



A – Aggregation of periods in the unemployment chapter

References

- TFEU: Article 48
- Recitals : 14 of Regulation (EC) No 883/2004
- Regulation (EC) No 883/2004 ("BR"): Article 6, Article 61
- Regulation (EC) No 987/2009 ("IR"): Article 12(1), Article 54(1)
- AC Decision : H6
- CJ CASE Law: Cases C-126/77 Frangiamore, C-388/87 Warmerdam, C-272/90 van Noorden, C-62/91 Gray, C-102/91 Knoch, C-481/93 Moscato, joined case C-88/95, C-102/95 and C-103/95 Losada, C-320/95 Alvite, C-372/02 Adanez-Vega, C-346/05 Chateignier, C-440/09 Tomaszewska

Legal background

The aggregation rules complement the fundamental aim of Article 48 TFEU: to contribute to the establishment of the greatest possible freedom of movement for migrant workers in the EU. To this end, arrangements must be made to secure for employed and self-employed migrant workers aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of several countries.

A general provision on aggregation of periods (Article 6 BR) is valid for all chapters of the Regulation. In addition, for the reasons of legal certainty, special provision has been included in the unemployment chapter (Article 61 BR).

Aggregation in the unemployment field has two particular features. First, there are differences between the national schemes as in some Member States an entitlement to unemployment benefits is based upon completion of periods of insurance and, in others it is conditional upon completion of periods of employment or self-employment. This is reflected in Article 61(1). Secondly, aggregation is applied only to those workers who have completed their most recent periods of insurance, employment or self-employment in the State where the benefit is claimed. This condition does not apply in the case of cross-border workers who resided in a state other than the last competent Member State (see Article 61(2)).

Former Regulation (EEC) No 1408/71 contained a specific provision on aggregation in the field of unemployment in Article 67. There is no substantial difference between Article 67 of Regulation (EEC) No 1408/71 and Article 61 of Regulation (EC) No 883/2004. The innovation introduced by Regulation (EC) No 883/2004 is that the principle of aggregation applies also to self-employed persons. This means that the case-law of the Court of Justice concerning Regulation (EEC) No 1408/71 continues to be relevant for the interpretation of Article 61 of Regulation (EC) No 883/2004.¹

¹ Cornelissen, R.: 'The new EU coordination system for workers who become unemployed', European Journal of Social Security, Volume 9 (2007), No.3.



In the absence of harmonisation at EU level, it is for each Member State to determine the conditions for insurance under a social security scheme and the entitlement to benefits under that scheme. Nevertheless, Member States must comply with EU law when exercising these powers. Article 48 TFEU aims to ensure that the exercise of the right to freedom of movement does not have the effect of depriving a worker of social security protection to which he would have been entitled, if he had spent his working life in only one Member State.

Article 61 BR implements Article 48 TFEU by laying down special rules for aggregating periods for the purpose of granting, or determining the length, of unemployment benefits. Article 61(1) BR draws a distinction between cases where the legislation of a competent Member State makes entitlement (or length of such benefits) subject to the completion of periods of insurance and cases where the legislation makes that entitlement conditional on the completion of periods of employment or self-employment.

In cases where the legislation of the competent Member State makes entitlement to unemployment benefits subject to the completion of periods of employment or self-employment, **all periods** (of insurance, of employment and of self-employment) completed in another Member State have to be taken into account.

The second para of Article 61(1) relates to situations where the competent Member State (ie. country of residence in the case of frontier workers) makes the right to benefits conditional on the completion of periods of insurance. In such a case, **periods of insurance** must be taken into account, without any further examination of their nature by the competent institution. However, the competent institution is not bound to take into account **periods of employment or self-employment** completed in another Member State, unless, according to the legislation of the competent State, those periods are to be seen as periods of affiliation to an unemployment insurance scheme.

1. Aggregation of insurance periods

'**Periods of insurance**' means periods of contribution, employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance (Article 1(t) BR).

The term 'periods of insurance' must be therefore understood as referring not only to periods in which contributions to an unemployment insurance scheme were paid but also to periods of employment or self-employment considered by the legislation under which they were completed as equivalent to periods of insurance, that is to say, periods in which insurance covered by such a scheme is guaranteed. Such periods must be taken into account by the institution of the competent Member State, even if they would not have been considered as periods of insurance under the legislation of that State.²

It follows from Article 61(1) BR that all periods of insurance, without any further examination of their nature by the competent institution, must be taken into account for assessing entitlement to unemployment benefits by the competent state. This is irrespective of whether they were based on employment, self-employment, or they were other periods equal to insured (self-)employment (eg. periods of sickness, maternity, education, military service).

2. Aggregation of periods of employment or self-employment

² See case C-126/77 *Frangiamore*.



'Periods of employment' or **'periods of self-employment'** mean periods so defined or recognised by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or to periods of self-employment (Article 1(u) BR).

The Court of Justice confirmed that the classification of a period of work as a 'period of employment' is dependent on the national legislation under which it was completed.³

The competent institution is not bound to take into account such periods of employment or self-employment completed in another Member State, unless, according to the legislation of the State where benefits have been requested, those periods are to be regarded as periods affording cover under an unemployment insurance scheme.

3. When to aggregate?

Article 61(2) BR provides that aggregation is applied only to workers who have completed their most recent periods of insurance, employment or self-employment in the State where the benefit is claimed.

The only exception concerns unemployed persons who, during their last employment or self-employment, were residing in a Member State other than the competent State (workers falling within the scope of Article 65 BR). In this case, the Member State of residence, when it is the competent State for providing unemployment benefits, must aggregate periods of insurance, employment or self-employment completed in another Member States even if the unemployed person has never completed any periods in the State of residence.⁴

However, except for in the situation set out above, it is the State where the unemployed person last worked or paid contributions that should bear the burden of providing the unemployment benefit.

Most recent periods of insurance, employment or self-employment

Regulation (EC) No 883/2004 does not specify when a period of insurance, employment or self-employment is completed.

It is clear that the term, 'most recent periods of insurance, employment or self-employment' within the meaning of Article 61(2) BR must be read in conjunction with Article 48 TFEU, which guarantees the protection of social security rights of migrant EU workers.

As stated above, the aim behind Article 61(2) BR is that the State in which the unemployed person last worked or paid contributions should bear the burden of providing unemployment benefits. Therefore, the rule ensures that it is the competent Member State that provides the unemployment benefits.

³ See case C-372/02 *Adanez Vega*, concerning the period of military service completed in Spain. The Court confirmed that such a period must be regarded as 'period of employment' by the competent German institutions, where it is so defined or recognised by Spanish legislation or treated as such and regarded as a period equivalent to a period of employment.

⁴ The Member State of residence, which then provides unemployment benefits on the basis of Article 65(5) BR, shall then be reimbursed by the Member State to whose legislation the person was last subject (see Article 65(6) and (7) BR).



Under the rules of Regulation (EC) No 883/2004 (Title II), a migrant worker becomes subject to the legislation of a Member State as soon as he starts to work there. Consequently, the provisions on aggregation of periods of insurance, employment or self-employment are fully applicable as of that moment. In other words, the link between the person and the competent State is created as of day one of the economic activity of the person.⁵

Any other interpretation would deprive migrant workers, who became unemployed during this period, of any entitlement to unemployment benefits in the EU, despite having completed periods of insurance or (self-)employment in the EU. This would lead to the loss of social security protection of a migrant worker and create an effect that is clearly contrary to the purpose of Article 48 TFEU and Regulation (EC) No 883/2004.

4. Exchange of data concerning insurance, employment or self-employment periods

It is the responsibility of the competent institution where the person applied for unemployment benefits to contact the institutions of the Member States to whose legislation the person has also been subject in order to determine all periods completed under their legislation.⁶

Exchange of information between the national institutions concerning the insurance, employment or self-employment records shall be done in the future through electronic data exchange system (→ Explanatory Note: "Electronic Exchange of Social Security Information (EESSI)"). Currently, the exchange is done on paper forms.

Relevant flows

- Flow U001 is used for persons who do not fall under Article 65 BR (ie. persons who resided in the competent State during their last activity).
- Flow U004 is used for persons who fall under Article 65 BR (ie. persons who resided in a Member State other than the competent State).

If periods from more than one Member State have to be considered for the entitlement to unemployment benefits, a separate flow will have to be initiated for each Member State concerned.

Portable document

The Portable document 'U1' certifies periods of insurance and employment or self employment completed by a worker in another Member State that are to be taken into account for the award of unemployment benefits. This document is issued to the worker, on his/her request, by the institution of the State where the person completed the periods of insurance, employment and self-employment. If this document is presented to the competent institution, the above mentioned flows do not have to be used (unless periods from more than one Member State have to be considered).

⁵ In case C-272/90, *van Noorden*, the Court of Justice held that "a person who has never been subject to the social security legislation of the Member State in which he claims unemployment benefits and, thus, has not lastly completed periods of insurance or employment in accordance with the provision of the legislation of that Member State, cannot be entitled to unemployment benefits under Article 67 of Regulation 1408/71". It follows that a person, who has worked and therefore been subject to the legislation of that State, must be considered as having completed his last periods of insurance, employment or self-employment there.

⁶ Article 54(1) IR read in conjunction with Article 12(1) IR.



Examples

Example 1:

Mr X had completed periods of insurance as a self-employed person in Member State A. After, he moved to Member State B and completed periods of insured employment there. Mr X loses his job and claims unemployment benefits in Member State B.

Member State B must aggregate periods of insured self-employment completed in Member State A. Pursuant to Article 61(1) BR, all periods of insurance for entitlement to unemployment benefits in the Member State where they were completed should always be taken into account for the purposes of aggregation.

Example 2:

Mr Y had completed a period of non-insured employment in Member State A. After, he moved to Member State B and completed periods of insured employment there. Mr Y loses his job and claims unemployment benefits in Member State B.

Pursuant to the second para of Article 61(1) BR, periods of non-insured employment or self-employment completed in Member State A should be aggregated by Member State B only if those periods would have been considered to be periods of insurance had they been completed in Member State B.

Example 3:

Ms Z, employed in Member State A, went on maternity leave. Under the legislation of Member State A, the maternity leave period is considered to be a period of insurance. Afterwards Ms Z moved to Member State B and completed periods of insured employment there. She loses her job and claims unemployment benefit in Member State B.

Member State B must aggregate all insurance periods, which come within the definition of insurance period under Article 1(t) BR (without questioning or examining its nature). If Member State A notifies periods of insurance that were neither employment nor self-employment periods (e.g. periods of sickness, maternity, deprivation of liberty, education or military service) as periods of insurance (in points 8-12 of SED U002), the competent institution in Member State B must take them into account for the purposes of aggregation.

To go further

See also: Explanatory Note "Unemployment benefits for persons residing in a Member State other than the competent state"