

## 1. GENERAL INFORMATION

### 1.1. Regulation 883/2004 and Regulation 987/2009

Interns ("small statutes") may find themselves in a cross-border situation that falls under the European regulations on the coordination of social security systems (n° 883/2004 and 987/2009), whereby the social security system that applies to them is determined on the basis of rules and principles contained in these regulations.

**The basic rule is that a person can only be subject to the social security legislation of one Member State.<sup>2</sup>**

Two hypotheses are possible:

A. The Member State in which the internship takes place does not consider the internship as an equivalent to an employed activity

→ Application of article 11, 3, e of Regulation 883/2004 = occupational accidents are covered in accordance with the legislation of the Member State of residence of the intern

→ Determination of the place of residence in accordance with article 11 of Regulation 987/2009

E.g. Different scenarios are possible depending on various elements such as the source of income, the housing situation, etc. The place of residence of the intern is then determined based on that information.

👉 This does not apply in Belgium, where the internship is assimilated to an employed activity (see hypothesis B).

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<sup>1</sup> The EU Member States, Switzerland (since 1 April 2012) and Iceland, Liechtenstein and Norway (since 1 June 2012) fall within the scope of Regulation 883/2004.

<sup>2</sup> Article 11,1 Regulation 883/2004

## B. The Member State in which the internship takes place considers the internship as an equivalent to an employed activity

→ Application of article 11,3, a of Regulation 883/2004 = occupational accidents are covered in accordance with the legislation of the Member State in which the internship takes place.

→ E.g. If the internship takes place in Belgium, the Belgian social security law shall apply to the situation and the intern is covered for accidents at work according to the Law on accidents at work of 10 April 1971 (LAW). In Belgium, by virtue of the coverage in the (obligatory) general social security system for employees, interns are assimilated to employees and the educational institutions are assimilated to employers<sup>3</sup>.

### **1.2. Regulation (EU) N° 1231/2010 of the European Parliament and of the council of 24 November 2010 extending Regulation (EC) N° 883/2004 and Regulation (EC) N° 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.<sup>4</sup>**

Since 1 January 2011, Regulation 883/2004 and Regulation 987/2009 also apply to those third-country nationals who are not yet covered by these regulations solely on the ground of their nationality, as well as to their family members and their surviving relatives, provided they are legally resident on the territory of a Member State and are in a situation involving at least two Member States.

E.g.: A person from Colombia who legally resides in Belgium with their family and works in a company in the Netherlands will benefit from social security coverage in accordance with the coordination regulations.

### **1.3. Posting**

Article 12(1) of Regulation 883/2004 provides a specific rule that deviates from the general rule, which states that the competent system is that of the place where the work is carried out (Art.11.3a).

Posting is obligatory as soon as the basic conditions are met.<sup>5</sup>

A Belgian intern who does an internship in a Member State on behalf of the educational institution **must** be posted by this educational institution. The intern then remains subject to Belgian social security legislation provided the basic conditions for posting are met.

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<sup>3</sup> Article 5 of the Law on accidents at work of 10 April 1971.

<sup>4</sup> However, this extension does not apply to Denmark, Switzerland, Iceland, Norway and Liechtenstein and the United Kingdom.

<sup>5</sup> Judgment of the CJEU of 14 October in the case van Delft (C-345/09).

This also applies in reverse: interns from another Member State following an internship in Belgium will remain subject to the social security legislation of the sending State if they are posted by that State. Please note that if an internship is not assimilated to an employed activity in the Member State, the intern cannot be posted to Belgium and the Belgian social security legislation - which only provides coverage for occupational risks (so for occupational accidents and occupational diseases) – shall apply.<sup>6</sup>

If all the basic conditions of the posting are fulfilled, the competent social security institution shall issue an attestation of "Applicable legislation" A1 proving that the concerned interns retain their usual social security regime of the sending State.

The educational institution must inform the NSSO of the situation of secondment and can request an A1 attestation via the portal website of the NSSO: [https://www.socialsecurity.be/site\\_nl/employer/applics/gotot/index.htm](https://www.socialsecurity.be/site_nl/employer/applics/gotot/index.htm).

At the end of 24 months, if the temporary posting of the intern (= equivalent to an employee) has not ended and the posting conditions are still fulfilled, an extension of the posting period may be granted by mutual agreement between the competent social security institutions of the countries concerned.

The educational institution must ensure that the A1 attestation is applied for and communicated to the Belgian work accident insurer.

The majority of foreign internships of Belgian students meet the posting conditions.

#### **1.4. Social security coverage of foreign interns when the Belgian social security legislation applies**

##### a. General

When the Belgian social security legislation applies in accordance with the binding European designation rules, the foreign interns ONLY benefit from coverage for occupational risks (occupational accidents and occupational diseases). **It is not possible for them to be affiliated to the Belgian health insurance scheme.**

##### b. Exception: free coverage provided by non-competent Member State (Judgment of the CJEU<sup>7</sup> of 19 September 2019 in the case Van den Berg and Giesen C-95/18)

The foreign interns may be able to benefit from coverage, for example for health care, in the sending Member State IF that Member State provides in its own legislation that individuals may benefit from coverage, and this for free and without any financial compensation (the payment of the NSSO contributions and therefore the social security coverage can only take place in one country).

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<sup>6</sup> In the Netherlands, an internship is not assimilated to an employed activity. Therefore, posting is not possible for Dutch students with an internship in Belgium.

<sup>7</sup> Judgment of the European Court of Justice of 19 September 2019 in the case Van den Berg and Giesen C-95/18

In the absence of coverage in a sector of the national general social security system (in the competent country in accordance with the European designation rules or in the non-competent country which offers coverage for free), the intern can inquire about the possibility of a common/private coverage in this sector where they cannot be covered.

E.g. A Dutch student who does an internship in a company on Belgian territory will only benefit from coverage for occupational risks (occupational accidents and occupational diseases). He/She will not be covered for medical expenses because the legal conditions of the Belgian regulation on medical care are not met.<sup>8</sup> However, the Netherlands CAN provide in its legislation that the Dutch intern can still benefit from health insurance cover, and this for free.

## 2.PRACTICAL APPLICATION

Always take two steps to determine which legislation should be applied effectively.

Step 1. Determine the applicable legislation:

→ is determined by using the assignment rules of Regulation 883/2004 either the application of Article 11, 3, e (= legislation of the place of residence, therefore not possible for an internship in Belgium) or Article 11, 3, a (= legislation of the place of the internship, this applies for internships in Belgium)

Step 2. The applied legislation:

→ consult the legislation of the competent Member State for the exact conditions of coverage for an accident at work.

**These two steps are only relevant if posting is not applicable.**

### 2.1. Foreign student within the EEA is doing an internship in a company in Belgium.

<p><b>General rule:</b></p> <p><b>Application of the legislation of the State of Employment (= Article 11.3 a of Regulation 883/2004).</b></p>	<p><u>E.g.</u> A student lives and studies in Spain to become an architect and goes to Brussels for a two-week internship in a company (RSP architects).</p> <p>→ Step 1: Application of article 11,3, a = legislation of the internship site = Belgium The Law on accidents at work applies</p> <p>→ Step 2: The educational institution in Spain must conclude the work accident insurance with an insurance company in Belgium + declaration Dimona STG to the NSSO</p>
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<sup>8</sup> Article 32 of the Act on compulsory insurance for medical care and cash benefits, consolidated on 14 July 1994.

	<p>→ <b>Company in Belgium may only accept internship if proof of insurance of OA is received from the educational institute in Spain.</b></p>
<p><u>Exception rule:</u></p> <p><b>Posting -&gt; Application of the legislation of the posting State</b></p> <p><b>Only possible if the internship in the sending Member State is assimilated to an employed activity and if the posting conditions are fulfilled.</b></p>	<p><u>E.g.</u> A student lives and studies in Spain to become an accountant. For their internship in a company (Danone) in Brussels, they are posted by their educational institution in Spain.</p> <p>→ The Spanish social security legislation is applicable.</p> <p>→ Coverage of the work-related accident in Belgium according to the applicable rules in Spain.</p> <p>→ <b>The Spanish student must submit the A1 attestation to the company in Belgium prior to the internship.</b></p>

## 2.2.A student at an educational institution in Belgium is doing an internship in an enterprise within the EEA

<p><u>General rule:</u></p> <p><b>Application of the legislation of the State of Employment (= Article 11.3 a of Regulation 883/2004).</b></p>	<p><u>E.g.</u> A student in Economic Sciences at the VUB does a 3-month internship in a company (Geox) in Italy.</p> <p>→ Step 1: Legislation of the internship = Italy  Application of Italian social security legislation  If the intern is regarded as an equivalent to an employee, application of Article 11.3 a)  If the intern is <u>not</u> regarded as an equivalent to an employee, application of Article 11.3 e) (= application of the legislation of the State of residence). <b>Depending on the elements in accordance with article 11 of Regulation 987/2009 the residence can be in Belgium or in Italy BUT There can only be one residence</b></p> <p>→ Step 2: The intern is covered for accidents at work is covered according to the Italian rules or Belgian rules in function of the applicable legislation laid down in step 1.</p>
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	<p><b>NOTE:</b> If the coverage for accidents at work in the Italian social security legislation is more limited than that of the Law on accidents at work, the VUB <b>can</b> provide an additional coverage under private law for the intern (but it is not an obligation).</p>
<p><b><u>Exception rule:</u></b></p> <p><b>Posting - Application of the legislation of the posting State.</b></p> <p><b>For Belgian interns, this will be the rule in practice, as almost all Belgian interns fulfil the posting conditions.</b></p>	<p><u>E.g.</u> A Social Sciences student at the VUB is posted for 3 months by the VUB for an internship in a company (research centre PVV) in Italy.</p> <ul style="list-style-type: none"><li>→ Law on accidents at work applies</li><li>→ VUB must conclude the work accident insurance and make the Dimona STG declaration with the NSSO</li><li>→ <b>VUB notifies insurer of the A1 attestation.</b></li></ul>