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TEMPLATE: FINAL REPORT BY THE EXPERT

Advice case title: Anti-cumulation of parental allowances in cross-border cases

Full official name of the advised entity: Grenzinfopunkt Aachen-Eurode

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I. Executive summary

The design, structure and organisation of social security systems remains a national competence of the Member States. In the Euregio Meuse-Rhine, the neighbouring countries and social security systems of the Netherlands, Germany (Land North Rhine-Westphalia) and Belgium come together. This is especially true in the case of cross-border employment or family situations where a cross-border element is involved (e.g. partners working across the border, or children attending school across the border). The GIP Aachen-Eurode received questions of cross-border workers who are having difficulties with applying for parental allowances. From the provided cases it becomes clear that more clarity is needed regarding how authorities decide about parental leave schemes and how the information provision and exchange is arranged in cross-border situations.

The report discusses the national parental allowance schemes in the Netherlands, Germany and Belgium, from design and conditions to the international aspects. Recently, in the Netherlands the new parental allowance scheme entered into force. The Dutch scheme is designed as a replacement of income (via labour) and is an individual right per partner and per child. The Belgium scheme is also per partner and per child, as lump-sum compensation for the loss of work. In Germany on the contrary, the *Elterngeld* is a benefit for the parents together and did not move towards a more individual rights'-approach. The report highlighted these differences and the complications for the EU coordinating framework. There may be a grey area between the conflict rules regarding maternity and related benefits and the anti-cumulation rules regarding family benefits. In this respect the revision of the Coordination Regulation is a positive development in ensuring a more clear definition of parental allowances and the applicable coordination rules. Yet, the feasibility of the revision in the short term is uncertain. Therefore, the report advises to come to a better understanding and coordination at trilateral level between the competent authorities and ministries.

Next to a clear definition and framework, the report also stresses the importance of information exchange. Here the problem lies in the fact that the responsible authorities are not at the same level and implementing powers differ. While the Netherlands is organised centrally, in Germany the regional *Elterngeldstelle* have more powers. Finding the right counterpart across the border seems to be problematic. The use of EESSI is limited in these cases, also because of differences in implementation (timing) and privacy regulations.

To come to a better understanding in the cross-border setting of the Netherlands, Belgium and Germany it is the concrete advice to organise a round table with the competent authorities and ministries to discuss the two elements, clear out confusions and come to better agreements and procedures.

II. Description of the obstacle with indication of the legal/administrative provisions causing the obstacle

II.1 Understanding the obstacle

The design, structure and organisation of social security systems remains a national competence of the Member States. In the Euregio Meuse-Rhine, the neighbouring countries and social security systems of the Netherlands, Germany (Land North Rhine-Westphalia) and Belgium come together. This is especially true in the case of cross-border employment or family situations where a cross-border element is involved (e.g. partners working across the border, or children attending school across the border). The Grenzfopunkt (GIP) Aachen-Eurode is responsible for informing about working in the neighbouring country as an employee or self-employed person, living in the neighbouring country and studying in the neighbouring country, as well as beneficiaries or employers. In this context, the GIP Aachen-Eurode received questions of cross-border workers who are having difficulties with applying for parental allowances.

Given the national competency, each social security system also has its own parental leave scheme. In the EU's Mutual Information System on Social Protection (MISSOC)¹ an overview is provided of the various social protection systems and its organisation in the EU Member States. The latest update of the MISSOC information on national social security systems was on January 2023 and includes information as of July 2022.² The comparative table of maternity/paternity leave for the Netherlands, Belgium and Germany is attached as Appendix. Yet, as of 2 August 2022 a new paid parental leave scheme was introduced in the Netherlands, the so-called *Betaald Ouderschapsverlof* (Wet betaald ouderschapsverlof; WBO).³ The new scheme is introduced as implementation of the Directive (EU) 2019/1158, the Work-Life Balance Directive.⁴ "This Directive is without prejudice to the coordination of social security systems under Regulations (EC) No 883/2004 (9) and (EU) No 1231/2010 (10) of the European Parliament and of the Council and Council Regulation (EC) No 859/2003 (11). The Member State competent for the social security of a worker is determined by those Regulations.", recital 30 stipulates.

Indeed, while social security is a national competency, Regulation (EC) 883/2004 (hereafter: Coordination Regulation) and Implementing Regulation (EC) 987/2009 coordinates at European level. It stipulates the conflict rules on the coordination of social security systems of the Member States. Based on the principle of exclusivity, persons subject to the Regulation⁵ are covered by a legislation of one Member State.⁶ The competent Member State is determined by the rules on applicable legislation. Regarding maternity and paternity benefits, the same coordination rules of sickness benefits are applicable, that are mentioned in Title III, chapter 1 of the Coordination Regulation. Family benefits, such as parental allowances, on the other hand are coordinated by the rules of chapter 8. According to Article 1(z) of the Coordination Regulation "*family benefit*' means all benefits in kind or in cash intended to meet

¹ <https://www.missoc.org/>

² MISSOC, Latest update of the MISSOC information (as of July 2022) on national social protection systems now available, <https://www.missoc.org/the-missoc-tables-updated-to-july-2022-are-now-available/>

³ Rijksoverheid.nl, Invoering van 2 maanden betaald ouderschapsverlof, <https://www.rijksoverheid.nl/onderwerpen/ouderschapsverlof/invoering-van-2-maanden-betaald-ouderschapsverlof>

⁴ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU

⁵ According to Article 2 of Regulation 883/2004, the Regulation applies to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member State, family members and survivors.

⁶ Article 11(1) Regulation 883/2004. See also CJEU 12 June 1986, 302/84, ECLI:EU:C:1986:242 (Ten Holder) where the Court advocated a strict application of the exclusivity principle.

family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I.” Yet, the European Commission also indicates: “there might be a grey area, notably when benefits are paid immediately after childbirth and continue to be paid for some years to the person caring for the child. In such cases, it is not clear how long these benefits can continue to be regarded as maternity benefits and when they become family benefits.”⁷

Regarding the new WBO, in the Explanatory Memorandum it is mentioned that the paid parental leave is classified as maternity and equivalent paternity benefits.⁸ Requested by the Minister of Social Affairs, the competent authority ‘UWV’ (*Uitvoeringsinstituut Werknemersverzekeringen*) made an inventory on the consequences of implementing the international aspects regarding a new benefit for parental leave as addendum to the implementation test.⁹ It repeats that the paid parental leave scheme should be qualified as maternity and equivalent paternity benefits under the Coordination Regulation.¹⁰

The GIP Aachen-Eurode received questions of applicants of this scheme who were confronted with uncertainties how the anti-accumulation rules will be applied in cross-border settings. The social security systems, and thus the paternal leave schemes differ per country. It is not clear how the competent authorities are dealing with parental allowances in cross-border settings. Some cases were provided by the GIP Aachen-Eurode as examples:

Case 1

A family lives in Germany. The father is working in Germany and therefore socially insured in Germany. The mother works in the Netherlands and thus insured in the Netherlands. Next to the maternity and childbirth leave in the Netherlands, she also would like to request the nine weeks of paid parental leave. Two problems seem to arise:

- Regarding data exchange: The UWV appears to pay out the paid parental leave simply if it is established that the person concerned is entitled to it under Dutch law. However, it is not clear how the German "Elterngeld" amount will be calculated on that basis. For the time being, those involved will be contacted by the German Elterngeldstelle themselves to prove what they have received from another country.
- Regarding the calculation: It is often unclear - especially in the case of set-off - how the amount of the German Elterngeld is determined. Clients often signal that they receive less "Elterngeld" than they expected. This is often due to the calculation method applied to wages earned abroad. This is because the actual net income is not normally taken as the starting point to calculate the Elterngeld. Instead, wages are converted to "German" income whereby a notional German net income is determined on which the Elterngeld is calculated.

Case 2

Family lives in the Netherlands, both parents work in Germany. There is an entitlement to German "Elterngeld". If both parents or one of the parents apply for this family benefit in Germany, they must prove to the competent administrative body in Germany that they are not entitled to a similar benefit from the Netherlands. This is the case in this instance, as an

⁷ European Commission, A-Z on social security coordination (FAQs) – M (40.1. What are maternity benefits, how are they coordinated and what is the difference with family benefits?), <https://ec.europa.eu/social/main.jsp?catId=1142&langId=en&intPageId=3394>

⁸ Kamerstukken II, 2020–2021, 35 613, nr. 3, p. 10. Accessed via: <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35613>

⁹ Rijksoverheid.nl, Addendum uitvoeringstoets UWV: internationale aspecten wijziging Wet arbeid en zorg, <https://www.rijksoverheid.nl/documenten/kamerstukken/2021/06/17/bijlage-addendum-uitvoeringstoets-uwv-nav-verzoek-om-inventarisatie-internationale-aspecten-mb>

¹⁰ Ibid, p. 2.

entitlement to paid parental leave only arises if work is carried out in the Netherlands. Residency alone is insufficient for this.

Problem identified: It is still not clear how individuals should obtain proof to prove in Germany that they are not entitled to Dutch paid parental leave. EESSI intended for this purpose does not seem to work well in practice - at least it does not work between Belgian and German authorities in similar cases. Direct data exchange is precluded as a result, so that in the past, individuals could sometimes not receive *Elterngeld* because they could not provide proof that they did not claim a comparable benefit from the country of residence. Indeed, there is no provision in most countries for "negative decisions" showing that a person is not entitled to family benefits. This is particularly true if the relevant authority - as is the case with the UWV - does not even pay the benefit to those concerned but through the employer.

Case 3

The whole family lives in the Netherlands. One parent also works in the Netherlands, the other in Germany. The parent working in Germany would like to take paid parental leave and applies for "Elterngeld" in Germany.

Looking only at the situation of the parent working in Germany, it is clear that he or she cannot apply for paid parental leave in the Netherlands because there is no Dutch employment but the person works in Germany. However, Germany does ask for proof that there is no entitlement to Dutch paid parental leave in these cases. After all, looking at the situation of the parent working in the Netherlands, it is the country of residence of the Netherlands that is primarily responsible for paid parental leave.

Question: Again, the question is whether it is up to those concerned to provide such proof themselves or whether the bodies concerned could or even should provide data on this.

With regard to Belgium and Germany, there is already the experience that individuals could not provide proof that no comparable benefit was requested in the country of residence.

Case 4

The family lives in Germany, one parent works in Belgium and one in the Netherlands.

Particularity compared to the other case positions: There is entitlement to paid parental leave from three countries. What about the offsetting possibilities here and the related information to be provided?

From these cases it becomes clear that more clarity is needed how authorities decide about parental leave schemes and how the information provision and exchange is arranged in cross-border situations.

- What are the European conflicting or priority rules applicable to parental allowances in several cross-border settings (e.g. partners working in two different countries than residence state)?
- How do the German, Dutch and Belgian authorities interpret the applicable EU rules regarding parental allowances in cross-border situations?
- What are the national parental allowance schemes and under which conditions? Is it an individual or derivative right and does this have an influence?
- How do the national authorities inform and consult each other? What is the role of MISSOC and EESSI?

II.2 Assessing the obstacle

In the following we will first provide a short overview of the national parental leave schemes.

The Netherlands

As of 2 August 2022, the Netherlands introduced a new paid parental leave scheme, the so-called *Betaald Ouderschapsverlof*.¹¹ The WBO amends the Act on labour and care (*Wet arbeid en zorg*). This gives parents, who are working as an employee, the right to take up leave for a period of 9 weeks in the first life year of the child. During this period, 70% of the wage will be paid out by the employer, who receives the benefit from the UWV in his turn.¹² This scheme also gives parents the right to take up leave for an additional 17 weeks, unpaid, totalling the parental leave to a maximum of 26 weeks. As of 2019, partners of women who gave birth received the right to take up birth leave (*Geboorteverlof*) for once the number of working hours per week in the first four weeks. The employer is obliged to continue to pay wages in full.¹³ As of 1 July 2020, the *Wet invoering extra geboorteverlof* (WIEG) went into force and gave partners the right to take up another five weeks (five times the working hours per week) within the first six months after the child's birth. Again, the employer pays out 70% of the wage, who receives the benefit of the UWV.

Entitled to the parental leave scheme are employees¹⁴ and the ones that are not regarded as employees, cq. are not insured, for the Sickness Act but have an employment contract¹⁵. Thus both the insured as well as the uninsured employees for the Sickness Act are covered by the scheme. An employee is someone who performs labour under civil law contract of employment or public law appointment.¹⁶ The right is personal to the one who qualifies (father/mother). For the leave of maximum 26 times the work time per week¹⁷, the employee should be in familial relationship to a child or live at the same registered address as a child and has permanently taken on the care and upbringing of that child as his or her own child.¹⁸ This right applies per child, up to the child's age of eight years. Regarding labour abroad, Art. 6:1 (3) WAZO stipulates that the right to this leave also applies, unless important business or service interests oppose this.

Regarding the benefit, Art. 6:3 WAZO formulates requirements and rights:

- The employee has right to a benefit in the leave period of maximum nine times the work time per week (par. 1);
- The child should not have reached the age of one year in the period (par. 1);
- In case of adoption or a foster child, the right exists during the first year after adoption and where the child has not yet reached the age of eight years (par. 1);
- In case of more than one child, adopted or in familial relationship, at the same time, the employee has a right to the benefit per child. In case of a foster child, the right remains limited to one child only (par. 2);
- The benefit is 70% of the daily wage (par. 3), that is calculated as 1/261 of the wage for social security purposes (par. 4);
- It is not possible to cumulate the benefit at the same time when a right to a benefit exist in relation to pregnancy, birth or adoption or foster care, as well as birth leave (par. 8).

¹¹ Rijksoverheid.nl, Invoering van 2 maanden betaald ouderschapsverlof, <https://www.rijksoverheid.nl/onderwerpen/ouderschapsverlof/invoering-van-2-maanden-betaald-ouderschapsverlof>

¹² Art. 6:3a WAZO.

¹³ Rijksoverheid.nl, Geboorteverlof voor partners, <https://www.rijksoverheid.nl/onderwerpen/geboorteverlof-en-partnerverlof/geboorteverlof-voor-partners>

¹⁴ Art. 6:3 (1) WAZO.

¹⁵ Art. 6:3 (7) WAZO.

¹⁶ Art. 1:1 (b) WAZO.

¹⁷ Art. 6:2 (1) WAZO.

¹⁸ Art. 6:1 (1) & (2) WAZO.

Regarding the international aspects, the Explanatory Memorandum¹⁹ and Addendum on the Implementation Assessment of the UWV²⁰ state that the benefit of the parental leave scheme should be qualified as a maternity and related paternity benefits in terms of the Coordination Regulation. In cross-border situations this means that if the Dutch social security system applies, foreign employers have the same obligations as Dutch ones. A foreign employer, thus, has to submit an application to the UWV in the Netherlands. Following the rules of maternity and paternity benefits, the conflict rules stipulate when an employee should be insured in the Netherlands or abroad. The UWV indicated that they will inform other Member States, special attention would be placed at communication with the neighbouring countries.

Belgium

The Belgian parental leave scheme is a thematic leave, which means it is a specific interruption of the career to facilitate the care for children.²¹ During this break, the person concerned is entitled to lump-sum (fixed) monthly benefits, the so-called *onderbrekingsuitkering*. These are paid by the National Employment Office (Rijksdienst voor Arbeidsvoorziening, RVA). The regulatory framework and details differ per sector.²² A distinction between private sector, municipalities and provinces, governmental sector, education sector and the autonomous governmental organisations, and others can be made.²³ Yet, in general terms for the right to parental leave a person should be an employee, working for an employer subjected to Belgian law and receive wage over which social contributions are withheld to the RSZ (Rijksdienst voor Sociale zekerheid). Furthermore, the employee should be the biological or lawful parent of the child or be the adoption parent of an adopted child. The right is individual for each parent and is granted per child.²⁴ To the right of parental leave there can be sectoral limitations that requires that within a period of 15 months an employee was tied to the employer for a period of 12 months.

The leave can be designed in four ways:

- Fulltime parental leave: Both part-time and fulltime working employees can take fulltime parental leave for four months, the period of four months can be divided over several months;
- Halftime parental leave: Fulltime working employees can take up halftime parental leave during a period of eight months. Again this can be divided over the months, but each period should be two months or multiplication thereof;
- 1/5-parental leave: Fulltime working employees can take up 1/5th parental leave for a period of twenty months. Each period must be five months at least;
- 1/10-parental leave: Fulltime working employees can take up 1/10th parental leave for a period of forty months, if agreed with the employer. Each period should be at least ten months.

¹⁹ *Kamerstukken II*, 2020-2021, 35 613, nr. 3, p. 10

²⁰ UWV, Addendum n.a.v. verzoek inventarisatie internationale aspecten m.b.t. de wijziging van de Wet arbeid en zorg, p. 3.

²¹ RVA, Ouderschapsverlof, <https://www.rva.be/burgers/loopbaanonderbreking-tijdskrediet-en-thematische-verloven/thematische-verloven-alle-sectoren/ouderschapsverlof>

²² Applicable legislation:

- Article 101, 105 §1 Herstellwet van 22 januari 1985 houdende sociale bepalingen
- Wet van 13 april 2011 tot afschaffing van de beperkingen op de leeftijd van het gehandicapte kind inzake ouderschapsverlof
- Koninklijk besluit van 29 oktober 1997 tot invoering van een recht op ouderschapsverlof in het kader van de onderbreking van de beroepsloopbaan
- collectieve arbeidsovereenkomst nr. 64

²³ *Ibid.*

²⁴ Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg, Ouderschapsverlof, <https://werk.belgie.be/nl/themas/feestdagen-en-verloven/ouderschapsverlof>

It is possible to switch between the four arrangements, where recalculation takes place.²⁵ To this rule the educational sector in the French and German speaking Community is excluded. There is also some room for flexibility, as well as limitations, that differ per sector. The parental leave can start after birth of the child and should be taken up before the age of 12 years. Also in case of adoption there is a same right to parental leave. In this case the leave can be taken up in the period of the registration of the child at the municipality to the age of 12 years.

The monthly benefit can be requested by the employee to the RVA, after informing the employer. The benefit cannot be accumulated with an activity or forbidden pensions (listed in T1²⁶) and the place of residence should be Belgium or another member state of the European Economic Area or Switzerland.²⁷ In case of cross-border work, one has thus also right to the benefit if it complies with the requirements above.

Germany

In Germany, *Elterngeld* compensates for a lack of income when parents care for their child after birth. It is regulated through the *Gesetz zum Elterngeld und zur Elternzeit (Bundeselterngeld- und Elternzeitgesetz - BEEG)*. In short, *Elterngeld* is a benefit for parents of infants and young children. It is intended to enable parents to take the time to raise and care for their child. Parental allowance provides compensation if parents have less income because they work less or not at all after the birth. In this way, parental allowance helps to secure the families' livelihoods. Parental allowance is available to employees, civil servants, the self-employed, persons involved in *mini-jobs*, as well as the unemployed or housewives and househusbands. Parental allowance is also available for parents who had no income at all before the birth.²⁸

Parental allowance is available in three variants:

- Basic parental allowance (*Basiselterngeld*)
- Parental allowance plus (*ElterngeldPlus*)
- Partnership bonus (*Partnerschaftsbonus*)

One can combine these variants with each other.

Parents who share gainful employment and family work as partners are especially supported by *ElterngeldPlus* and the partnership bonus (*Partnerschaftsbonus*).²⁹ It secures the economic existence of families and helps fathers and mothers to better reconcile family and career. It is intended to enable parents to take time for their child. *Elterngeld* is also available to separated parents.

The most important requirements at a glance

A mother or father, can receive parental allowance under the following conditions

- You look after and bring up your child yourself.
- You live with your child in the same household.
- You are either not gainfully employed or work no more than 32 hours per week.
- You live in Germany.³⁰

²⁵ One month fulltime equals two months for 1/2, equals five months for 1/5 and ten months for 1/10.

²⁶ RVA, T1, <https://www.rva.be/burgers/loopbaanonderbreking-tijdskrediet-en-thematische-verloven/gemeenschappelijke-bepalingen/regels-voor-de-cumulatie-met-onderbrekingsuitkeringen>

²⁷ RVA.

²⁸ <https://www.bmfsfj.de/resource/blob/185424/5b90c242725e545669b2e7536503c75b/elterngeld-und-elternzeit-data.pdf>, p. 11.

²⁹ See <https://www.bmfsfj.de/bmfsfj/themen/familie/familienleistungen/elterngeld/elterngeld-73752?view=>.

³⁰ § 1 Gesetz zum Elterngeld und zur Elternzeit (Bundeselterngeld- und Elternzeitgesetz - BEEG).

One can receive parental allowance for a natural child, the natural child of one's wife or husband, the registered partner, for an adopted child, in special cases also for a grandchild or great-grandchild, a niece or nephew, a sister or brother. One cannot get parental allowance for foster children.

Basic parental allowance (Basiselterngeld)³¹

Parental allowance compensates for the lack of income when parents want to be there for their child after the birth and therefore interrupt or limit their professional work. The parents are entitled to a total of 14 months of basic parental allowance if both of them participate in caring for the child and the parents lose income as a result. They are free to divide the months between themselves. One parent can claim a minimum of two and a maximum of twelve months.

Single parents who receive parental allowance to compensate for the loss of earned income can claim the full 14 months of parental allowance themselves. Parents can only receive basic parental allowance during the first 14 months of the child's life. After that, they can only receive *ElterngeldPlus* or the partnership bonus.

ElterngeldPlus

ElterngeldPlus strengthens the compatibility of work and family and especially recognizes the plans of those who want to return to work part-time while still receiving parental allowance. Mothers and fathers thus have the opportunity to claim *Elterngeld* for longer than before. *ElterngeldPlus* can be received by parents for twice as long as basic parental allowance: one month of basic parental allowance corresponds to two months of parental allowance plus. If parents do not work after the birth, the *ElterngeldPlus* is half the amount of the basic parental allowance. If they work part-time after the birth, the monthly *ElterngeldPlus* can be as high as the monthly basic parental allowance with part-time.

Partnership bonus (Partnerschaftsbonus)³²

Parents can each receive up to four additional months of *ElterngeldPlus* as a partnership bonus if they simultaneously work between 24 and 32 hours per week part-time during this period in order to have more time for their child (between 25 and 30 hours for children born before 1 September 2021). The partnership bonus can be claimed for a minimum of two and a maximum of four months (for children born before 1 September 2021, this is only possible for four consecutive months of life). The regulation also applies to separated parents who go part-time together as parents. Single parents are entitled to the entire partnership bonus.

Amount and eligibility requirements³³

The amount of parental allowance depends on how much income the caring parent had before the birth of the child and whether income is lost after the birth. Parents with higher incomes receive 65 per cent, parents with lower incomes up to 100 per cent of their previous income.

Depending on income, the basic parental allowance is between 300 and 1800 euros per month and the *ElterngeldPlus* between 150 and 900 euros per month. The minimum parental allowance is paid to all those who look after their child themselves after birth and work a maximum of 32 hours a week (a maximum of 30 hours a week for children born before 1 September 2021), for example also students, housewives or househusbands and parents who have not worked because of looking after older children.

Multi-child families with small children benefit from the so-called sibling bonus: they receive a supplement of ten percent of the parental allowance to which they would otherwise be entitled,

³¹ § 4 Gesetz zum Elterngeld und zur Elternzeit (Bundeselterngeld- und Elternzeitgesetz - BEEG)

³² § 4b Gesetz zum Elterngeld und zur Elternzeit (Bundeselterngeld- und Elternzeitgesetz - BEEG)

³³ <https://www.bmfsfj.de/bmfsfj/themen/familie/familienleistungen/elterngeld/elterngeld-73752?view>.

but at least 75 euros for basic parental allowance (37.50 euros for parental allowance plus). In the case of multiple births, a multiple supplement of 300 euros (150 euros for *ElterngeldPlus*) is paid for each additional newborn child.

Elterngeld is thus not granted solely on the basis of the number of children and the age of the children. While some of the conditions for granting '*Elterngeld*' are linked to the fact of having a child and the age of the child, it is, in principle, calculated by reference to the salary received by the parent looking after the child before that parent stopped working. As raised by Germany – and accepted by the Court - in the *Hoever and Zachow* case, *Elterngeld* is not granted for the child, but for the individual parent.

The agencies designated by the Land governments are responsible for implementing the Federal Parental Allowance and Parental Leave Act. One can find the parental allowance office responsible via the family portal.³⁴

Since autumn 2021, parental allowance has been even more flexible, partnership-based and simple - with more part-time options, less bureaucracy and more parental allowance for premature babies. This supports parents in reconciling family life and work even better. The new regulations of the *Zweiten Gesetzes zur Änderung des Bundeselterngeld- und Elternzeitgesetzes* apply to all children born on or after 1 September 2021.³⁵

It appears that Germany has not departed from the application of the general anti-overlap rules applicable to family benefits, nor moved towards a more individual rights'-approach as put forward by the European Commission in the Impact Document.³⁶

EU Legal Framework for parental leave

Family benefits are all benefits in kind or in cash intended to meet family expenses.³⁷ The term 'family benefits' covers a wide diversity of social security benefits, including not only the traditional child benefits, but also other types of benefits for families, for instance those that encourage educational attainment, labour market participation by parents, or replace income during child-raising periods.³⁸ In the section below, emphasis will be put on the latter (child-raising allowances). Not all benefits payable to family members constitute family benefits; they have to be intended to meet family expenses. This will be dealt with in more detail below.

The CJEU's approach in classifying benefits: which coordination rules?

The list of benefits referred to in article 3(1) Regulation 883/2004 seems at first sight rather unproblematic. However, as demonstrated by the cases addressed in the previous sections, given the various schemes of all EU Member States, determining to which a category a specific benefits can be allocated, appears to be problematic. This categorization of benefits is relevant for two reasons.³⁹ First, to determine whether a particular benefit falls within the Regulation's material scope. Secondly, more relevant for this report, is to know which coordination rules apply. Moreover, this difference can be decisive for the issue whether a particular benefit is exportable or not, next to some other issues.

³⁴ See <https://familienportal.de/familienportal/familienleistungen/elterngeld>.

³⁵ See <https://familienportal.de/familienportal/familienleistungen/elterngeld/faq/was-ist-neu-beim-elterngeld-seit-dem-01-09-2021--177368>.

³⁶ See <https://www.bmfsfj.de/resource/blob/185424/5b90c242725e545669b2e7536503c75b/elterngeld-und-elnzeit-data.pdf>, par 1.2.6: 'In diesem Fall bekommen Sie Familien-Leistungen wie das Elterngeld vorrangig von dem Land, in dem Sie arbeiten.'

³⁷ CJEU 24 October 2013, C-177/12 (*Lachheb*), ECLI:EU:C:2013:689. See also F. Pennings, 'European Social Security Law', Antwerp: Intersentia 2022, p. 305.

³⁸ European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004, SWD (2016) 460*, Brussels, 2016 (Impact document), p. 124.

³⁹ F. Pennings, 'European Social Security Law', Antwerp: Intersentia 2022, p. 58 ff.

The Court of Justice reasoned in the *Hoever and Zachow*-cases that, for the purpose of determining which coordination rules apply, the constituent elements, in particular the benefit's purposes and the conditions concerned are decisive.⁴⁰ In the given case, a German child-raising allowance (*Erziehungsgeld*) was to be classified. The German Government held that the given benefit did not have the same purpose as a family benefit within the meaning of Regulation 883/2004, as the parental benefit was intended – by conferring a personal right – to remunerate the particular parent who both takes on the task of raising a child, as well as personally fulfils the conditions for grant of the allowance. This reasoning was rejected by the Court, since the given benefit's aim was to meet family expenses (within the meaning of Article 1(u)(i) of Regulation No 1408/71).⁴¹ Moreover, the Court held that the parental benefit qualified as a family benefit, since it is paid only where the family of the person concerned comprises one or more children and its amount varies partly according to the age and number of the children.⁴² The CJEU confirmed this approach in the *Kuusijärvi* case.⁴³ The Court held, in this case, that the that parental benefit is intended, on the one hand, to enable the parents to devote themselves, in alternation, to the care of the young child until that child has started to attend school and, on the other, to offset to some extent the loss of income entailed for the parent devoting himself or herself to the care of the child in temporarily giving up his or her occupational activity.⁴⁴

General arising from CJEU's case-law: in order to know which coordination rules apply, the constituent elements, in particular the benefit's purposes and the conditions concerned must be observed. (subject matter; purpose of benefit; basis of its calculation and conditions for granting).

Assessing the cases and questions

- *What are the European conflicting or priority rules applicable to parental allowances in several cross-border settings (e.g. partners working in two different countries than residence state)?*

General anti-overlapping rules for family benefits on EU-level

It is a core principle of the EU social security coordination rules that two Member States are not simultaneously obliged to pay social security benefits for the same purpose in respect of the same period (anti-accumulation principle).⁴⁵ This forms the basis for the priority rules for overlapping family benefits.

The EU social security rules provide that primary responsibility for payment of family benefits lies with the Member State of economic activity, on the assumption that the country of employment will usually be the country where a mobile EU citizen pays social security contributions and taxes. However, in the field of family benefits, it is very common that families in a cross-border situation have overlapping entitlements to family benefits. This is because a child normally has two parents, who may each have independent entitlements to family benefits from different States. To address this issue, the coordination rules provide specific

⁴⁰ CJEU 10 October 1996, I-04895, C-245/94 and C-312/94 (*Hoever and Zachow*), par 17.

⁴¹ CJEU 10 October 1996, I-04895, c and C-312/94 (*Hoever and Zachow*), par 23.

⁴² CJEU 10 October 1996, I-04895, C-245/94 and C-312/94 (*Hoever and Zachow*), par 24.

⁴³ CJEU 11 June 1998, I-03419, C-275/96 (*Kuusijärvi*).

⁴⁴ CJEU 11 June 1998, I-03419, C-275/96 (*Kuusijärvi*), par 65. See also CJEU 19 September 2013, C-216/12 and C-217/12 (*Hliddal and Bornand*), ECLI:EU:C:2013:568, para 33.

⁴⁵ European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004*, SWD (2016) 460, Brussels, 2016 (Impact document), par 7.2.2.

anti-overlapping rules which establish an order of priority for the Member States to make payments.⁴⁶

Under these rules, the primary competent Member State will pay its family benefits in full, but entitlement to family benefits in cash under the legislation of the Member State with secondary competence will be suspended up to the amount of the benefits due under the legislation of the State that takes priority (usually the Member State of Employment or in the case of two economically active parents, the place of residence of the child). The current rules also provide that in the event of overlapping entitlements the family concerned will always receive an amount equivalent to the highest level of benefits available.⁴⁷ Consequently, if the amount of family benefit provided for by the legislation of the former State is higher than that provided in accordance with the legislation of the other State; the former State will pay a supplement or "top up" corresponding to the difference between the two benefits.⁴⁸

A further important principle in the rules on family benefit coordination is that family benefits are considered benefits for the family as a whole.⁴⁹ This means that a family member may have a derived right to claim such benefits even if they reside and work in another Member State and have no personal connection to the social security system of the Member State awarding the benefit.⁵⁰

Conflicting or priority rules applicable to parental allowances in several cross-border settings
The definition of family benefits also covers child-raising benefits, often referred to as 'parental benefits'. These parental benefits intend to cover wages or income loss when a parent interrupts their working career to take care of a child.⁵¹ The benefit may be calculated either by reference to the salary or professional income or may consist of a flat-rate benefit.

The inclusion of income-related benefits into the coordination system on family benefits has led to different problems of interpretation and sometimes undesirable results.⁵² The very wide interpretation by the CJEU when it comes to defining family benefits reached a cross-road in the *Wiering* case. Here, the Court had to acknowledge that not all family benefits are the same – at least not in overlapping situations. However, in the recent *Moser* case, concerning derived rights to income-related benefits for family members, the Court once again showed that family benefits are indeed a right for the family rather than for the individual parent.⁵³

Different coordination rules for child-raising allowances: greater emphasis on individual rights and different treatment under the anti-overlapping rules

As has been addressed by the European Commission, some Member States did not agree with the fact that, as a result of the application of the coordination rules, some persons were deprived of parental benefit, or their benefit was reduced.⁵⁴

⁴⁶ The priority rule is defined in Article 68 of Regulation (EC) no 883/2004.

⁴⁷ The Court has been explicit in its case law by concluding that "the Regulation cannot be applied in such a way as to deprive the worker, by substituting the benefits provided by one Member State for the benefits payable by another Member State, of the most favourable benefits" CJEU 12 June 1980, 733/79, (*Laterza*) ECLI:EU:C:1980:156.

⁴⁸ See art. 68(2) Regulation 883/2004.

⁴⁹ Joined cases C-245/94 and C-312/94 *Hoever and Zachow*.

⁵⁰ See for example, Article 68A of Regulation (EC) no 883/2004 and Article 60(1) of Regulation (EC) 987/2009 supporting the rights of a parent or person in loco parentis to assert derived rights.

⁵¹ F. Pennings, 'European Social Security Law', Antwerp: Intersentia 2022, p. 319.

⁵² E. Holm, 'Coordination of classic and specific family benefit – challenges and proposed solutions', 22(2) *European Journal of Social Security* (2020), pp. 196-211.

⁵³ CJEU 18 September 2019, C-32/18 (*Moser*), ECLI:EU:C:2019:752.

⁵⁴ European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004, SWD (2016) 460*, Brussels, 2016 (Impact document). The restrictions set by the CJEU in the *Wiering* case (CJEU 8 May 2014, C-347/12, ECLI:EU:C:2014:300 (*Wiering*)) to the application of overlapping rules in cases of simultaneous receipt of family benefits and parental benefits are of no help for a family receiving parental benefits from two countries.

Against this background, it is hardly surprising that one of the areas where changes are proposed in the Regulation concerns family benefits, or more specifically, new provisions for the coordination of family benefits intended to replace income during child-rearing.⁵⁵ The need for specific rules for these benefits has become urgent as more and more Member States introduce such benefits into their national legislation (22 Member States).⁵⁶ As is apparent from above, the problems relating to the coordination of income-related family benefits have been an issue for Member States such as Germany and Sweden for a long time.

In March and June 2015, 4 Member States in the Administrative Commission indicated support for an alternative coordination of salary-related child-raising allowances and action was also recommended by the FreSsco network of experts.⁵⁷ It also reflected in the need to ensure clarity in the rules as they apply to child-raising allowances recognising the current inconsistent treatment of such benefits by different Member States which creates uncertainty for citizens and competent institutions and consequent difficulties in enforceability.

Applying the (anti-accumulation) priority rules (applicable to family benefits) to parental benefits (as a subcategory of family benefits) was considered unfair, because in contrast to other family benefits a child-raising allowance is intended to cover wages lost when a parent stays home from work to take care of the child.⁵⁸ It is therefore perceived as a sum that parent has "earned" and which should be awarded without deduction. Some critics also complain that the application of the anti-accumulation rules undermines the policy objective of promoting greater gender equality by encouraging parents to share child-raising responsibilities as the potential loss in household income that results from the anti-overlapping rules acts as a deterrent against both parents claiming child-raising allowances at the same time.⁵⁹

A related problem with the application of the current coordination rules to child-raising allowances is that these are generally considered 'parent-centred' rights, intended to protect the individual parent concerned.⁶⁰ However, under EU law, family benefits are deemed benefits for the family as a whole. This means that either parent may have a derived right to claim such benefits even if such parent is residing and working in another Member State and has no personal connection to the social security system of the Member State awarding the benefit. Some national authorities complain that there are administrative and practical

⁵⁵ E. Holm, 'Coordination of classic and specific family benefit – challenges and proposed solutions', 22(2) *European Journal of Social Security* (2020), pp. 196-211.

⁵⁶ De Coninck J: Reply to an ad hoc request for comparative analysis: salary-related child raising benefits, FreSsco - Freemovement of workers and Social security coordination, European Commission 2015 p. 9.

⁵⁷ SPIEGEL, B. (ed.), CARRASCOA BERMEJO, D., HENBERG, A. and STRBAN, G., Assessment of the impact of amendments to the EU social security coordination rules on export of family benefits, Analytical Report 2015, FreSsco, European Commission, May 2015.

⁵⁸ European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004, SWD (2016) 460*, Brussels, 2016 (Impact document), par 7.2.2.

⁵⁹ European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004, SWD (2016) 460*, Brussels, 2016 (Impact document), par 7.2.2.

⁶⁰ European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004, SWD (2016) 460*, Brussels, 2016 (Impact document), par 7.2.2. If there are overlapping entitlements to family benefits in cash (i.e. entitlements under two or more legislations in respect of the same family member and for the same period) on different bases, the order of priority is as follows: firstly, rights available on the basis of an activity as an employed or self-employed person, secondly, rights available on the basis of receipt of a pension and finally, rights obtained on the basis of residence. In the case of rights available on the same basis, the Member State where the children resides shall be competent by priority right but in cases where a right exists solely on the basis of residence, there shall be no obligation for the secondary competent Member State to export the differential supplement in respect of children residing in another Member State. It should be noted, these rules apply to family benefits in cash, in the case where a child does not reside in the State which has primary competence, the State of residence of the child will usually be responsible for providing benefits in kind (subject to a family fulfilling conditions of entitlement).

challenges for their institutions when a claim is made as a derived right by a spouse or partner as it is difficult to determine if national conditions are satisfied. These complexities are exacerbated for salary-related child raising allowances where a claim is made by a family member who does not have earnings in the Member State awarding the benefit.

As a demonstration of the aforesaid issues, the European Commission provides the following example:⁶¹

Example: *David and Marie live with their child in Member State A. David is working in Member State A and Marie is a frontier worker in Member State B. They both work part-time and share child-care responsibilities. Member State A has a child raising allowance calculated with reference to salary while Member State B has a flat-rate child-raising allowance regardless of salary or income. David is entitled to €75 per week based on his salary in Member State A, and Marie is entitled to €25 per week. Member State A is primarily competent to pay child allowance because of child's residence and David's work. Member State B is the secondary competent and obliged to pay only the differential supplement. In calculating differential supplement, Member State B takes into account the benefits paid in Member State A in line with the anti-accumulation rules. The level of allowance in Member State A (€75) is higher than the amount in Member State B (€25) and therefore Member State B does not pay Marie anything during periods when she takes leave from work to take care of her child. The family gets €75 but it would get €100 if the child-allowance based on individual salary would be treated as individual right and not as an entitlement for the entire family.*

Consequently, some Member States refuse to coordinate parental benefits as family benefits under the EU Coordination rules, instead classifying them as maternity or equivalent paternity allowances in a manner that circumvents both the anti-accumulation rules and the application of derived rights. Moreover, notwithstanding enforcement action taken by the Commission, very few Member States are currently fully complying with EU law. According to the Commission, the consequence of such divergent approaches is inconsistent treatment of families and uneven distribution of burden between Member States.⁶² Regarding the latter, member states with a system where child-raising benefits are part of the total sum of family benefits often have higher benefits than States with separate schemes, and are therefore more often obliged to pay supplements to persons receiving benefits in other States.⁶³

In order to overcome these issues and respond to the criticism, the Commission proposed to revise the given coordination rules.⁶⁴ It must be noted at the outset, that due to the deadlock in the negotiations of the revision of the coordination rules (Regulation 883/2004), this proposal has not been adapted yet.

The Commission proposed to treat child-raising allowances, as individual and personal rights (which may only be claimed by the parent who is subject to the applicable legislation in question (not by other members of their family)). There shall, hence, be no derived right for his or her family members to such benefits. In addition, it is proposed that no anti-overlapping rules would apply to such benefits meaning that they would be payable in full to the parent concerned. There is an optional right for the 'secondary competent' Member State to pay the benefit in full.

In this line, it is proposed that a new Article 68b.1 should be introduced to clarify that benefits that are intended to replace income during child-raising periods, which are to be listed in Part

⁶¹ European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004, SWD (2016) 460*, Brussels, 2016 (Impact document), p. 128.

⁶² European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004, SWD (2016) 460*, Brussels, 2016 (Impact document), par 7.2.2.

⁶³ F. Pennings, 'European Social Security Law', Antwerp: Intersentia 2022, p. 321.

⁶⁴ F. Pennings, 'European Social Security Law', Antwerp: Intersentia 2022, p. 133 ff.

I of the newly created Annex XIII, should be awarded under the legislation of the competent Member State solely to the person subject to that legislation and that there shall be no derived rights to such benefits.⁶⁵ It is also to be proposed that Article 68a of the Regulation should not apply to such benefits. Family benefits intended to replace income during child-raising periods are a special category of family benefit and are to be treated as an individual and personal right provided the benefit in question is listed in Part 1 of Annex XIII of the basic Regulation. This means a competent Member State is not obliged to grant derived rights in respect of such a benefit to members of the insured person's family. Member States with secondary competence may choose to disapply the anti-overlapping rules at Article 68(2) of the basic Regulation and award such benefits in full to an entitled person. Where a Member State chooses to derogate it should be listed in Part 2 of Annex XIII and the derogation must be applied consistently to all entitled persons concerned.

As the benefits intended to replace income during child-raising periods are to be listed in an Annex XIII to the Regulation, the question of which national benefits belong to which basket ought to be clear. The test elaborated by the CJEU in *Wiering* of trying to distinguish whether the benefits at issue are of the same kind would thus no longer be one for the national institutions to figure out when calculating supplementary amounts. Rather, this test would be made when benefits are listed in the Annex to the Regulation. This can be considered to be in conformity with the *Wiering*-case approach.⁶⁶ In practice, the judgment means that benefits of parental benefit-type are not to be included in the 'basket' of family benefits, for the purpose of the anti-overlapping rules.

In the so-called 'Impact Document' the European Commission clarified these new rules through an example.⁶⁷

Example: *Peter and Marie live with their child in Member State A, which has a parental benefit scheme, listed in Part 1 of Annex XIII (this concerns family benefits in cash intended to replace income during periods of child-raising and shall be awarded solely to the person subject to the legislation of the competent Member State and there shall be no derived right for his or her family members to such benefits). Marie works in Member State A, Peter is a posted worker from Member State B. Member State A is the primarily competent State for family benefits since this is the place of residence of the child. When Marie takes leave to take care of her child she is able to claim the parental benefit from Member State A. Marie will receive the full amount of parental benefit, but Peter will have no entitlement to parental benefit from Member State A, since this is no longer a derived right (i.e. a departure from the Hoever and Zachow-case). When calculating the level of parental benefit Peter is entitled to in Member State B, no overlap rules are applied if the parental benefit is listed in the annex. In such a case, they both receive parental benefits.*

The proposal was accepted in the Council in June 2018, and laid down in art. 68(2a) of the regulation, yet not adopted.⁶⁸

Consequences of 'horizontal option'

The European Commission points out that this 'horizontal option' provides greater protection for mobile EU parents in the field of child-raising allowances (either calculated by reference to salary/professional income or all types of such benefit), and by exempting these benefits from the application of derived rights and the anti-accumulation rules will also decrease regulatory costs for public authorities in administering these benefits and reduce delays for families in

⁶⁵ Amendment of Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 on procedures for implementing Regulation 883/2004 COM(2016)815.

⁶⁶ See CJEU 8 May 2014, C-347/12, ECLI:EU:C:2014:300 (*Wiering*).

⁶⁷ European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004, SWD (2016) 460*, Brussels, 2016 (Impact document), p. 138 ff. See also F. Pennings, 'European Social Security Law', Antwerp: Intersentia 2022, p. 322.

⁶⁸ See <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM:2016:815:FIN>.

processing claims.⁶⁹ By preventing claims on the basis of derived rights to be made in respect of family benefits intended to replace an individual worker's income during periods of child-raising the aim of achieving a clear and transparent link between the Member State issuing the benefit and the recipient is achieved.

Where Member States choose to disapply the anti-accumulation rules, workers will not experience deductions to child-raising benefits facilitating the right for both parents to share child-raising responsibilities. However, this advantage is limited as not all Member States will apply the derogation. On the contrary, the risk of a loss of protection for parents currently relying on derived rights to such benefits is assessed as low due to the current low levels of compliance with the existing EU law requirement to award family benefits calculated with reference to salary or professional income on the basis of a derived right.

- *How do the German, Dutch and Belgian authorities interpret the applicable EU rules regarding parental allowances in cross-border situations?*

Although the UWV indicated that they will inform other Member States about the international aspects of the new Dutch parental leave scheme and in particular communicate with the neighbouring countries, there seems to be a different interpretation of the applicable EU rules. The Dutch authorities are of opinion that the conflict rules of the Coordination Regulation for maternity and paternity benefits apply. While the German and Belgian authorities apply the anti-accumulation rules of the Coordination Regulation, which apply to family benefits. As portrayed above, the EU legislative framework is also under debate for having an updated and better coordinated approach to parental allowances.

- *What are the national parental allowance schemes and under which conditions? Is it an individual or derivative right and does this have an influence?*

There are important differences in the national parental allowance schemes as can be derived from the descriptions above. The Dutch and Belgian parental allowance schemes are an individual right per parent, the German scheme is a derivative right and did not move towards a more individual rights'-approach as put forward by the European Commission in the Impact Document. Furthermore, the design differs in procedure (directly from the authority or indirectly), requirements (for example the Netherlands also grants it for foster children) and amount.

- *How do the national authorities inform and consult each other? What is the role of MISSOC and EESSI?*

The Electronic Exchange of Social Security Information (EESSI) is the European IT-system for social security institutions to exchange information on social security in the framework of EU rules on social security coordination. The basis of EESSI are the Coordination Regulations. Article 76 of Regulation (EC) 883/2004 includes provisions on the cooperation between national authorities and institutions, where there is a duty of mutual information and cooperation to ensure the correct implementation. For example, Article 78 of Regulation (EC) 883/2004 states that Member States should use new technologies for the exchange, access and processing of data required to apply this Regulation. Implementing Regulation (EC) 987/2009 includes provisions on the structure, content, format and arrangements regarding information exchange. Annex 4 of the Implementing Regulation includes more details on the database:

1. Content of the database

An electronic directory (URL) of the bodies concerned shall indicate:

- a. the names of the bodies in the official language(s) of the Member State as well as in English

⁶⁹ European Commission, *Commission staff working document. Impact assessment. Initiative to partially review Regulation (EC) No 883/2004, SWD (2016) 460*, Brussels, 2016 (Impact document), p. 162.

- b. *the identification code and the EESSI electronic addressing*
- c. *their function in respect of the definitions in Article 1(m), (q) and (r) of the basic Regulation and Article 1(a) and (b) of the implementing Regulation*
- d. *their competence as regards the different risks, types of benefits, schemes and geographical coverage*
- e. *which part of the basic Regulation the bodies are applying*
- f. *the following contact details: postal address, telephone, telefax, e-mail address and the relevant URL address*
- g. *any other information necessary for the application of the basic Regulation or the implementing Regulation.*

2. *Administration of the database*

- a. *The electronic directory is hosted in EESSI at the level of the European Commission*
- b. *Member States are responsible for collecting and checking the necessary information of bodies and for the timely submission to the European Commission of any entry or change of the entries falling under their responsibility.*

3. *Access*

Information used for operational and administrative purposes is not accessible to the public.

4. *Security*

All modifications to the database (insert, update, delete) shall be logged. Prior to accessing the Directory for the purposes of modifying entries, users shall be identified and authenticated. Prior to any attempt of a modification of an entry, the user's authorisation to perform this action will be checked. Any unauthorised action shall be rejected and logged.

5. *Language Regime*

The general language regime of the database is English. The name of bodies and their contact details should also be inserted in the official language(s) of the Member State.

Thus the European Commission hosts the EESSI, but Member States themselves are responsible for its own part of the data-processing services.⁷⁰ The European Commission publishes a repository of national institutions that have access to EESSI and are the competent social security authorities: the EESSI – Public Access Interface.⁷¹ EESSI should benefit the following aspects⁷²:

- Faster and more efficient information exchange between social security institutions benefits to mobile citizens
- More accurate data exchange between national authorities
- Fight against fraud
- Secure handling of personal data
- Collect statistics about social security coordination
- Verification of social security rights

In principle, EESSI should thus address the issues that were brought forward by the cases. Information and consultation regarding the implementation of the coordination rules of the Coordinating Regulations should go electronically via EESSI. Also regarding fraud, EESSI should allow competent authorities to prevent abuse and claiming double benefits. Yet, there are some indications that in practice the information exchange is not performing adequately in case of parental allowances (and other benefits).

⁷⁰ See also International Labour Organization, Coordination of Social Security Systems in the European Union: An explanatory report on EC Regulation No 883/2004 and its Implementing Regulation No 987/2009, 2010.

⁷¹ <https://ec.europa.eu/social/social-security-directory/pai/select-country/language/en>

⁷² European Commission, 'Electronic Exchange of Social Security Information (EESSI)', <https://ec.europa.eu/social/main.jsp?catId=1544&langId=en>

In 2022 the Dutch *Algemene Rekenkamer* (Court of Auditors) published a report on the international aspects of a Dutch benefit.⁷³ While the report focusses on the unemployment benefit and disability benefit, it includes relevant general international and cross-border insights. For example regarding information sharing, the Court of Auditors states: “*The European digital system EESSI (Electronic Exchange of Social Security Information) could speed up communication within the EEA and Switzerland and reduce susceptibility to error, but the UWV currently still mainly uses the post. The Netherlands is late in the European context in adopting EESSI. The Netherlands had among other things, objected to lack of AVG-proof usage. However, in 2020 and 2021 some WW processes started running through EESSI. By the end of 2022, the data exchange for the WIA will run via EESSI.*”⁷⁴ Thus, following this report it appears that no digital information exchange on paternal allowances is currently taking place via EESSI. In an online meeting, the UWV also pointed on a distinction to be made between the front office, working with EESSI, and the back-office, which are not.

Furthermore, the Court of Auditors signals that while the EU Regulations stipulate that member states should support each other in cross-border social security situations, the cooperation is difficult in some cases. The Court: “*For example, Germany prohibits the exchange of personal data between agencies. A central number for identification with different government agencies, such as our Citizen Service Number does not exist in Germany.*”⁷⁵ Another layer of complexity is the design of the management of social security system. In the Netherlands this is centrally designed, but for example Germany has a decentral social security system with regional offices (*Elterngeldstellen*), that are responsible for the implementation of policies.⁷⁶ This makes that national agreements between neighbouring states are not per definition implemented on the regional level, which is responsible for implementation. Indeed, the UWV made clear that they are struggling with finding a central contact point at the German side. Looking at the EU Repository of national institutions⁷⁷, a long list of competent authorities in Germany regarding child-raising benefits appears, while the list for the Netherlands for example is limited to two. This could be an indication that confirms that more guidance and centralisation in the field of contact persons is needed.

Finally, regarding MISSOC, it can be mentioned that the latest update is of July 2022. The next update will again be in July 2023. Currently, this means that the information in MISSOC still excludes the Dutch new parental leave scheme. Indeed, the scheme was introduced after July 2022, namely August 2022. In this regard, a mistiming might be possible. Nevertheless, the new Dutch parental leave scheme was communicated across the borders. The UWV stated that it was mentioned within the Administrative Commission, also the Dutch view on the coordination rules in cross-border settings were mentioned.

Finally, regarding the information exchange on anti-cumulation the following difficulty arose. In the case examples it was mentioned that individuals were requested to proof that they have not received and claimed benefits from another parental leave scheme, e.g. by the *Elterngeldstelle* to receive *Elterngeld*. The UWV made clear to be aware of this problem and request of the *Elterngeldstelle*. Unfortunately, when no request is made at the UWV for a parental leave benefit, no dossier exists. The UWV indicated that it cannot write a formal letter, indicating that no benefits were claimed, as they cannot prevent that a benefit will be claimed in the near future. That would still lead to accumulation of benefits. A practical result is that in individual cases the communication between the competent authorities across borders is still

⁷³ Algemene Rekenkamer, Een Nederlandse uitkering in het buitenland, June 2022, <https://www.rekenkamer.nl/publicaties/rapporten/2022/06/22/een-nederlandse-uitkering-in-het-buitenland>

⁷⁴ Ibid, p. 26.

⁷⁵ Ibid, p. 24.

⁷⁶ See also: <https://www.bmfsfj.de/bmfsfj/themen/familie/familienleistungen/elterngeldstellen-und-aufsichtsbehoerden-in-elterngeldangelegenheiten-73716>

⁷⁷ <https://ec.europa.eu/social/social-security-directory/pai/select-country/language/en>

hard and unclear. There are uncertainties and confusions that need to be addressed, to come to a common understanding.

III. Description of solution

Clarifying definitions

Paternal allowances are not defined nor mentioned in the Coordination Regulation as such. “[T]here might be a grey area, notably when benefits are paid immediately after childbirth and continue to be paid for some years to the person caring for the child. In such cases, it is not clear how long these benefits can continue to be regarded as maternity benefits and when they become family benefits.”⁷⁸, the European Commission mentioned. From case law, the report also discussed that family benefits are a right for the family rather than for the individual parent. On the contrary, individual benefits for the parent that compensates in loss of income could be seen as maternity and related benefits. The classification of a parental allowance scheme can thus be arguable under EU law, as it depends on the specific characteristics of the scheme. In the case of Belgium, the Netherlands and Germany, this may have caused problems in cross-border settings. The German Elterngeld is classified as family benefit, as the scheme is also targeted at the parents together/the family as a whole. On the contrary, the Belgian and Dutch allowances are individual rights for each parent – where the Netherlands clearly classifies it as maternity and related benefits.

Although the clarifications presented in the proposal to amend the Regulation are welcome, and will solve some important issues, some problems will remain. Member States may therefore continue to classify similar benefits in different ways, even with new specific coordination rules on family benefits compensating income-loss due to child-rearing. A solution would have been to formulate a clearer definition on maternity/paternity benefits.⁷⁹ By doing so, system-related differences can be better overcome. While the process of the revision of the Coordination Regulation is unclear at the moment⁸⁰, it would thus improve the current situation. Within a shorter period, it is advisable that the competent authorities of the neighbouring countries seek closer cooperation and coordination. This is also promoted by Article 76 of the Coordination Regulation. This report presents the characteristics and legal aspects of the national parental allowance schemes. This could be the foundation for a better understanding of each other’s systems and differences, and come to an improved common understanding. In case a solution cannot be found, that would make ground to call on the Administrative Commission.⁸¹

Information exchange

The analysis also showed that there indeed seems to be a problem regarding the cross-border information exchange. Here there is the problem that the responsible authorities are not at the same level and implementing powers differ: the UWV is centrally organised and has instructions from the Ministry. Elterngeldstelle on the other hand are organised in a decentral manner and have great implementing responsibilities. The UWV indicated that it is hard to find the correct contact point for Germany, as there are different Elterngeldstellen with different procedures. In practice, the system of EESSI and the Repository of national institutions appears not to be functioning optimal. An explanation could be that while the system is European, the national authorities and institutions are still responsible for the data, also the contact data. Based on the findings and analysis, it can be argued that an improved Single Point of Contact (SPoC) could be of use here. While it more or less exists with the Repository of national institutions, it cannot prevent a long list of national contacts. A more centralised

⁷⁸ European Commission, A-Z on social security coordination (FAQs) – M (40.1. What are maternity benefits, how are they coordinated and what is the difference with family benefits?),

<https://ec.europa.eu/social/main.jsp?catId=1142&langId=en&intPageId=3394>

⁷⁹ Cf. E. Holm, ‘Coordination of classic and specific family benefit – challenges and proposed solutions’, 22(2) European Journal of Social Security (2020), pp. 196-211.

⁸⁰ The Commission proposal was made in December 2016. After eight years of negotiations, there is still no prospect of an agreement within short term.

⁸¹ Art. 76 (6) Coordination Regulation.

approach may be advisable. This principle can also be found in the General Data Protection Regulation (GDPR) and exists for businesses to gather national information.⁸² The central idea is that given national differences, national coordination points should be established. These points act as a central place for contact, improving the accessibility of information across borders. With regard to the already existing Repository of national institutions, a more central approach to the SPoC could mean that the list of national contact points is more limited. In decentralised systems, some mandates may have to be provided in this regard.

Next to that, there are also practical problems in individual cross-border cases. Information exchange across borders regarding the individual claiming of benefits is not possible or troublesome. Double claiming benefits appears not to be possible to prevent via EESSI or information exchange. While EESSI is meant to improve cross-border information exchange and consultation for national authorities in implementing the coordination rules for social security, on the practical level issues remain apparently. Here it is also important to emphasise that Member States themselves remain responsible for processing data. The exact use of EESSI in the national social security authorities is unclear at the moment, as processes and internal guidelines are not publicly available. The report showed based on literature, that there may be differences in national implementation. It is therefore hard to assess whether EESSI is currently fit for purpose for communication about cross-border cases and whether it is a suitable system to be able to prevent fraud. If this is not possible indeed, it is recommendable to improve the use (and if needed design) of EESSI, where automation can help to prevent cases of fraud and accumulation of benefits (e.g. automatic signals when a beneficiary is claiming a benefit in another Member State). This could be addressed by the neighbouring countries and/or on EU level. To do so, the internal procedures and systems have to be made more clear, also regarding EESSI, and streamlined across borders. This is the case for the authors of this report, the national authorities and practitioners. Based on a better understanding, it is possible to work on a common understanding of how procedures could be designed and coordinated for a better cross-border information exchange. This would benefit a coordinated use and implementation of EESSI.

To come to a better understanding in the cross-border setting of the Netherlands, Belgium and Germany it is the concrete advice to organise a round table with the competent authorities and ministries to discuss the two elements, clear out confusions and come to better agreements and procedures.

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⁸² European Commission, Points of Single Contact, https://single-market-economy.ec.europa.eu/single-market/services/directive/points-single-contact_en

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Koninklijk besluit van 29 oktober 1997 tot invoering van een recht op ouderschapsverlof in het kader van de onderbreking van de beroepsloopbaan

collectieve arbeidsovereenkomst nr. 64

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VI. Appendix

Missoc Comparative Tables
Updated at: 01 July 2022

	Belgium	Germany	The Netherlands
IV. Maternity/ Paternity			
Applicable statutory basis	<p>Employees: Health Care and Sickness Benefit Compulsory Insurance Act (Loi relative à l'assurance obligatoire soins de santé et indemnités/Wet betreffende de verplichte verzekering voor geneeskundige verzorging en uitkeringen), co-ordinated on 14 July 1994, Royal Decree of 3 July 1996 implementing this Act and Regulation of 16 April 1997 on the execution of Article 80, 5° of this same Act. Act of 3 July 1978 on labour contracts (Loi relative aux contrats de travail/Wet betreffende de arbeidsovereenkomsten) (Articles 30 §2 and 30). Self-employed: Royal Decree of 20 July 1971 on the creation of a health care and maternity insurance for the self-employed and their helping spouses (Arrêté royal instituant une assurance indemnités et une assurance maternité en faveur des travailleurs indépendants et des conjoints</p>	<p>Act on the protection of mothers who are working, or following a course of study or training (Gesetz zum Schutz von Müttern / Mutterschutzgesetz) (MuSchG) of 23 May 2017 (BGBl. I p. 1228), last amended by Article 57 (8) of the Act of 12 December 2019 (BGBl. I p. 2652) MuSchG - Act on the protection of mothers who are working, or following a course of study or training (gesetze-im-internet.de) Social Security Code (Sozialgesetzbuch), Book V, introduced by the Health Reform Act (Gesundheits-Reformgesetz) of 20 December 1988, last amended by Article 14 of the Act of 10 December 2021, BGBl. I p. 5162. SGB 5 – unofficial table of contents (gesetze-im-internet.de)</p>	<p>Health Insurance Act (Zorgverzekeringswet, Zvw) of 16 June 2005. Work and Care Act (Wet arbeid en zorg, Wazo) of 16 November 2001. Directory of legal acts : www.wetten.nl</p>



aidants/Koninklijk besluit houdende
instelling van een uitkeringsverzekering
en een moederschapsverzekering ten
voordele van de zelfstandigen en van de
meewerkende echtgenoten).
Directory of legal acts: Moniteur Belge -
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<p>Basic principles</p>	<p>Benefits in kind: Compulsory social insurance scheme mainly financed by contributions, covering the active population (employees and self-employed) and providing health care for insured women and members of the family. Cash benefits: Compulsory social insurance scheme mainly financed by contributions, covering the active population (employees and self-employed) and providing earnings-related benefits (employees) and lump-sum benefits (self-employed). Maternity benefits are earnings related (general scheme). As regards self-employed women, see annex "Social protection of the self-employed". The maternity (and paternity) leave is remunerated by the health insurance body (as regards the paternity leave, the first 3 days are paid by the employer). Maternity leave is taken into account to determine eligibility for old-age benefit and to calculate the amount payable.</p>	<p>Benefits in kind: Compulsory social insurance scheme for female employees and assimilated groups providing benefits in kind and earnings-related cash benefits. For reasons relating to pension entitlement, maternity protection periods are considered as non-contributory fixed credit periods.</p>	<p>Benefits in kind: Health Insurance Act (Zorgverzekeringswet, Zvw): Compulsory social insurance scheme covering all persons working and/or living in the Netherlands. Cash benefits: Work and Care Act (Wet arbeid en zorg, Wazo): Compulsory social insurance scheme covering employees and providing earnings-related benefits. Self-employed women are entitled to earnings-related maternity benefits provided under the scheme "Self-employed and pregnant" (Zelfstandig en Zwanger). Maternity, paternity and adoptive leave is paid and taken into account for determining entitlement to old-age benefits and in the calculation of the amount payable.</p>
<p>Field of application</p>			
<p>1. Benefits in kind - Medical care</p>	<p>Insured women (see table II "Health care"). Members of the family. No possibility of voluntary affiliation. The same provisions apply to other family types.</p>	<p>Insured women and equivalent groups (see Table "Application Area – insured persons living and/or working in the Netherlands. Co-insured spouse and daughters of insured person.</p>	<p>Health Insurance Act (Zorgverzekeringswet, Zvw): All women living and/or working in the Netherlands.</p>

<p>2. Maternity/Paternity leave and benefit</p>	<p>Maternity benefit (indemnité de maternité/moederschapsuitkering): All female employees under labour contract and categories assimilated thereto. Paternity/birth benefit (indemnité de paternité et d'adoption/vaderschaps geboorteuiterkering) and adoption benefit (adoptieuitkering): All employees under a labour contract. For the special rules for the self-employed, see annex "Social protection of the self-employed". Right to breastfeeding breaks (Borstvoedingspauzes): Workers who work less than 7.5 hours a day (but at least 4 hours) are entitled to one half-hour break per day, and those who work at least 7.5 hours are entitled to two breaks. No possibility of voluntary affiliation. The same provisions apply to other family types.</p>	<p>Maternity Benefit (Mutterschaftsgeld): Women affiliated to a statutory sickness fund (compulsory or voluntarily). Co-insured spouse and daughters of insured persons in low-income employment as well as female employees not affiliated to a statutory sickness fund may receive Maternity benefit which is financed by the Federal State. Adoptive mothers are not entitled to maternity benefits. Private, self-employed women with private insurance are entitled to claim payment of the agreed daily sickness allowance.</p>	<p>Maternity leave Employees For self-employed women entitled to earnings-related maternity benefits provided under the scheme "Self-employed and pregnant" (Zelfstandig en Zwanger): see the information on the social protection of the self-employed on www.missoc.org. Paternity leave for male or female employees who are the spouse or registered or unregistered partner of the woman giving birth or who acknowledge the child (also if not living with the mother). For adoptive parents, leave is possible for maximum 6 weeks during which an earnings-related benefit is payable.</p>
<p>Conditions</p>			
<p>1. Benefits in kind - Medical care</p>	<p>Affiliation to a health insurance body. Payment of a minimum amount of contributions (in the current or previous year) In special cases: qualifying period of 6 months (reaffiliation).</p>	<p>No special conditions for eligibility for benefits.</p>	<p>No qualifying conditions.</p>

<p>2. Maternity/P aternity leave and benefit</p>	<p>Maternity benefit (prestation (indemnité)de maternité/moederschapsuitkering) and paternity/birth benefit and adoption benefit/vaderschaps-geboorte/adoptieuitkering): Maternity: affiliation as holder, 120 working days or equivalent, qualifying period of 6 months and payment of contributions. Paternity/birth: employment contract, leave to be taken within 4 months after delivery, kinship relationship or married, legal or permanent and emotional cohabitation with the other parent. Adoption: minor child and existence of an employment contract (full time basis or temporary).</p>	<p>Maternity Benefit (Mutterschaftsgeld): Entitlement to Sickness Benefit (Krankengeld) or Maternity Benefit in case of incapacity of work, if no employment allowance is paid during the periods of protection. Adoptive mothers are not entitled to maternity benefits.</p>	<p>No qualifying conditions.</p>
<p>Benefits</p>			
<p>1. Benefits in kind - Medical care</p>	<p>Injections, pre- and post-natal care, monitoring and assistance during labour and delivery in a hospital or day-hospital or at home, ... See also Table II "Health care", "Benefits".</p>	<p>Medical care and midwife care during pregnancy and during and after childbirth, midwife care in the days after delivery up to 12 weeks after childbirth, or longer by doctors' orders, supply of medicines, dressings, healing aids, out- or inpatient childbirth, home care, household assistance. Benefits in kind, as in illness, see Table II "Illness – benefits in kind", "services". No additional payments are made in the case of pregnancy discomforts and in connection with delivery.</p>	<p>Obstetric care (including medical checks and tests) is normally provided by a midwife, but may be provided by a general practitioner or specialist (if necessary in a clinic or hospital) when no midwife is available or when medically indicated. From 2016, follow-up testing (chorionic villus sampling or amniocentesis) is possible in cases of a positive Non-Invasive Prenatal Test (SIPS) done abroad. See also Table II "Health care", "Benefits".</p>

2.
Maternity/P
aternity
leave

Duration of leave

Maternity leave (congé de maternité/moederschapsverlof):

Prenatal leave: 6 weeks (8 weeks in case of multiple births) before the expected date of delivery. The week immediately preceding delivery is compulsory, the other weeks are optional. Postnatal leave: 9 mandatory weeks after delivery.

If the newborn is required to stay in hospital for over 7 days, maternity leave can be extended. This extension may not exceed 24 weeks.

The days of inability to work and the days of lay-off during the prenatal leave period are considered as work.

Paternity or birth leave (congé de paternité ou de naissance/vaderschapsverlof):

Fathers or co-parents are entitled to 15 days of birth or paternity leave upon their child's birth to be taken within four months after delivery.

Adoption leave (congé d'adoption/adoptieverlof):

Both parents are entitled to an adoption leave in case of adoption of a minor child. The maximum duration of the leave is 6 weeks (base period). The leave is extended by 2 weeks

* in case of adoption by a single parent;
* two adoptive parents can share these additional weeks between themselves (either one parent takes 2 additional

Maternity leave (Mutterschaftsurlaub): 6 weeks before and 8 (or 12 weeks for premature births in medical terms or multiple births) weeks after delivery. In the event of premature delivery, maternity leave is extended by those days that could not be claimed before delivery. If a mother gives birth to a disabled child, she is entitled to 12 weeks maternity leave after the birth if the mother applies for such leave and the disability is diagnosed within 8 weeks of giving birth. The mother can expressly refrain from claiming the prenatal period of protection. She may revoke this declaration at any time. The post-natal period of protection is obligatory. Adoptive mothers have no entitlement to maternity leave.

Maternity leave (Zwangerschaps- en bevallingsverlof):

16 weeks. Prior to confinement, a leave between 6 and 4 weeks is compulsory; 10 to 12 weeks remain for leave after confinement.

If the baby is born before the due date, the number of days before the due date is added to post-natal leave. If the baby is born after the due date, the number of 'late' days is added to the total period of leave. In this case, the leave is longer than 16 weeks.

If the child is hospitalised for more than 7 days, the leave is extended according to the duration of hospitalisation.

If a mother dies in childbirth, the remaining leave can be transferred to the partner.

In the case of multiple births, maternity leave starts 8-10 weeks before the expected date of birth (instead of 4-6 weeks before the due date). The total period of leave is thus extended with 4 weeks.

The same duration provisions apply to insured self-employed: during the period of maternity leave, they are entitled to maternity cash benefits. However, they are not obliged to stop working. Paternity leave is optional and lasts max. six weeks (geboorteverlof). Adoption leave: Each parent can take up to six weeks of adoption leave over a



weeks or each parent takes one week)

* in case of simultaneous adoption of several children.

The duration of the leave is doubled in case of disability of the child. The leave must be taken within two months of the baby's birth being registered.

Right to breastfeeding breaks up to 9 months after the birth.

period of 26 weeks, starting four weeks before the actual adoption.

Flexibility and transferability

Flexibility
 Maternity leave (congé de maternité/moederschapsverlof):
 The optional prenatal leave not taken prior to the birth may be taken after the post-natal leave or when the baby returns home following a prolonged hospital stay. In principle, the leave cannot be taken on a part-time basis. If the worker wants to go back to work gradually at the end of her maternity leave, she can convert the last two weeks of her optional post-natal leave into post-natal leave days. However, she must have 2 weeks of optional post-natal leave and must take them within 8 weeks of returning to work.
 Paternity/birth leave (congé de paternité ou de naissance/vaderschaps-of geboorteverlof): the leave cannot be taken on a part-time basis, but can be taken intermittently.
 Adoption leave: the leave cannot be taken on a part-time basis; it must be taken without any interruptions.
 Transferability
 Maternity and paternity leave may not be shared between the parents. However, it is possible to convert the maternity leave into paternity leave following the death or hospitalisation of the mother (the baby must have been discharged from the hospital).
 In the event of death of the mother: the father may take the part of the leave not

Maternity leave:
 The mother can expressly refrain from claiming the prenatal 6-week period of protection. She may revoke this declaration at any time. The post-natal period of protection is obligatory. Maternity leave before birth can also be taken part-time with the employer's agreement. Maternity leave cannot be transferred to the father. Adoptive mothers have no entitlement to maternity leave.

Maternity leave
 Flexibility:
 * see 2. Maternity/Paternity leave - Duration of leave
 * Maternity can be taken part-time from the 7th week onwards. The remaining leave can be taken within a period of 30 weeks.
 Transferability
 * In general, maternity leave is not transferable, but if the mother dies in childbirth, the remaining leave can be transferred to the partner.
 Paternity leave
 * 1 week of optional paid paternity leave (geboorteverlof) can be taken within 4 weeks after the birth. 5 additional weeks can be taken within 26 weeks after the birth.
 * Paternity leave can be taken part-time or full-time, and/or intermittently.
 * It is not transferable.
 Adoption leave
 Each parent can take up to six weeks of adoption leave over a period of 26 weeks, starting four weeks before the actual adoption.

used by the mother.
If the mother is hospitalised: conversion
from the 8th day following the birth up
until the end of the maternity leave.

3.
Maternity/P
aternity
benefit

Amounts

Maternity benefit (prestation/indemnité de maternité/moederschapsuitkering):

In the first 30 days of maternity leave: for employees:

* 82% of the gross daily wage without ceiling,

* for unemployed women: allocation of unemployment benefit and a 19.5% supplement to the gross daily wage, up to a maximum of € 127.88 per day. As of the 31st day of maternity leave or in the event of extension:

* 75% of gross daily wages (employees) up to a maximum of € 120.64;

* allocation of unemployment benefit + supplement of 15% of salary (unemployed) up to a maximum of € 120.64.

The payment is monthly. Daily compensation (6 days a week system).

Paternity or birth/adoption compensation(vaderschaps-geboorte- en adoptieuitkering):

82% of wages up to ceiling (maximum benefit: € 131.90).

Breastfeeding break: compensation covered by the sickness fund (82% of gross hourly pay, without an upper limit).

Maternity Benefit (Mutterschaftsgeld):

Average net wage of insured person, reduced with legal contributions, with maximum of €13 per day. The difference between the maternity benefit and the average remuneration per calendar day is compensated by the employer's allowance (see maternity allowances - payment of wages by the employer).

Maternity benefit is paid for the duration of maternity leave.

Family insured or non-statutory health insured female employees receive a maximum of €210 maternity benefit (as well as the employer contribution for the entire maternity protection period) during the maternity protection period from the statutory health insurance.

Self-employed women with private insurance who have taken out a private daily sickness insurance are entitled to claim payment of the agreed daily sickness allowance during the maternity protection period.

Adoptive mothers have no entitlement to maternity leave.

Maternity benefit (zwangerschaps- en bevallingsverlofuitkering): 100% of the daily wage, paid during the period of Maternity leave (zwangerschaps- en bevallingsverlof).

Ceiling: maximum daily amount of: € 232.90. Frequency of payment: weekly (women in receipt of unemployment benefit) or monthly (employed women).

Maternity benefit for self-employed (ZEZ-uitkering): max. 100% of the net trading income, earned during the period of maternity leave (zwangerschaps- en bevallingsverlof). Ceiling: minimum monthly wage (€ 1,756.20).

Frequency of payment: weekly. Paternity benefit: 100% of the wage paid by the employer the first week; for the additional 5 weeks, benefit paid at 70% of the daily wage.

Ceiling: 70% of maximum daily amount (€163.03).

Frequency of payment: one-off. Adoption:

100% of daily wage. Ceiling: maximum daily amount of €232.90.

Frequency of payment: weekly or one-off.

Continued payment by the employer

Maternity leave (congé de maternité/moederschapsverlof):

No statutory continuation of payment. Paternity/birth leave/adoption (vaderschaps-geboorte-/adoptieverlof): Statutory continuation of payment during the first three days. Afterwards, compensation by the insurance body:

* 12 days maximum for births from 1st January 2021,

* 17 days maximum for births from 1st January 2023.

Supplement paid by the employer: The difference between €13 and the daily average net wage of the insured woman, reduced with legal contributions, is covered by the employer according to the provisions of the Maternity Protection Act Mutterschutzgesetz.

The employer's contribution is to be paid during the pre-natal and post-natal protection periods as well as for the delivery day.

In the framework of an apportionment procedure under the Expenditure Compensation Act (AAG), the medical insurance funds will refund employers the expenses in the event of maternity - on request - in the full amount. If the employment relationship had been terminated by the employer during the pregnancy or the protection period, the maternity allowance will be granted by the competent authority (statutory health insurance fund or the Federal Office for Social Security) for maternity benefit. The same applies if an employer cannot pay his subsidy because of insolvency.

Maternity/adoption: No continued payment by the employer. Paternity: five days continued payment by employer (100% daily wage). The employer is not reimbursed by the social security administration.

Taxation and social contributions

1. Taxation of cash benefits	<p>Maternity benefit (prestation (indemnité de maternité/moederschapsuitkering) and paternity or birth/adoption benefit (vaderschaps of geboorte- en adoptieuitkering):</p> <p>The full benefits are subject to taxation.</p>	<p>Maternity Benefit (Mutterschaftsgeld) as well as the supplement paid by the employer are not subject to taxation (but subject to progression). Maternity protection wages according to § 11 Maternity Protection Act, which the pregnant woman receives in the event of a prohibition on employment, is subject to income tax liability.</p>	<p>Benefits are subject to taxation.</p>
2. Limits of income for taxation of cash benefits	<p>Maternity benefit (prestation (indemnité de maternité/moederschapsuitkering) and paternity and or birth/adoption benefit (vaderschaps of geboorte- e/adoptieuitkering):</p> <p>Tax reduction calculated in accordance with the taxpayer's income.</p>	<p>Not applicable. Benefits are not subject to taxation.</p>	<p>General taxation rules. No special relief for benefits.</p>
3. Social security contributions on benefits	<p>No contributions.</p>	<p>Maternity protection wages according to § 11 of the Maternity Protection Act is subject to the obligation to pay contributions.</p> <p>Maternity benefit as well as the employer's contribution to maternity allowance are not subject to social security obligations.</p>	<p>Work and Care Act (Wet arbeid en zorg, Wazo):</p> <p>Social insurance contributions for the</p> <ul style="list-style-type: none"> * General Surviving Relatives Act (Algemene Nabestaandenwet, ANW), * the Long-term care act (Wet langdurige zorg, WLZ), * the General Old-Age Pensions Act (Algemene Ouderdomswet, AOW) <p>are deducted from the (maternity, paternity, adoption) benefits. The contributions for the Health Insurance Act are paid by the body that administers the payment of this social security benefit.</p>