Finland, the Social Insurance Institution is responsible; in Norway, the Labour and Welfare Service; and in Sweden, the Social Insurance Agency.

regarded as a family member of the divorced parent is only of significance in deciding which country has primary and, respectively, secondary responsibility for benefit payment. Since levels of family benefits in the Nordic countries are relatively equal, the case cannot be made that families are losing entitlement because the priority order of the countries is changed.

B24 Different Nordic countries calculate the number of days for payment of parental leave differently

Parents who work in different Nordic countries sometimes find that the authorities apply different methods for calculating days taken by one parent in one country compared with the days that the other parent wishes to take in the other country in respect of the same child. The nature of the Swedish calculations is particularly unclear.

Background

This issue is about how or whether calculations should be done where parents have applied for parental leave benefit from two Nordic countries in respect of the same child.

The rule in Sweden is that the number of days for which the parents have received benefit corresponding to Swedish parental allowance from another Nordic country in respect of the same child are deducted from the number of days for which Swedish parental leave benefit can be paid. The deduction is

made irrespective of which parent received the payment.

If the legislation of the other country specifies that benefit is paid out weekly or monthly, the weekly or monthly payment is recalculated as seven days per week or the number of days per month. If the parents cannot choose a number of days under the other country's legislation because the benefit is always based on five days per week, a check must be made with the other country as to whether this corresponds to a whole week. If the institution in the other country confirms that the benefit in that country corresponds to a whole week in Sweden, the deduction is made on the basis of seven days per week. In other situations, the deduction is made according to the days for which benefit was actually paid out by the other country.

In Finland, under sickness benefit legislation, working days are regarded as payment days, i.e. six days per week (including Saturdays). If the benefit in the other country is calculated in weeks, six days per week are deducted from the period of benefit in Finland.

In Iceland, each parent has an independent right to parental leave benefits for three months, plus three more months that they can divide between them as they wish. Deductions are only made for the person who has received benefit for the same period from another Nordic country.

Parental leave benefit in Denmark is calculated on a weekly basis based on hours worked per week. From a Danish perspective, it is therefore irrelevant whether the calculation is for five or seven days per week. When a Danish authority gets an enquiry from another country,

²⁶ In Denmark, the Ministry of Employment is responsible for information; in Iceland, the Directorate of Labour provides information on entitlement to parental allowance and parental leave. In Finland, the Social Insurance Institution is responsible; in Norway, the Labour and Welfare Service; and in Sweden, the Social Insurance Agency.

it needs to know whether the other country calculates benefit on the basis of, for example, a five- or seven-day week.

In Norway, parental allowance is paid for five days per week. There is no deduction from one parent's benefit if the other has received corresponding parental leave benefit from another Nordic country in respect of the same child.

Proposed solution

The Expert Group does not believe that it is an obstacle to freedom of movement that calculations are made differently in the different Nordic countries, since the rules differ from country to country. However, it is important that information is circulated among the Nordic social insurance institutions²⁷ so that, where necessary, calculations in relevant cases can be done correctly.

Administrative issues

B25 Long processing times for EU cases

Processing times for decisions on social and unemployment insurance benefit cases vary in the Nordic countries. For EU cases, processing times can be longer, since the institution responsible may need to obtain information from the corresponding institution in another country. This can cause financial difficulties for the individuals involved.

Background

The Expert Group finds that long processing times constitute an obstacle to freedom of movement that affects many people. It leads to uncertainty and financial difficulties for the individual. It may be necessary for the individual to apply for social assistance to maintain him/herself while waiting for a decision on his/her benefits.

Initially, the obstacle consisted of long processing times in applying for sickness benefit or completing E301 forms at NAV's International unit. The Expert Group found that this was not enough to deal with this problem alone, and that a general mapping of processing times in EU cases should be undertaken. The Group decided to make internal inquiries among its respective authorities to find out about processing

times for international cases involving family benefits, unemployment benefits, pensions, invalidity benefits and sickness benefits. The survey conducted in 2011 was based on the perceptions of case officers or the authorities' own information, and showed, in brief, that processing times in EU cases were often significantly longer than in purely national cases. The survey is reported in the Overall List.

Regulations 883/2004 and 987/2009 both contain provisions emphasising the importance of member states' authorities and institutions co-operating with each other. In Regulation 883/2004, Article 76.2 states that authorities and institutions in member states should assist each other as if they were applying their own legislation, while Article 2.2 of Regulation 987/2009 stresses the importance of institutions providing or exchanging without delay all the information necessary to establish the rights and responsibilities of the individual. In order for co-ordination to function, it is therefore necessary that every member state ensures that information required by another country is delivered as soon as possible.

There are also rules for the provisional application of legislation, granting of benefits and calculation of benefits in articles 6 and 7 of Regulation 987/2009. As yet, there is little experience of how these provisions work in practice. In the

light of previous experiences, it can be expected these provisions for provisional application will also require bilateral co-operation between the Nordic institutions.

Proposed solution

The Expert Group believes it is important that the institutions meet the requirement for good co-operation between member-state institutions and for them to forward without delay such information as another country needs in order to establish the entitlements of the individual.

It is of utmost importance that the institutions apply articles 6 and 7 on provisional decisions in the manner intended. The Expert Group believes the countries should seek to establish a consensus with regard to dealing with such situations.

Long processing times may be an indication that adequate staff resources have not been allocated to the task or that the work has not been sufficiently

well organised. The Expert Group believes it is important that the countries should allocate sufficient resources to cope with international tasks, and that it should be ensured that international tasks are dealt with as quickly as possible. In this context, statistics are important for efficiently evaluating the need for resources and to organise the work. The Expert Group therefore believes it is a problem that processing times for all kinds of benefit cannot be tracked. It is important that all countries should consider the issue of statistics in the development and construction of national EESSI²⁷ solutions. It is uncertain to what extent EESSI will provide statistics on processing times. It is also uncertain whether the authorities, and thus the ordinary citizen, will benefit in the form of shorter processing times when EESSI is implemented. It is likely that special national solutions will subsequently be required to ensure access to the statistics.

²⁷ Stands for Electronic Exchange of Social Security Information.

C. Labour-market issues

Covered by Article 7.2 of EU regulations 492/2011 and 1612/68 and/or EU regulations 883/2004 and 987/2009 (and 1408/71 and 574/72)

Labour-market issues

C1 Practical training in another Nordic country

Practical training cannot be undertaken in another Nordic country, since national labour-market legislation is to a large degree based on it being undertaken in the home country. There are similar issues regarding the right to practical training of people who come from other Nordic countries.

Background

In the cases of Finland and Sweden, the regulations are so constructed that practical training can only be done in another country on condition that the person organising it is a Finnish or, respectively, Swedish legal entity. Sweden also has regulations about practical training being done, under particular circumstances, in areas adjacent to Sweden. 'Adjacent' is defined as countries that border Sweden and countries that border the Baltic Sea. The Swedish Employment Service's referrals to programmes such as practical training must always be based on labour-market considerations.

In Norway, labour-market measures are used to combat unemployment at national level. Labour-market legislation therefore states that labour-market policy measures should, as a general principle, be implemented in the country.

Such measures are designed and adapted to the opportunities for finding work in Norway. In practice, joint European measures in other EU/EEA countries are also recognised. The Norwegian Employment Service decides who to prioritise for participation in such schemes.

There are several reasons for these restrictions in Finland, Norway and Sweden. The authorities must be able to conduct checks of the people/companies involved and conditions in prospective workplaces. If the person/company is not a Finnish, Norwegian or Swedish legal entity, and has his/her business in another country, there are limited opportunities for carrying out the necessary checks.

Another reason for the restrictions in Finland, Norway and Sweden is that insurance cover, for example for accidents at work, has not been adapted to cover practical training abroad. Finland and Sweden both have state insurance cover if, for example, a participant was to injure him- or herself or cause damage at the host workplace. Although Norway does have accident insurance that also provides cover for schemes abroad, it does not apply to practical training.

In Sweden, a referral to practical training can, under certain circumstances, be revoked or an individual can be excluded from entitlement to unemployment benefit. The Employment Service has limited opportunities to monitor

or exercise a controlling function if the practical training is set up via a non-Swedish arranger in another country.

In Denmark, people cannot in general receive compensation for practical training done in another country. The only group that can do practical training in another country are recipients of sickness benefit who are entitled to it while staying in another country. This restriction is based on Danish authorities needing to ensure certain conditions for practical training, including compliance with Danish working environment legislation and that the practical training does not give the company an unfair advantage over its competition.

The authorities in Iceland have no experience of this obstacle. Labour-market measures are instruments for combating unemployment at national level and are therefore adapted to Icelandic conditions. Nordic citizens are entitled to register as job-seekers at employment centres and are entitled to make use of the employment service and support in looking for work. An individual who is registered as a job-seeker can be referred by the authorities for practical training on precisely the same basis as other job-seekers.

In Sweden, the Employment Service can make referrals to labour-market programmes such as practical training for individuals who are entitled to work in Sweden and intend to live permanently in the country once a labour-market policy assessment has been carried out. A referral may only be made if it is considered appropriate both for the individual concerned and from a general labour-market policy perspective.

Proposed solution

The regulations on practical training in the different countries are first and foremost adapted to national circumstances, and the employment services in the different countries decide who will be referred for practical training. If practical training is to be carried out in other countries, the Expert Group believes this would require the amendment of national regulations in the various countries. In the event of such changes to regulations, a number of related issues, such as checks, monitoring and insurance, would need to be clarified.

With regard to practical training referrals for job-seekers from other countries, the employment services should clarify how their regulations ought to be applied.

C2 Right to leave of absence for political activities for an individual living in one country and working in another

An individual who lives in one country and works in another has no right to leave of absence for political activity in the country of residence. This can be an obstacle to engaging in political activity.

Background

There are rules in the different countries on the rights of elected representatives to take leave of absence from work to carry out the political tasks for which they were elected. However, the right to

leave of absence for political work for which an individual has been elected applies only in the country of work. A frontier worker who is elected in his or her country of residence has therefore no corresponding right to leave of absence to carry out political work.

Iceland has no specific legislation on the right to leave of absence from work for elected representatives, nor does it have many frontier workers. The problem is therefore not regarded as relevant for Iceland.

This problem has not been raised at national level in any of the countries. The explanation could be that there are not many frontier workers who get elected in their country of residence, but it could also be the case that employers are granting leave of absence even though it is not required by legislation.

In Sweden, the issue has been raised in a report on enhancing the way in which local democracy works (dir. 2010:53). The committee will examine the need for new regulations on leave of absence where an individual has an elected role in another country. Only once it has been established whether it is possible to find out whether this would involve practical problems will the issue be dealt with through the legislative process. The report will be finalised not later than 1 May 2012.

Proposed solution

In order to solve this problem, the countries must amend their laws and rules so that the right to leave of absence from work for political activity would also apply to employees who are elected in the country of residence.

C3 Contributions to travel expenses for cross-border job interviews are not possible

Job-seekers can receive contributions to travel expenses for job interviews within the country, but not for job interviews in other countries.

Background

In order to promote geographical mobility, job-seekers in Sweden, Norway and Finland are entitled to contributions to expenses for travelling to job interviews. Job-seekers must fulfil certain criteria to be entitled to such contributions, and it is the labour-market authorities in each country that assess who to prioritise for contributions. Iceland does not make contributions to travel expenses for job interviews.

In Finland, contributions to travel expenses are only made for trips to job interviews within Finland. National regulations restrict options for receiving contributions for trips to other countries. Job-seekers in Norway and Sweden could previously only receive contributions to travel expenses for trips to job interviews within the country, but they can now also receive contributions for trips to another EU/EEA country. In Denmark, it is up to the individual local authority to set guidelines for contributions to travel expenses for job-seeking and to decide who should receive such contributions. There is nothing to prevent a local authority making a contribution to travel expenses for job interviews in other countries.

The EU Commission has stated that Sweden's former practice of only granting mobility-enhancing contributions

for trips within Sweden was in conflict with the EU legal principle of equal treatment. The relationship to EU legislation is also assessed in the report 'Flyttningsbidrag och unionsrätten (Contributions to moving expenses and EU law)' (SOU 2010:26), which drew the same conclusion and said that this practice was an obstacle to free movement of labour. Sweden has changed the regulation with effect from 1 February 2011, so that the Employment Service can now contribute to travel expenses for interview trips, the transport of household goods and commuter support within the whole EU/EEA area and Switzerland. In the light of the Swedish report, Norwegian authorities have also ceased their previous practice of only contributing to travel for interviews within Norway,

since it did not accord with EU law. On 12 August 2011, Norway passed a new provision on mobility-promoting travel support for job-seekers, which states that contributions can be made to job-seekers for travel to other EU/EEA countries. The new regulation came into force on 1 January 2012.

Proposed solution

This obstacle has been removed as far as Sweden and Norway are concerned.

Solutions in respect of Finland and Denmark would require changes to national legislation so that contributions can be made to the expenses of job-seekers travelling to job interviews in other countries.

Issues that do not involve obstacles to freedom of movement

C4 Possibility of frontier workers receiving unemployment benefit while on study leave

Employees living in Sweden and working in Denmark cannot receive benefit during study leave from Danish unemployment insurance funds on the same basis as colleagues living in Denmark.

Background

Denmark previously had a system whereby it was possible to receive support from a Danish unemployment insurance fund during study leave. This system has not existed for the last eight or nine years.

People studying in Denmark can receive State Educational Support for Adults (SVU) or support for vocationally oriented adult education (VEU). There is no requirement that an individual

should have lived in Denmark to receive this support. It is sufficient that the person has worked for a Danish employer with a Danish CVR (Central Business Register) number. For example, commuters from Malmö who work in Copenhagen can use the study-support system. There is no requirement for membership of a Danish unemployment insurance fund in order to receive support.

The other Nordic countries have no systems allowing contributions from unemployment insurance funds (unemployment benefit) during study leave.

Proposed solution

The Expert Group does not believe that there is any obstacle to freedom of movement as described, given that the previous system with contributions from a Danish unemployment insurance fund has not existed for the last eight or nine years.

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Nord 2012:014

Freedom of Movement within the Social and Labour-market Area in the Nordic Countries

Summary of obstacles and potential solutions

Removing barriers to mobility and encouraging cross-border freedom of movement have long been priorities for the Nordic countries. A series of analyses and reports have addressed the issue. In Punkaharju in 2007, the Nordic prime ministers decided that it was time for this work to enter into a more operational phase and they set up the Freedom of Movement Forum. In addition to safeguarding citizens' rights, work on this issue makes the Nordic countries more competitive and promotes economic growth.

Nord 2012:014
ISBN 978-92-893-2437-3