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Strengthening of the capacity of the institutions from selected EU countries in the field of implementation of Regulation (EC) No 883/2004 and 987/2009 and introduction of the electronic data exchange (EESSI)

PROGRESS project 10/2010-9/2012 (Czech Republic, Bulgaria, Finland, Hungary)

National report, Finland

28.2.2011
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1. Introduction

1.1 General description of the structure of the report

This report gives an overall view of the implementation of the Regulation 883/2004 and 987/2009 in Finland and of the introduction of the electronic data exchange (EESSI). Chapter 2 concentrates on the preparation of the implementation of Regulation 883/2004 and 987/2009 from a legal and administrative perspective. It is followed with a description of first experiences and challenges of the implementation in practice.

Chapter 3 of this report concentrates on the EESSI-project. The chapter is divided into two parts. The first (3.1) deals with the starting point of the project in Finland and the decisions made in the beginning. It gives also an overall picture of the national coordination project dealing with connecting the business and IT-people. It is followed by an introduction of the institutional projects in KELA and ETK which are the two institutions involved in the PROGRESS project. The second part deals with the AP-project in Finland. Chapter 4 consists of final remarks.

1.2 Administrative organisation of implementation of Social Security in Finland

Here is a short summary of all the relevant institutions in Finland implementing the Regulations 883/2004 and 987/2009. All the mentioned authorities, with the exception of the public entities providing for health care and hospital care, are also involved in the EESSI-project in Finland. In the report the focus will however be in the work of KELA and ETK which are the two institutions taking part in the PROGRESS project.

The Ministry of Social Affairs and Health is the competent authority according to article 1.m in Regulation 883/2004 in Finland.

KELA (the Social Insurance Institution) is:

- *Competent institution* according to article 1.q.i and ii in Regulation 883/2004 for the following benefits:
 - o Sickness (both cash and in kind when it concerns the sickness insurance scheme), maternity an equivalent paternity benefits
 - o Old-age, invalidity and survivors pensions (the Basic residence based pensions)
 - o Unemployment benefits (the basic unemployment allowance)
 - o Family benefits
- *Institution designated by the competent authority* according to article 1.q.iii in Regulation 883/2004 for:
 - o Legislation applicable when it is not in the competence of ETK (mainly legislation applicable for non- active people)
- *Liaison body* according to article 1.2 in Regulation 987/2009 for the above mentioned benefits as well as for the financial provisions in title IV in Regulation 987/2009

The public entities providing for health care and hospital care are *competent institution* according to article 1.q.i and ii in Regulation 883/2004 for sickness benefits in kind.





ETK (Finnish Centre for Pensions) is:

- *Institution designated by the competent authority* according to article 1.q.iii in Regulation 883/2004 to determine whether the Finnish legislation is applicable when an employee, a self-employed person or a civil servant pursues activity in another member state (A 1 cases) *Contact institution* according to article 47 in Regulation 987/2009 for pension claims *Designated institution* according to article 75.2 in Regulations 987/2009 for recovery as regards insurance contributions.

Employment pension Institutions act as *competent institution* according to article 1.q.i and ii in Regulation 883/2004 for the employment based old-age, invalidity and survivors pensions.

TVL (The Federation of Accident Insurance Institutions) is:

- *Competent institution* according to article 1.q.i and ii in Regulation 883/2004 and *Liaison body* according to article 1.2 in Regulation 987/2009 for benefits in respect of accidents at work and occupational diseases

Accident Insurance companies handling statutory accident insurance in Finland are members of TVL and act also as *competent institution* according to article 1.q.i and ii in Regulation 883/2004 for benefits in respect of accidents at work and occupational diseases

The unemployment insurance funds act as *competent institutions* according to article 1.q.i and ii in Regulation 883/2004 for the earnings-related unemployment benefits

The Federation for unemployment funds in Finland (TYJ) coordinate the work of the unemployment funds.

Employment and Economic Development Offices are *Institution designated by the competent authority* according to article 1.q.iii in Regulation 883/2004 for situations mentioned in article 64.1.a in Regulation 883/2004 and article 55.4 in Regulation 987/2009.

2. Implementation of Regulations 883/2004 and 987/2009 in Finland

2.1 Preparations for implementation

2.1.1. Training and sharing of information

The competent institutions and authorities in Finland have all given training to the clerks and cooperation partners as well as information to the public and guidelines for the clerks. Here's a summary of these measures in different sectors.

KELA (The Finnish Social Insurance Institution)

KELA is responsible for the implementation of rules concerning legislation applicable, sickness and parental benefits, pensions, unemployment benefits and family benefits. KELA organised training for its staff concerning the new Regulations in March and April 2010. The aim of the training was to give the clerks as well as other people that need the Regula-





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tions in their work an overall picture of the changes in the new Regulations and the objectives of the changes. There were three types of *trainings*.

1. KELA arranged seven (7) identical one day trainings that consisted of the following themes:

- An overall presentation of the new Regulations
 - o objectives of simplification and modernisation
 - o summary of the relevant changes in each sector that is relevant for KELA
- Principles of coordination
- Presentation of the provisions of the new Regulations common to all benefit sectors
 - o General provisions: Legislation applicable and provisions concerning recovery and offsetting
- Transitional period: use of paper SEDs, E-forms other means of communication
- General presentation of the future EESSI

The objective of the general training day was to give an overall picture of the changes and their purpose for KELA. The aim was that also people who did not have an understanding about the coordination rules would be able to follow the training.

Almost 400 persons participated the general training. Many of these were people from the central administration (lawyers, planners, heads of department etc.) who are not specialised in international matters but who also should know the coordination rules in their work.

2. All seven general training days were followed by a specialised training targeted to clerks who work in KELA's specialised units for case handling in international affairs. The trainings were scheduled in a way that it was possible for the clerks to participate in the general training and the specialised training on consecutive days. Special training days were organised for:

- Legislation applicable
- Sickness benefits in cash
 - o consisting of sickness- and parental allowances, rehabilitation and handicapped allowances
- Sickness benefits in kind
- Sickness benefits in kind (clerks who work in the special unit responsible for the reimbursement if sickness costs on behalf of Finland)
- Unemployment benefits
- Pensions (one day for clerks in the 4 EU-pensions units)
- Pensions (one day for clerks in KELA's office for international affairs)
- Family benefits

In the specialised trainings the clerks were given information on the provisions concerning benefits relevant for their work. They were also given detailed information (to the extent that was possible at that point) of the use of the paper SEDs and the transitional period.

3. A general presentation of the new Regulations is available for the whole staff in KELA in the form of an e-learning training course in KELA's intranet. This training is meant for everyone working in KELA.





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Guidelines of all the relevant provisions have been published in KELA's intranet. Most of these guidelines have also been uploaded on KELA's internet page www.kela.fi in Finnish.

KELA has given *information to the public* through different channels. An information plan was made in 2009 for the new Regulations. This information plan has been followed and follow up of the execution of the plan has been made. KELA has informed about the new Regulations internally with news in the intranet and there have been several articles in the internal magazine for the staff as well as in magazines published by KELA for cooperation partners. There have been also articles about KELA's staff who works with the Regulations.

The public has been given information gradually with newsletters to the media and on KELA's homepage. KELA's home page is built on a logic where the information is divided on the basis of different life situations of the clients. E.g. in January a wide information package concerning the European Health Insurance Card (EHIC) was published. Collected information was given on the home pages divided to different life situations in April.

There have also been two information events that have been open to the public in 2009 and 2010. The information sharing will continue when the EESSI project makes progress.

Specialists from KELA have also been lecturing for numerous cooperation partners about the new Regulations.

Organisation of international affairs in KELA

The handling of international matters was concentrated even more than before from 1 January 2010. The purpose of this concentration was to improve the standard of the decisions made in international matters. The concentration also gives possibilities to monitor these decisions better as well to be able to have better statistics of international matters. The aim is also that it would be easier to give the full training of the new Regulations to these specialised clerks. This is also important in relation to the administratively challenging transitional period. Here is a picture of the organisation of international affairs in KELA from 1 January 2010.





Organisation of International matters from 1.1.2010

Central administration

Regional Centres

Local offices / Insurance districts

All offices and Customer Contact Centres: Client service to people moving to and from Finland

InTo in Helsinki from 3.11.2008: Client service for people moving to Finland together with the tax authorities

Unit for
reimbursement of EU
health care costs
(Kouvola/
Kuusankoski)

Office for International
Affairs

- 1) People insured in Finland but staying abroad
 - Insurance coverage
 - Benefit matters
- 2) Pensioners residing abroad

6 Special units for
International matters

- Insurance coverage
- Family benefits
- Sickness benefits (cash)
- Parental benefits (cash)
- Defining responsibility of health care costs
- Unemployment benefits
- Rehabilitation benefits (cash and kind)
- Disability benefits

4 EU-pension Units

- For people residing in Finland

Special allowance for
immigrants (Helsinki)

ETK (Finnish Centre for Pensions)

The Finnish employment pension system is decentralised. Employment pension institutions are responsible for the implementation of the Finnish statutory earnings-related pension schemes. The Finnish Centre for Pensions is the central body of the Finnish statutory earnings-related pension scheme and an expert in pension provision.

The earnings-related pension scheme is within the scope of Regulations 883/2004 and 987/2009. For the implementation of the coordination Regulations ETK is the liaison body for the employment pension scheme and the contact institution according to article 47 in Regulation 987/2004. In addition to this ETK is the institution designated for issuing A1 portable documents.

ETK has arranged trainings for the Finnish employment pension institutions concerning the pension provisions of the new Regulations. ETK has also given training in relation to the provisions concerning legislation applicable to employers and other cooperation partners such as the tax authorities and supervisory authorities and social partners. The *guidelines* for the new Regulations are uploaded on the following web page <http://tyoelaKELAkivalvelu.etk.fi/> in Finnish and Swedish.

Information to the public has been given on ETK's home page (www.etk.fi) as well as in several articles that have been published in different magazines.





ETK organised an international conference in Helsinki 2.- 4.6.2010. About 100 social security specialist from different EU and EEA countries and Switzerland participated in the conference. The conference was dealing with rules concerning legislation applicable in the new Regulations and the changes as well as the background for changes. The especially challenging rules of the new Regulations were tackled in workshops.

Unemployment Funds

The unemployment funds have been informed of the new Regulations via an intranet page common to all funds as well as to some cooperation partners. The information has been provided by the Federation of Unemployment Funds (TYJ) in Finland. The SEDs and PDs have been uploaded on this intranet page too. The coming into force of the new Regulations and the new SEDs and PDs have been presented to all the directors of unemployment funds in a seminar on 29.4.2010. The guidelines were prepared by the ministry of Social Affairs and Health and the Finnish Financial Supervisory Authority (Fiva).

Employment and Economic Development Offices

The Ministry of Employment and the Economy (TEM) has in June 2010 issued guidelines on labour policy requirements for job seekers moving between the Member states to the Employment and Economic development offices (so called TE – office) (the number of the guideline TEM/1183/03.01.04/2010). The guidelines take into account both the old and new Regulations. The guideline is written in a way that should make the transfer to electronic exchange of information as easy as possible. The ministry has also prepared orientation material of the implementation of the new coordination Regulations for the Offices.

The ministry has also arranged training for the clerks in the TE-offices and so called ELY – centres (Centres for Economic Development, Transport and the Environment) where one of the issues handled has been the new Regulations. These trainings have been arranged in April, May and in June 2010 and about 140 civil servants from the TE-offices and ELY-centres have participated in these trainings. Many civil servants from the ministry have also participated in a training arranged on the new Regulations by the Finnish branch of the Norden Association in June 2010.

Public information on the new Regulations has been provided on the home page of the Ministry of Employment and the Economy at www.mol.fi.

Accident insurance Institutions

The Federation of Accident Insurance institutions (TVL) has arranged training for all the Accident Insurance institutions in April 2010. It has also published a newsletter of the new Regulations on its home page www.tvl.fi. The guidelines were finalised by the end of 2010.

According to TVL there is no major challenges with the implementation of the new Regulations as the provisions are to a large extent the same as in the old Regulations. The transitional provisions do not either effect this sector. There are however some problems with the





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practical implementations e.g. the interests on arrears. On this sector the traditional implementation has been the law in force at the time of the event is applied.

In practice there has not yet been problems with the implementation of the new Regulations, but the rules concerning provisional application of legislation and provisional payment of benefits does not seem logical in all situations.

Other actors

The Norden Association is a politically independent organization (NGO) with approximately 70 000 members throughout the Nordic countries. The Federation of the Norden Associations is the umbrella organization for the Norden Associations. The aim of the Norden Association is to stimulate and improve Nordic co-operation at all levels, especially in the fields of education, culture, the labour market, industry, mass media, international aid and environmental care. (http://www.pohjola-norden.fi/fi/in_english/?id=172)

The Finnish branch of the Norden Association has arranged two trainings on the new Regulations - one in Helsinki in June 2010 and another in Seinäjoki in September 2010.

2.1.2 Introduction of new national legislation

A new law (*Laki sosiaaliturvajärjestelmien yhteensovittamista koskevan Euroopan unionin lainsäädännön soveltamisesta 352/2010*) (so called EESSI law) came into force 19 May 2010. The law has a two fold purpose. On the other hand it contains provisions defining the competences of the institutions implementing Regulation 883/2004 and 987/2009 in Finland. The competences of the Finnish authorities and institutions have been defined in chapter 1.2. There was a common understanding in Finland that as the new Regulations came into force there was no more adequate legal base for the competences of the Finnish Institutions. When implementing the old Regulations 1408/71 and 574/72 the competences of the relevant Finnish institutions relied on the annexes of the Regulations. With the new Regulations the annexes defining the competences of the institutions were abolished and the competences of the institutions are administered by the Master directory (MD). This is not seen to have legislative status in Finland and therefore a piece of new national legislation was introduced.

This new law also contains provisions concerning electronic exchange of information and the Access Point in Finland. The law defines that the AP has been placed in KELA (15§). It's stated in the law that the use of the AP is based on article 4 in Regulation 987/2009 (16 §).

Furthermore the law defines the rights and obligations of KELA as the AP administrator (17 §). KELA is responsible for maintaining the electronic readiness and to take care of data protection and data security. KELA runs the data system on behalf of the other relevant institutions and bodies and it is stated that KELA can provide services for the relevant institutions and bodies. KELA is responsible for the functions of the AP as well as the usability, completeness, intangibility, protection, storage and disposal of information. This is the legal basis for the national SED register which will be built. According to the law KELA is responsible for arranging a back up system and to collect the log information. KELA must



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also produce statistics in order to produce information for the division of costs of the use of the AP.

About the rights of the relevant institutions it is stated that each institution and body is the register owner for the data it is competent for and that is handled in the data system for the AP (18 §). About the rights to the data services in the AP (19 §) it is stated that each institution and body has a right to get electronic documents it is competent for from the data system. KELA has a right to open an electronic document if it's necessary in order to find out the competent institution or to provide a service, or when there is a specific reason for this. Finnish Centre for Pensions and the Federation of Accident Insurance Institutions has the right to open an electronic document to find out the right institution.

There is also a provision on that the individuals have a right to check what information has been stored in the electronic system (20 §).

Moreover KELA has a right to handle the data for the functioning of the AP (21 §) and KELA has a right to get information for the operation of the AP from the Population Data Register without prejudice to the secrecy Regulations (and free of charge) (22 §).

In the law the administration and division of costs is also regulated. A cooperation group has been established (23 – 24 §). The Ministry has appointed a cooperation group for three year at a time that will consist of members from

- Ministry of Social Affairs and Health
- Ministry of Employment and the Economy
- The Social Insurance Institution (KELA)
- The Finnish Centre for Pensions (ETK)
- The Federation of Accident Insurance Institutions

The task of the cooperation group is to follow the functioning of the electronic exchange of information and evaluate the need for development. The cooperation group approves a yearly plan for the development of the AP including estimates of costs. Its task is to yearly note the volume of the electronic exchange and the overall administration of the AP and actual use of services and actual costs.

About the division of costs it is stated that (25 §) the common costs of use and administration of the AP will be divided amongst the actors involved in the electronic exchange of information according to the actual realisation of exchange and use of services. Costs for development and maintenance and changes will be divided on the basis of the actual amount of work. Common costs will be divided on the basis of the volume of each sector and costs occurred from changes made for just one sector will be borne by that sector alone. The cost for building the AP will be divided on the basis of the work load occurred for each sector. Common costs will be divided on the basis of the volumes of each sector. Each sector will pay its part of the cost to KELA after the verification of the costs by the end of June each year.





2.1.3 Challenges identified in the implementation

2.1.3.1 Legislation applicable

The implementation of rules concerning **simultaneous activity** is challenging. For example article 13.2 Basic regulation (BR) and article 14.8.b Implementing Regulation (IR) (and 14.9) are complicated. Hence, before the decision concerning a self-employed person who pursues activity in different MSs can be made, a lot of background information is needed and decision-making can be time-consuming. The elements (articles 14.8.b. and 14.9. of IR) that are taken into account when determining applicable legislation of the self-employed persons are more complex than elements regarding the employed persons. It would be useful to have more examples in the Practical Guide concerning these provisions.

It has come to our knowledge that article 13.1 can sometimes be applied in cases that could not be regarded as pursuing activity in two or more MSs according to our opinion. This has come up in cases where persons (who are employed by an international temporary personnel hiring company) have been sent to work in Finland for a quite long period of time, but nevertheless they have been issued E 101/A 1 certificates on the basis of pursuing activities in different MS. In these cases the provisions of posting could not be applied since the employees have never been insured in the MS where the employer has its registered office. It seems to us that some temporary personnel hiring companies tend to "misuse" art. 13 in 883/04 in order to be able to choose an advantageous legislation applicable from the employers point of view. Especially the phrasing in article 14.5.b of IR "irrespective of frequency of regularity of alternation" may lead to this kind of interpretation of article 13. (This has been changed according to the Commission's proposal concerning miscellaneous amendments of BR and IR.)

For example: Temporary personnel hiring company has its registered office in MS A. It recruits employees from MS B and places these employees to work in Finland in a relatively long-standing construction project (1-2 years at least). The employer receives A1 certificates from MS A according to article 13. The employment contracts are written in a way that the person is "seconded" to one MS (like to Finland in this case), but it is said that the employee can be transferred to work in another MS. This option of changing working countries sometime in the future is interpreted in some MSs as an article 13 situation, even though the employees concerned would work in only one MS for the following 12 months (at least) and the possible transfer date to another MS is not expressed in any way.

The implementation of **article 16 in Regulation 987/2009** is problematic in situations of work in two or more member states. According to paragraph 1 in article 16 the information concerning employment in two or more member states must be done to the institution of country of residence. According to paragraph 2 the institution of place of residence shall determine on provisional basis the legislation applicable to the person concerned. It is however very likely that this information is given to the institution in the member state where the employer has its place of business and the place of residence of the employee is in another member state. Then it will have to be decided how the case will be transferred to the institution of the place of residence of the employee and whether the institution of the place of residence of the employee will take the case without a new claim (see article 16 (6)).

The situation is considered as especially challenging if ETK considers that there is no grounds for issuing a A1 certificate. According to Finnish national legislation the person concerned has a right to get national appealable decision from ETK of this rejection. ETK





issues according to its established practice always an appealable decision in cases where it rejects the application for A1 certificate. If the application is issued in Finland which is not the place of residence of the employee it would seem that Finland could not issue the decision concerning legislation applicable as Finland according to the new rules would not be competent to decide upon legislation applicable. In this situation the legal protection of the person concerned should be secured adequately and it should be clear that a member state takes up the case and defines the legislation applicable to the employee.

In practice in these cases ETK determines the legislation first provisionally according to art. 16 IR and this provisional determination is expressed in the certificate A 1. However, the A 1 is issued for the whole applied time period and issue only one certificate provided that our determination of applicable legislation is not contested by other MSs. The fact that the A 1 is provisional for the first 2 months is stated in a cover letter that we attach to the copy of A 1 certificate which is sent to the person concerned. In the cover letter it is explained that the determination of legislation is initially provisional and it shall be definitive within 2 months unless the other MS informs us that it cannot accept the determination or takes a different view on this.

If ETK considers that the applicable legislation would not be Finnish legislation, but the other MSs legislation (for example if the person does not pursue substantial part of his/her activities in the state of residence, i.e. Finland), ETK informs the other MS of this provisional determination and the grounds for the determination and ask the other MS to issue A 1 certificate (if they are of the same opinion) or in case of different opinion to contact the case-handler in ETK (the contact information of the case-handler is enclosed in the letter).

In cases that a person is not considered residing in Finland ETK has transferred the application to the MS where the person is resident according to our opinion on the basis of article 2.3 IR. When the application is transferred to the other MS a cover letter is attached where it is explained why we consider that the person resides in that MS and ask the other MS to react within one month if the other MS does not consider itself as a state of residence. The person concerned is informed also about the fact that we have transferred his/her application to the other MS.

In article **11.2 in Regulation 883/2004** it is stated that "person receiving cash benefits because or as a consequence of their activity as an employer or self-employed person shall be considered to be pursuing the said activity". This means that receiving cash benefits should be considered in equal terms with actual employment. In the posting guide a situation where a person receives cash benefits and works simultaneously in another Member State should be considered to be working in two Member States and the applicable legislation would be the legislation of the Member State of residence. However the situation where a person receives cash benefits from one member state (i.e. unemployment, sickness or rehabilitation allowances) means in most cases that the persons capability to work has been in some way decreased and it's important to make sure that the person in question will stay in the labour market as long as possible. In this situation the straight forward application of the legislation of the Member State of residence is maybe not always the best possible solution for the individual.

The questions concerning **defining residence** for legislation applicable has been challenging especially in relation to non active persons. Here are some examples of practical situations:





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A) An employee is posted from Finland to MS A for three years (exception according to article 16) the family members follow the worker. According to Finnish national legislation the family members can still be considered to be residing in Finland although they are staying abroad with a posted worker. MS A has contacted KELA and is demanding an exception according to article 16 also for these family members. This could of course be possible, but we think that this is administrative laborious and that the case should be solved by establishing by common agreement the centre of interests of the person concerned according to article 11 in Regulation 987/2009. According to article 11 in 987/2009 it is firstly the national legislation which defines whether a person is considered to be residing in a member state or not. If the other Member State agrees with this then the case is clear, but if there are different views the case should be settled taking into consideration the elements mentioned in article 11. There is also SEDs made for this negotiation process.

B) A person has worked and resided in Finland and is now unemployed. MS B which is the country of origin of the employee however considers that the employee resided in MS B when working in Finland. This means that MS B has considered the employee to be cross border worker the whole time differently from Finland who has considered the person to be residing and working in Finland. Now MS B has started to apply article 65 of Regulation 883/2004 the person and has started to pay unemployment benefits to that person and is seeking reimbursement from Finland. This case shows that it is important to have a common understanding concerning residence also in the case of employed persons.

C) A pensioner has moved from Finland to MS C for less than a year but more than six months. According to Finnish national legislation you can stay abroad half of the year and still be considered to be residing in Finland. You are also considered to be temporarily abroad if your intention is to stay abroad for less than one year. MS C considers that the person concerned is residing in MS C because the minimum for residence in that MS is six month. MS C requires that Finland issues an E 121 / S1 certificate and does not accept EHIC. MS C states that if Finland doesn't give E 121/ S1 the person must pay the actual costs of the health care him/herself.

D) Ms. X is studying and residing in MS D. Her spouse is a posted worker from Finland to MS E. Ms. X is covered individually as a non active person by the legislation of MS D but as a family member to a worker posted from Finland, Finland would be responsible for the health care costs for Ms. X?

E) A student moves from MS A to MS B to study for 1, 5 years. According to the legislation in MS A the student is still considered to be residing in MS A when studying in MS B. This is also seen to be in compliance with article 11 in Regulation 987/2009. Now however MS B requires that MS A should issue an E106/S1 form for the student as it considers that the student is residing in MS B for chapter 1 purposes. MS B has not in any way indicated that it would consider that the legislation applicable to the student according to title II would be the legislation of MS B. It would seem that "residence" as it is used in chapter 1 has a different meaning that residence in title II.

According to our understanding the case should be solved on the basis of legislation applicable and the student should be considered to be covered by MS As legislation and the student would have the right to all necessary health care in MS with EHIC because he/she is staying there for more than a year. But it seems that there is a general decision amongst



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sickness benefit experts that residence according to chapter 1 shifts in one year. But this one year time line is not mentioned anywhere and should there be a connection between this residence and the one decided for the purposes of legislation applicable?

2.1.3.2 Sickness, maternity and equivalent paternity benefits

It seems that the implementation of article 16.2. in Regulation 883/2004 is unclear in relation to a residence-based system. In the old Regulation 1408/71 17 a article, which was directly linked from the annex VI related to Germany and Spain special pensioners' schemes. These were only schemes, where the normal procedures for the form E121 were not to apply. The similar exclusion of Germany and Spain special pensioners' schemes are not in annex 2 in Regulation 987/2009, which has a reference to articles 31 and 41 in Regulation 987/2009. However, there is no interlinkage/references made to article 16.2 in Regulation 883/2004. Furthermore, the text content of article 16 in Regulation 883/2004 and in article 17a in Regulation 1408/71 are the same. The primary rule is that the country paying the pension to a pensioner, who moves abroad, bears the cost burden of this pensioner's benefits in kind according to articles 23-27 in Regulation 883/2004. It's unclear whether article 16.2 of Regulation 883/2004 apply only to these special pensioners' schemes mentioned in annex 2 in Regulation 987/2009 or to all pensioners? Will article 16.2 in Regulation 883/2004 consist a veto-right for the pensioner, though articles 23-27 in Regulation 883/2004 oblige countries for the cost responsibility? (Especially if one thinks also the new ECJ Van Delft –ruling?) If article 16.2 of Regulation 883/2004 is to be applied, what is the result for the cost responsibility of benefits in kind between countries? What is the "right" way to apply the provision article 16.2 article in a residence-based scheme?

Another challenge concerning pensioners is when a pensioner who receives pension only from country A, where it's possible to quit your sickness insurance at the date of change of residence. The basic procedure when a pensioner moves to Finland is to ask for a form E121, in order to apply article 25 in 883/2004. However, if this country A allows the pensioner to quit his/her sickness insurance at the date of the change of residence, it's unclear what the implication of this is in relation to fulfilment of article 25. It seems impossible to receive form E121 from country A, though it is the only country paying a pension. Is the fulfilment of article 25 – the cost responsibility between countries – conditional to the actual insurance of the person concerned? Who is to collect contributions from these pensioners, if the country paying a pension is not responsible for the costs of their benefits in kind? E.g. Finnish pensioners who reside permanently in Spain are not insured in Finland. However, if Finland is the only country paying a pension to the pensioner, Finland is and considers itself to be the sole responsible state (according to article 24 article in 883/2004) for the costs of benefits in kind provided to this pensioner. A form E121 and EHIC is automatically issued at the date of change of residence from KELA Finland to this pensioner. Furthermore, a contribution is collected from this pensioner to Finland, according to article 30.1 article in Regulation 883/2004.

Besides the challenges in relation to benefits kind there are many challenges in relation to benefits in cash. This does not seem to be a problem that relates to the new Regulations but has existed already with the old Regulations. E.g. the coordination of rehabilitation cash benefits from a competent Member state (MS) with benefits in kind from the Member state of residence seems to be in practice very challenging. The Nordic countries have tried to solve this problem by making bilateral agreements about administrative procedure in cross-boarder rehabilitation situations. One of the thing putting even more challenges to the situa-





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tions are that Member States have organised their national systems in very different ways when it comes to activating people to stay in the labour market when they have in capabilities. The benefits can be defined nationally as sickness, rehabilitation, pensions or unemployment benefits.

Also the implementation of the judgement C-299/05 has been very demanding in practice. This judgement concerned amongst others the Finnish handicapped allowances.

2.1.3.3 Pensions

Implementation problems for pensions have occurred because the uncertainty on how insurance periods will be informed. Shall information on insurance periods be in the SEDs be divided on the basis that they are for the right to pension or for the calculation of pensions. This uncertainty has caused delays in the national projects for development of the national IT-systems to work for the EESSI system. Even though the Administrative Commission finally approved the Decision H 6, it is not yet clear how the periods of insurance should be treated. On P5000 can be notified periods for “contingency relevance and “information on calculation. How these periods are taken into account in the calculation of pension? Also the implementation of child-raising periods according to article 44 in Regulation 987/2009 is unclear. There is no implementation provision for child raising periods in the implementing Regulation. The issue will be discussed in the Administrative Commission working party meeting on 14 th April.

According to article 48 (2) in Regulation 987/2009 the claimant has the right a review of the decisions after the receipt of the summary if his rights have been adversely affected by the interaction of decision taken by two or more institutions. There is no practical experience when this provision would be applied. The implementation of this provision will sharpen when there is practical experience.

Finland has not yet any experience in the review procedure. According to our national legislation it's possible to review a pension decision even though it has already reached the legal force if the new clarification arises. In discussions with the other MSs Finland has noticed that the word review have been understood in different ways in MSs. The wording review can e.g. be regarded as a re-appeal, which at least according to our interpretation, has not been the purpose the wording review.

In Finland the Finnish Centre for Pension (ETK) is the contact institution that issues the summary note. The P1 is not yet in use. We still use the E 211. ETK sends the E 211 with a cover note (three different) depending on which of the Regulations is applied. For this reason it's important for us that in a decision issued by the other MS is reported under which Regulation the pension has been awarded.

It has also been difficult to decide in which situation the summary note is issued when the pension is not applied at the same time in all MSs where a person has been insured. Should it be done already after the pension is applied only from one MS, when the pension is applied from two MS, or perhaps once again when the pension is applied from the third MS.

Another practical problem concerns invalidity pensions awarded for a certain period. Should a new summary note be issued after all pension decisions or is it enough that the summary



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note is issued after the first pension decision. It is difficult to see that the claimant's rights would be adversely affected by the interaction of the decisions when a new invalidity pension is awarded for a certain period. The calculation of the pension remains the same.

One issue that has been less discussed is the question relating to cash sickness benefits in relation to e.g. rehabilitation. One major challenge for Finland is also the categorising of handicap allowances as cash sickness benefits.

The preparatory period for the introduction of the Electronic Exchange of Social Security Information (EESSI) may influence communication between institutions. Finland would be interested to hear of the plans of other MSs as to how they plan to do with pension cases where the process started on paper E-forms before or during the transitional period. Or, are there plans on the EU-level how to deal with the pending cases? Are we allowed to finish the pension process with E-forms, or, should the process of all the pending cases be handled by WEBIC after 1.5.2012? We hope this would be for the MSs to decide.

2.1.3.4 Unemployment

An obvious challenge or problem with the reimbursement exists when the two Member States in question do not agree on the Member State of residence.

For example: MS A is the state of employment. But it is not clear whether the person is residing in this state, or whether he is residing in a MS B. It is in interest of MS B to state that this person has been residing in this state, because in this case MS B is entitled to reimbursement from the state of last employment.

We feel that Recommendation U1 is not necessarily sufficient to ensure that persons partially working in another state than the state of residence remain subject to this latter state.

According to Recommendation U1, a person residing in another MS, but working partially in Finland should remain subject to his state of residence after an article 16 agreement on applicable legislation has been concluded.

Problems occur if the employer in Finland is not willing to pay contributions to the MS of residence.

Problems occur when the main rule of *lex loci laboris* has already been applied, and the person in question has received benefits from Finnish institutions.

2.1.3.5 Family benefits

For family benefits there were no major changes in the basic rules, but the procedure changed with the Regulations with the provisional decision making. The major challenges are in the calculating the differential amount as Member States still have different ways of calculating the supplement.

A constant challenge which is not a consequence of the new Regulations is the different family concepts in different member states. Especially in situations where the parents are divorced and have new partners it can be difficult to establish the right Member state of primary competence.





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Also questions in relation to defining the benefits into different benefit categories cause challenges. E.g. in some member states benefits for handicapped children are defined as family benefits and in others as cash sickness benefits etc. Also parental benefits which are meant to compensate for the loss of income are some times defined differently by Member states.

3. Introduction of the electronic data exchange (EESSI)

3.1 Organisation of the Finnish EESSI project

3.1.1 Cooperation between business and IT

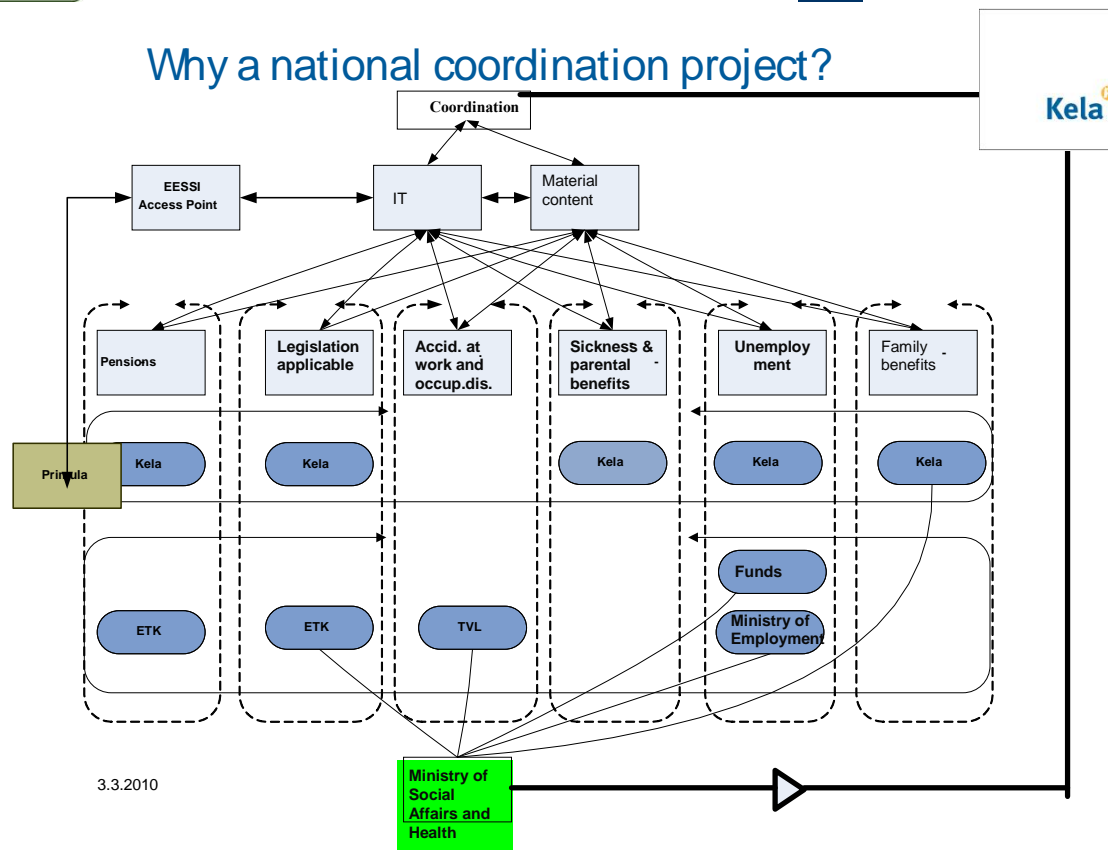
The Finnish EESSI project started in 2008 with a coordination group directed by the Ministry of Social Affairs and Health. The group has participants from the Ministry of Employment and the Economy, The Social Insurance Institution (KELA), The Finnish Centre for Pensions (ETK) and the Federation of Accident Insurance Institutions.

The group started the follow up of the EU EESSI project and has been responsible for spreading information to the parties involved in EESSI in Finland. The group has discussed and made proposals for necessary decisions for the relevant institutions for their internal decision making. The decision concerning the number of Access points in Finland was discussed in the group and the proposal was that there would be one Access point (AP) and that the AP would be located in KELA. This was considered to be the most cost efficient alternative. The decision was approved by the managements of the relevant institutions and other parties.

As the EESSI project progressed it became apparent that there is a need of some national coordination between the different EESSI projects going on in the Finnish institutions. All the projects are connected to each other at minimum because of the common time table. There was also a need to make sure that all the counterparties had the relevant and updated information and documents available. The IT-project that is responsible Access point project was also getting more and more demands for information and presentations to different cooperation parties. It is however important to make sure that the people working with the IT project are able to concentrate on the actual work of building the Access Point. For these above mentioned reasons a national coordination project, the *Primula* project, was established in January 2010.

The *Primula* project deals only with matters that are common to all the sectors and parties involved in the EESSI-project in Finland as well as with defining processes where more than one institution is involved. The administration of the coordination rules between different institutions and bodies in Finland can be seen in the following picture.





As can be seen in this picture in most of the sectors there are more than one actor and the processes between the actors need to be defined. The *Primula* project does not work in relation to those sectors where there is only one actor, i.e. sickness and family benefits.

3.1.2 The Finnish EESSI coordination project *Primula*

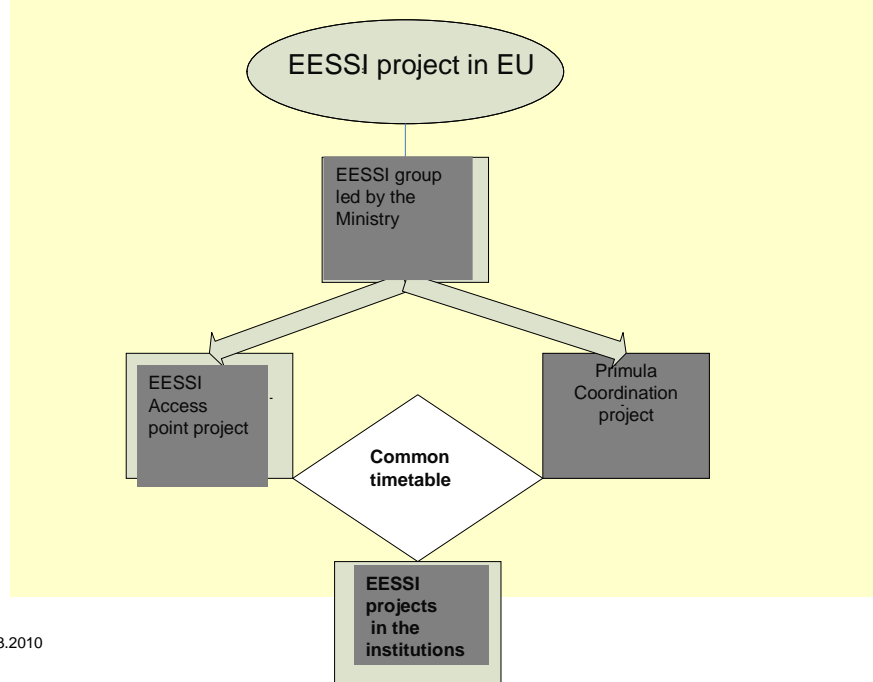
The task of the *Primula* project is to:

1. Coordinate and keep all the institutions and authorities involved updated about the common timetables. The aim is that all the national actors have the relevant information in order to be able to decide about recourses and for synchronising time tables as well as for the administration of costs
2. Organise the common tasks that are necessary for the implementation
3. Organise the international and national cooperation in order to facilitate the preparation for EESSI in Finland





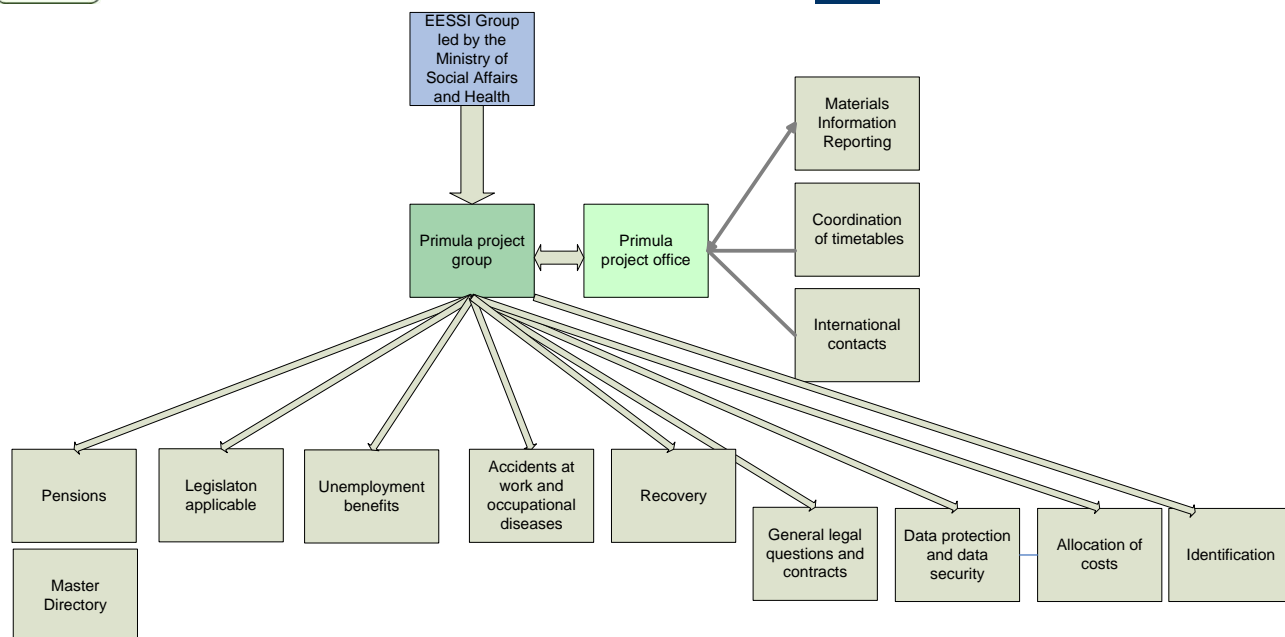
The national coordination project 'Primula' and other EESSI-projects in Finland



The *Primula* project only deals with matters that are common for all benefit sectors. These matters are: data security/data protection, general legal questions and contracts, allocation of costs, identification and questions relating to the master directory. From all these matters there is a sub-group in the *Primula* project. The rest of the sub-groups are formed for those benefit sectors where there is more than one counterparty involved in Finland i.e. pensions, legislation applicable and unemployment benefits. There is also a sub-group under *Primula* for accidents at work and occupational diseases. There is also a separate sub-group for recovery matters which is common for all benefit sectors. Benefits sectors where there is only one actor in EESSI, i.e. sickness and family benefits, are not under the *Primula* project. These sectors are handled by internal projects in KELA.¹

¹ Please notice that there are several different technical EESSI-projects in Finland. There is an *Access point project run by KELA* for implementing IPAP and NPAP national routing and other services (e.g. automatic identification services) which is outside the *Primula* coordination project, but lead by the Ministry of Social Affairs and Health. There are several national *sectored projects* for all benefit sectors. There are also national projects for *delivering horizontal information* between institutions (in other words, integration to already existing national exchange). And then there are the internal projects in institutions for *integration of national benefit systems*.





The core tasks of the *Primula* project has so far been that mainly business experts have in the sub-groups discussed, deccribed and illustrated the cross-sectored processes in order to give the Access Point project the information that is necessary in order to route the information nationally. Minutes from the meetings of different *Primula* groups and other relevant material are available for the Finnish EESSI cooperation parties on an extranet page.

3.1.3 EESSI projects in KELA

Internally in KELA there is a coordination project which takes care of matters that are common for all the different benefit sectors administered by KELA. In this project all the relevant experts responsible for benefits are represented. There is also representation from the *Primula* project in this project. This internal coordination project in KELA deals amongst other things with matters concerning the case handling of SEDs in KELA's own document handling systems (SAHA, OIWA² etc.).

The only benefit system that is planned at this stage to be integrated in EESSI is the system for sickness benefits in kind.

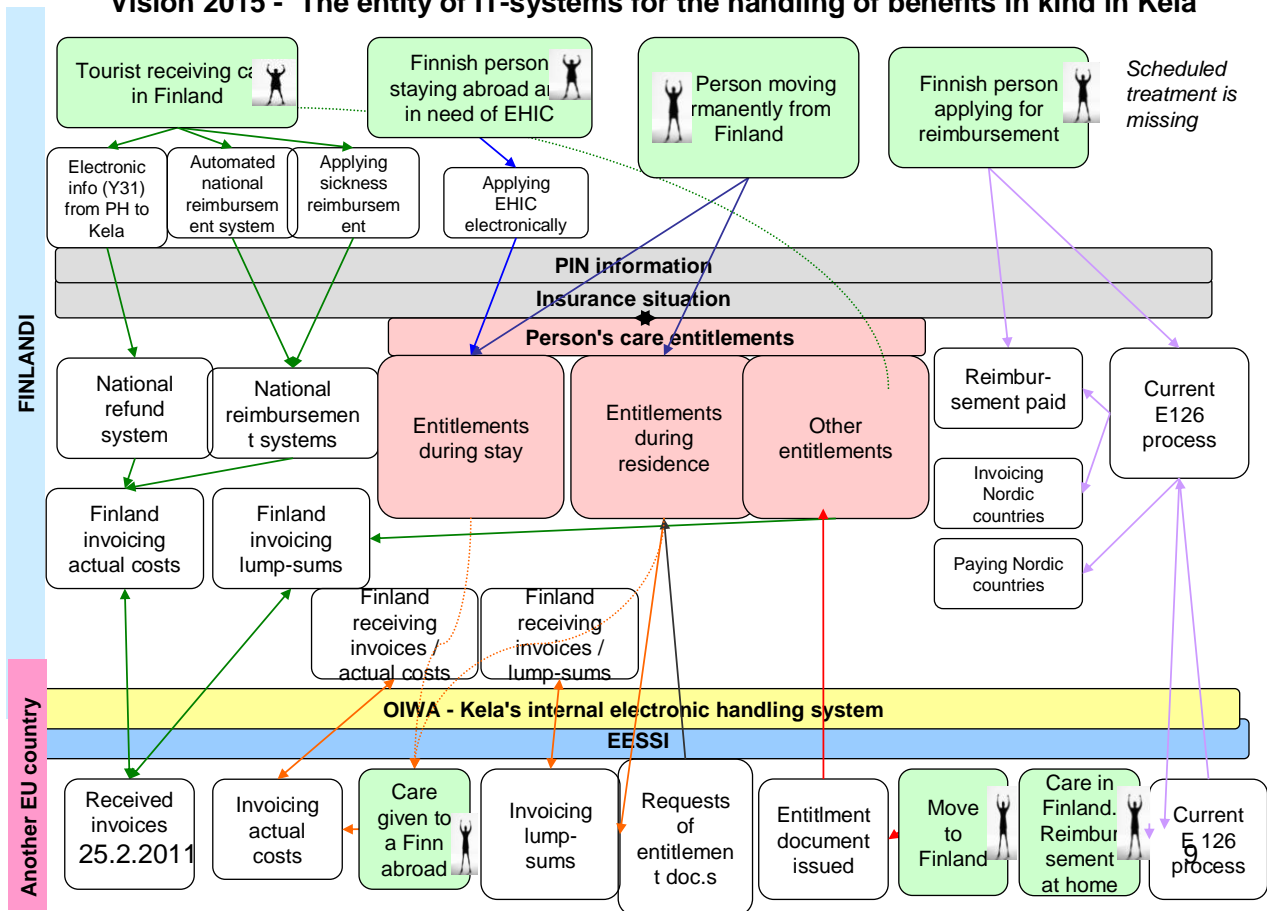
A project called KASA has started in autumn 2009 when the basic processes and proceedings in the handling of an individual case have been identified. In the second phase in spring 2010 the process descriptions were made and the handling of the SED flows within the handling process in KELA was identified. In the third phase user descriptions and requirement definitions for the Access Point, WEBIC and OIWA were made. The launch of the KASA plan for year 2010 – 2015 was in the fourth phase of the project in 2010.

²OIWA (Own Integreted Working Area) is a new document handling system which will be introduced approximately in autumn 2011 and then replace the now existing SAHA system.





Vision 2015 - The entity of IT-systems for the handling of benefits in kind in Kela



3.2 The Finnish EESSI Access Point (AP) project in Finland

3.2.1. Organisation and identified tasks of the AP project

As already has been mentioned it has been decided nationally that there will be one Access point (AP) in Finland. The Finnish AP will be placed in KELA and the Finnish AP project (“EESSI Access Point Project”) is run by KELA. There is also a steering committee for the AP project within KELA and in addition to this, the project leader of the AP project reports regularly about the developments of the AP project to the EESSI group led by the Ministry of Social Affairs and Health.

The main tasks of the AP project are to install and test the international part the AP (IPAP) delivered by Siemens and build the national part of the AP (NPAP) for the implementation of the electronic exchange of social security information. One of the main tasks is also to develop common services needed for this electronic exchange of information. The definitions are made in cooperation with the Finnish social security institutions implementing the Regulations mainly within the framework of *Primula* project, but also directly with the institutions concerned. The AP project is also responsible for tasks and activities concerning the testing of the EESSI in the first place among the pilot countries and then with other Member states too.





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The messages/SEDs (structured electronic documents) are classified in the AP according to benefit sector. In addition to this there are horizontal SEDs and recovery SEDs used by all sectors and institutions.

- Pension
- Legislation applicable
- Family benefits
- Sickness
- Accidents at work and occupational diseases
- Unemployment benefits
- Horizontal (shared by all sectors)
- Recovery (shared by all sectors)

Identified tasks for the AP project are the following:

1. Installation and testing of Siemens reference implementation (RI)
2. Connections
3. AP architecture
4. Routing
5. EESSI-Message Register
6. Portal solution (National User Interfaces, WEBIC etc.)
7. Authorization and Authentication
8. Maintenance, management, monitoring, support etc.
9. Email impulse service to institutions (message arrived to WEBIC)
10. Person identification
11. (Case-ID, probably not)

3.2.2. Financing of the AP

The European Commission is responsible for the financing of the international part of the AP (IPAP) and of the design, construction and testing of WEBIC. This task was carried out by Siemens during the period of 1.12.2008 – 30.11.2010.

The estimated costs of the national AP project are 2,3 million euro in 2010-2012. All competent institutions in Finland participate in the costs both during the building phase and when EESSI has been set up (see also 2.1.2.). There is no agreement so far concerning the share of costs of each institution, but the question concerning the building phase is negotiated among the institutions at the moment. A part of the costs will be divided between all Finnish social security institutions. This is the case when the EESSI services in question are used by all benefit sectors/institutions. Another part of the costs will be shared by the cooperation partners according to benefit sector and/or the volume of SEDs exchanged by each institution.

In addition to the sum of 2,3 million euro, the person identification costs about 750 000 euro. The person identification project will however be carried out as a separate project, but this too within KELA.





3.2.3. Schedule and iteration phases of the Finnish AP project

The working method of the AP project is iterative. Times for iteration phases as well as specific tasks for each iteration phase change in course of time depending on the developments of the project. Here is the present schedule of the iteration phases:

Inception phase -> 14.11.2010

- Pre-definition
- Goal is to find tasks and achieve concurrence among all stakeholders

Elaboration phase, 4 iterations (15.11.2010 - 1.5.2011)

- The goal is to baseline the architecture of the system to provide a stable basis for the bulk of the design and implementation effort in the construction phase
- Definition and technical design

Construction phase, 9 iterations (2.5.2011 – 11.3.2012)

- The goal is to clarify the remaining requirements and completing the development of the system based upon the baselined architecture
- Implementation

Transition phase, 2 iterations (12.3.2012 – 4.5.2012)

- The focus is to ensure that software is available for its end users
- Deployment

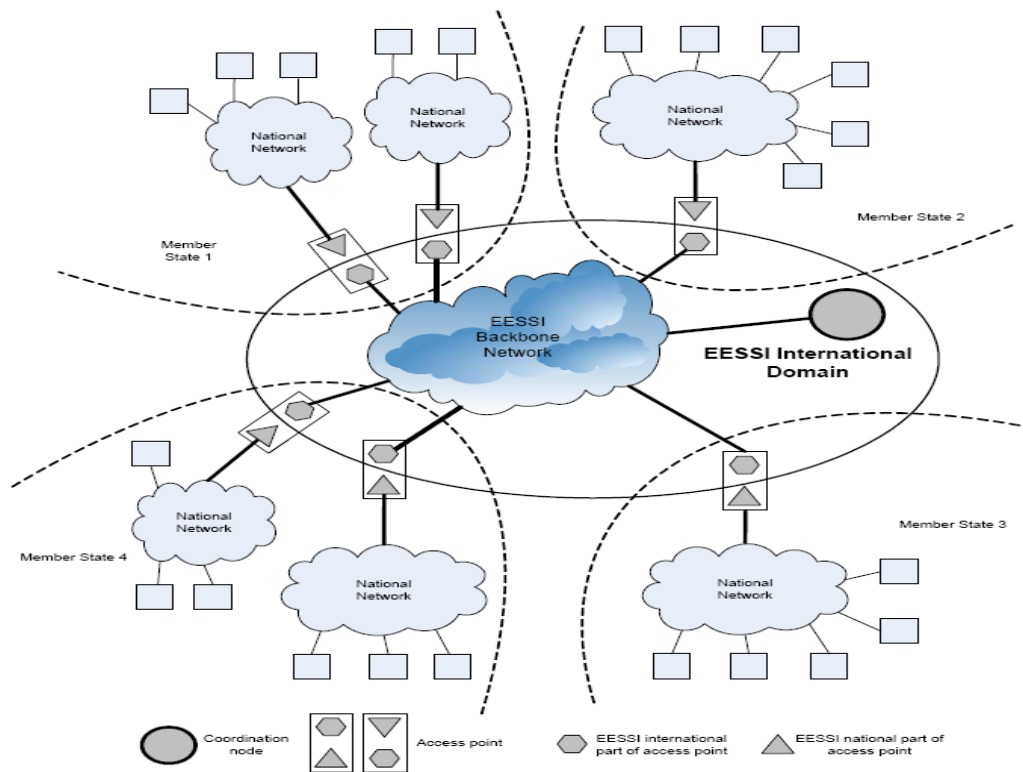
3.2.4. Background: The European EESSI architecture

The electronic exchange of social security information is based on utilization of sTesta, structured electronic documents (SEDs) in XML format, centralized directory service (i.e. each message goes through the so called Coordination node) and national Access points (one to five in each country). The national EESSI architecture is based on the European EESSI architecture which is illustrated in the following pictures (EESSI High-level Architecture, Data Exchange Diagram, Reference Implementation architecture).



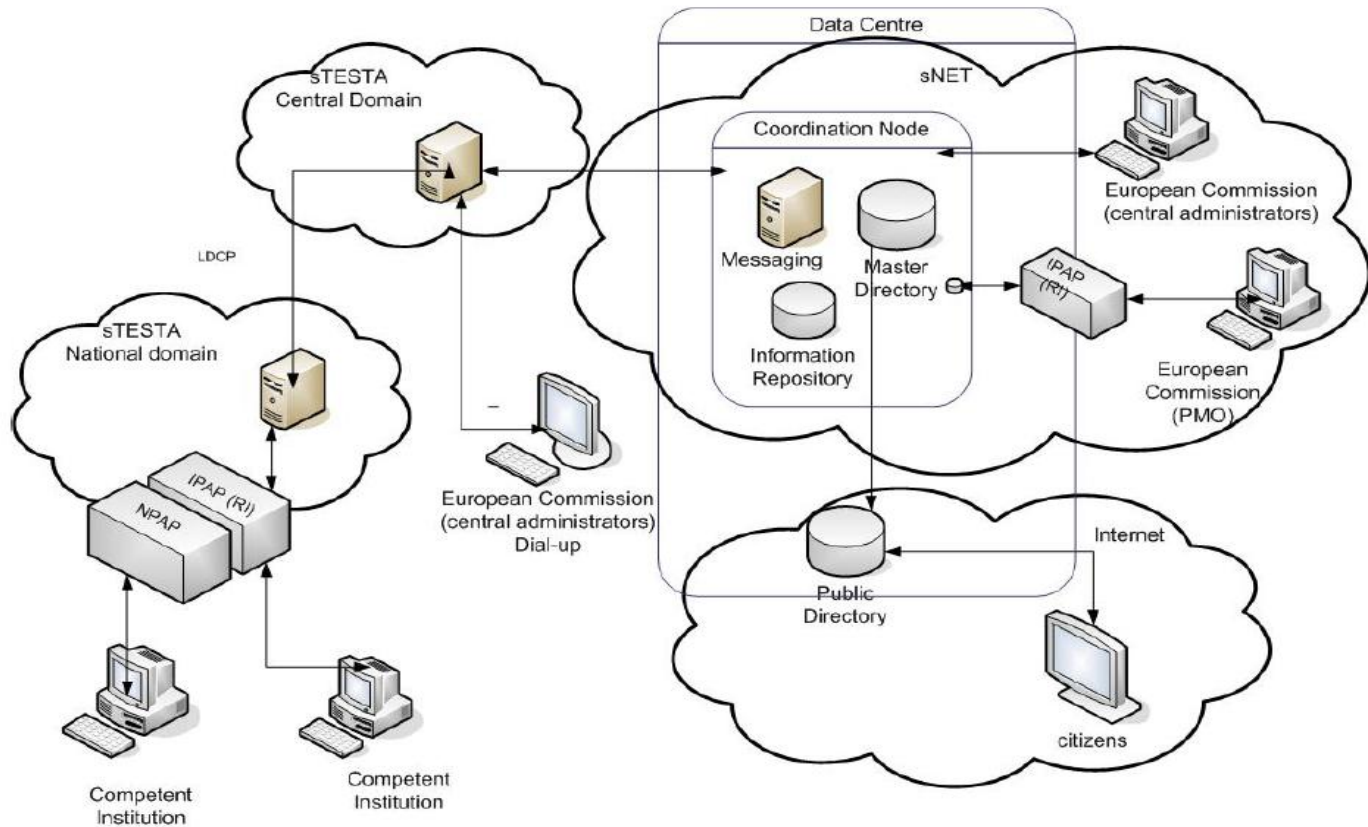


EESSI High-level Architecture

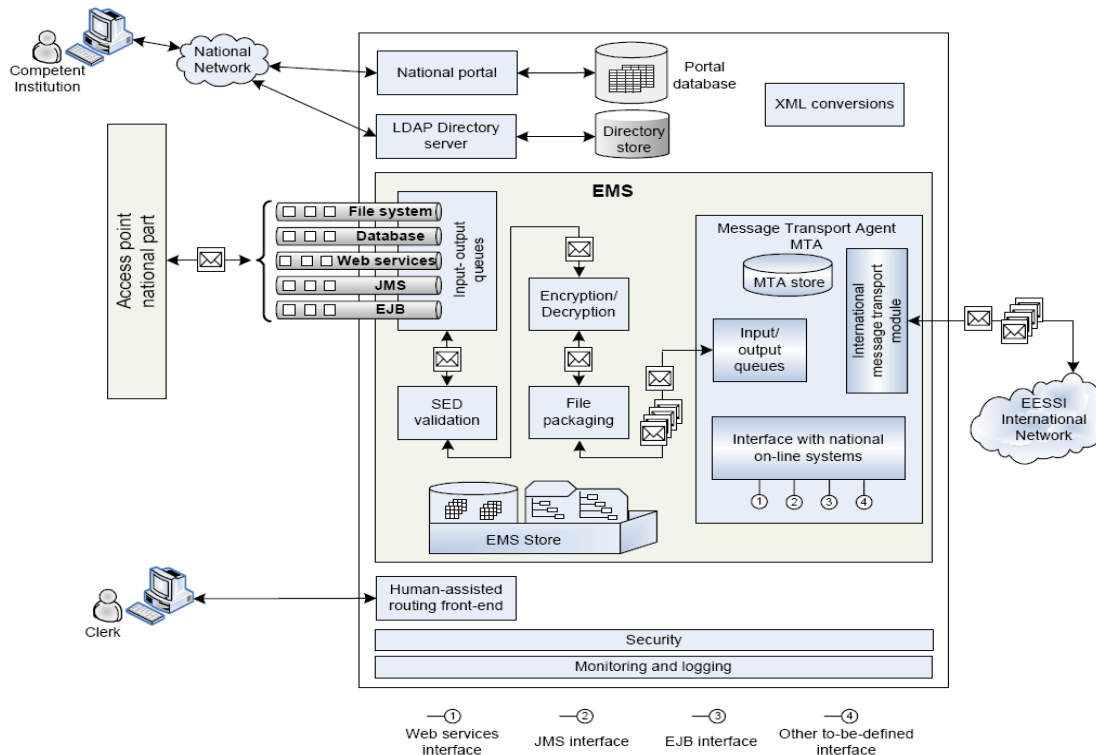


Data Exchange Diagram





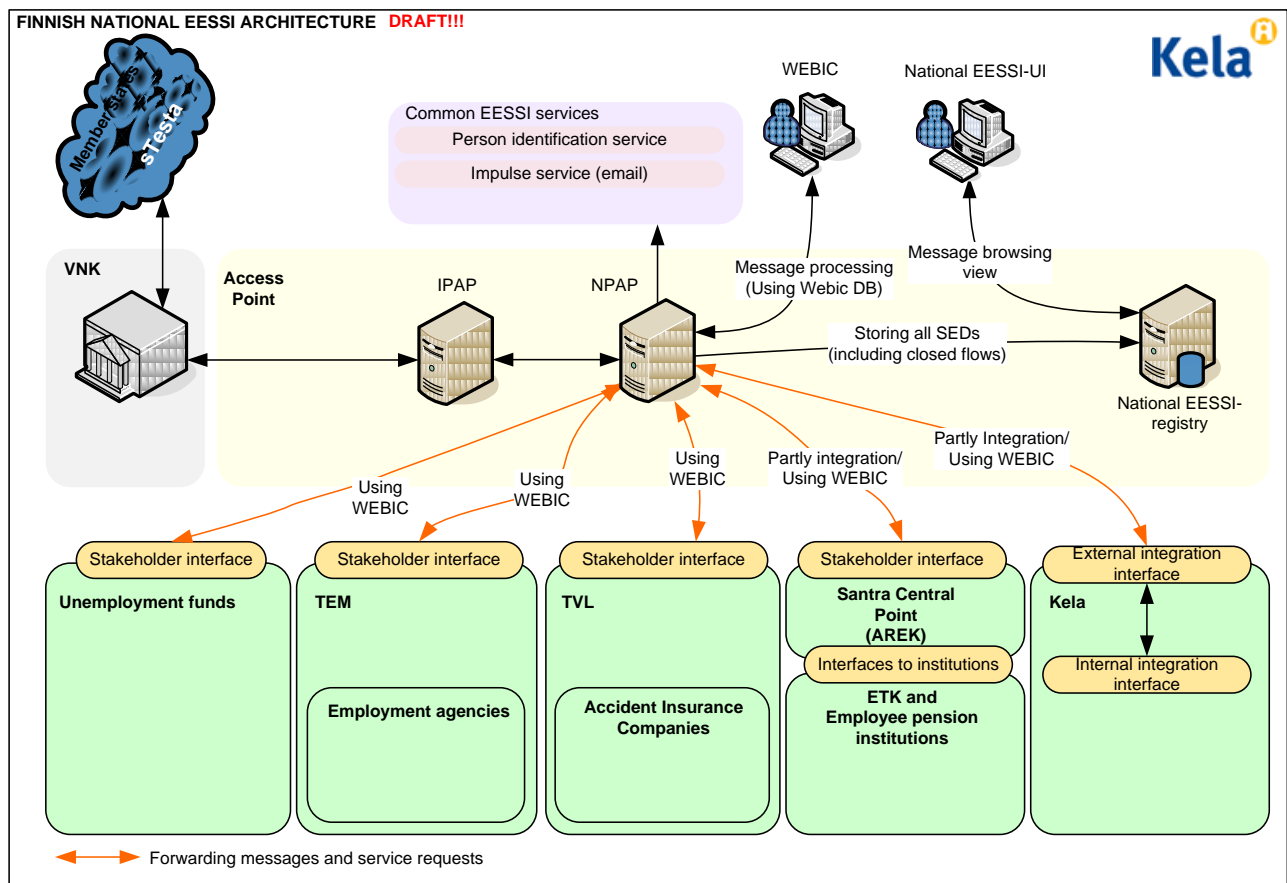
Reference Implementation architecture





3.2.5. National EESSI architecture

The Finnish EESSI architecture is illustrated here.



Mainly all institutions in Finland will use WEBIC interface to process messages and only few institutions will integrate some of the flows to the national systems.

The main principles concerning **national integration** are:

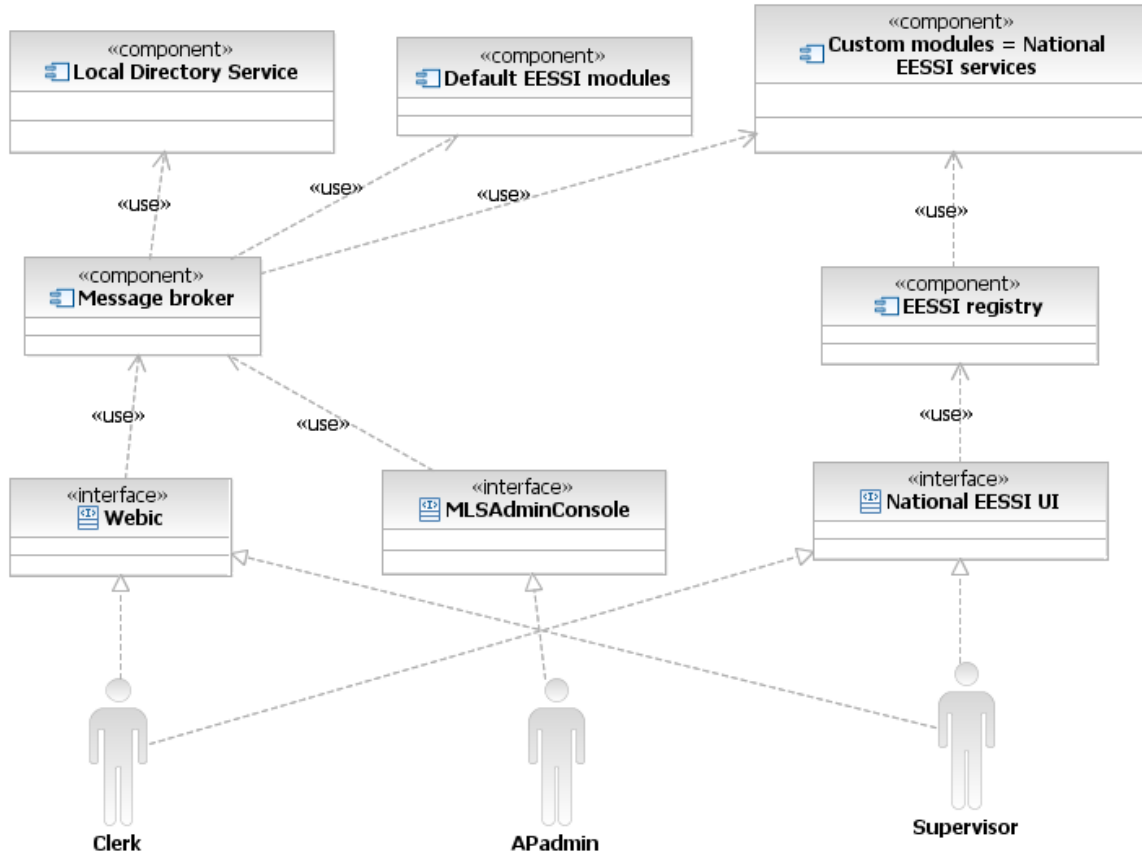
- Reference implementation should be isolated for the national implementation (NPAP+institution level). This will ensure support and updates in the future.
- National integration should use reference implementation functions as much as possible.
- NPAP and institution integration should be isolated as well.





- National integration should support the flexibility of NPAP. This means that integration between AP and institution should be implemented by flexible way in transport layer (e.g. HTTP(S)/SOAP). There might be new custom modules in the future.

EESSI AP high-level component architecture in Finland



EESSI AP architecture in Finland consists of reference implementation (WEBIC and JBoss-platform with "out-of-box" default modules) and national implementation.

National implementation includes

- EESSI-Register
 - All incoming and outgoing SEDs + Long-term message storing
 - National EESSI UI: Clerk can view SEDs and Flows
 - Better search criterias and possibility to show SEDs to the many institutions inside same Flow
- National Person Identification Service
 - The Service will identify persons inside SEDs
- National Email Impulse Service
 - Will send email to the institution when SED has arrived to the WEBIC
- Integration to the national applications
 - KELA: OIWA - Customer Relationship Management (CRM) system
 - KELA: KASA – Care Entitlement System, Invoicing and Payment System





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- ETK & Employee pension institutions: Santra Central Point
- Few smaller modules for processing messages inside AP

3.2.5.1 Example: Earnings-related pension scheme

In order to give an example on a separate EESSI project on one of the benefit sectors in Finland we will give a short description of the situation on the earnings-related pension scheme

The EESSI-parties in the earnings-related pension scheme are

- Finnish Centre for Pensions/ETK: Earnings-related pensions, contact institution, competent institution when a person applies for a pension and has not been insured by any authorised pension provider. Also legislation applicable.
- Pension providers: Handle and provide earnings-related pensions, independent also in regard to EESSI solutions.

In addition to these parties mentioned above AREK Ltd has an important role in EESSI development: It is a company owned by ETK and pension providers which functions as a tendering and coordinating point for the jointly used information systems of the pensions industry.

New case handling systems will be needed to handle EESSI traffic on the employment-based pension sector. Some of the systems are developed at ETK and some by AREK. At ETK an EU-pension system will be needed to work as a contact institution's tool to handle claims and SEDs (P5000 excluded). Call for tender will be launched in Feb 2011 and the system will be taken partly into production in May 2012. Also a system for legislation applicable to handle SEDs will be introduced. Call for tender will be launched in Apr 2011. The system will be taken partly into production in May 2012. Even other new systems (case management system, document management system) developed will support EESSI traffic.

At AREK a new system which will handle insurance period history and create and receive P5000 SEDs is under development. It will be put into production in 2 phases: In January and March 2012. The use of SEDs will start in May 2012. Central Point "Santra 2" will route and pass SEDs, SED copies and alarms in earnings-related pension scheme. Formal decision-making will take place in March 2011. The initial plan for the call for tender is March 2011 and for the production - December 2012.

Also pension providers might develop their own systems to handle EESSI cases.

Thus, there will be two phases in the EESSI traffic on the employment-based pension sector.

First phase (initial plans): 1.5.2012 -> ~ Dec 2012

- WEBIC: SEDs are created, sent and received in WEBIC
- Own system + WEBIC's import –functionality: SEDs are created in a national application, imported to WEBIC and sent from WEBIC

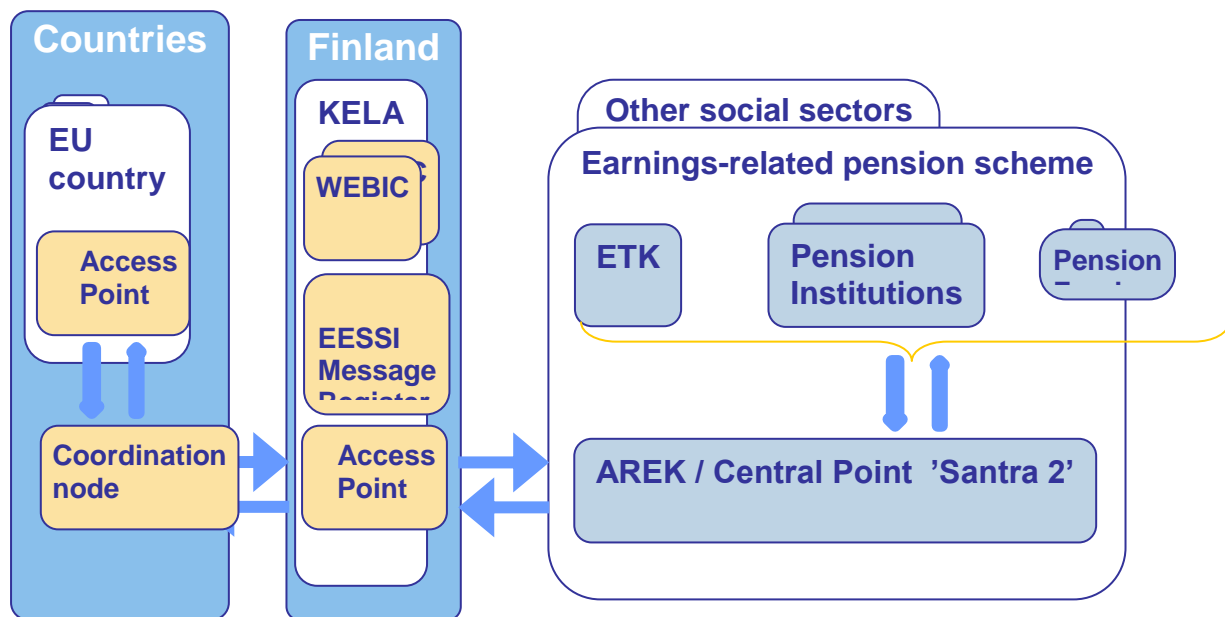




Second phase (initial plans): ~ Dec 2012 ->

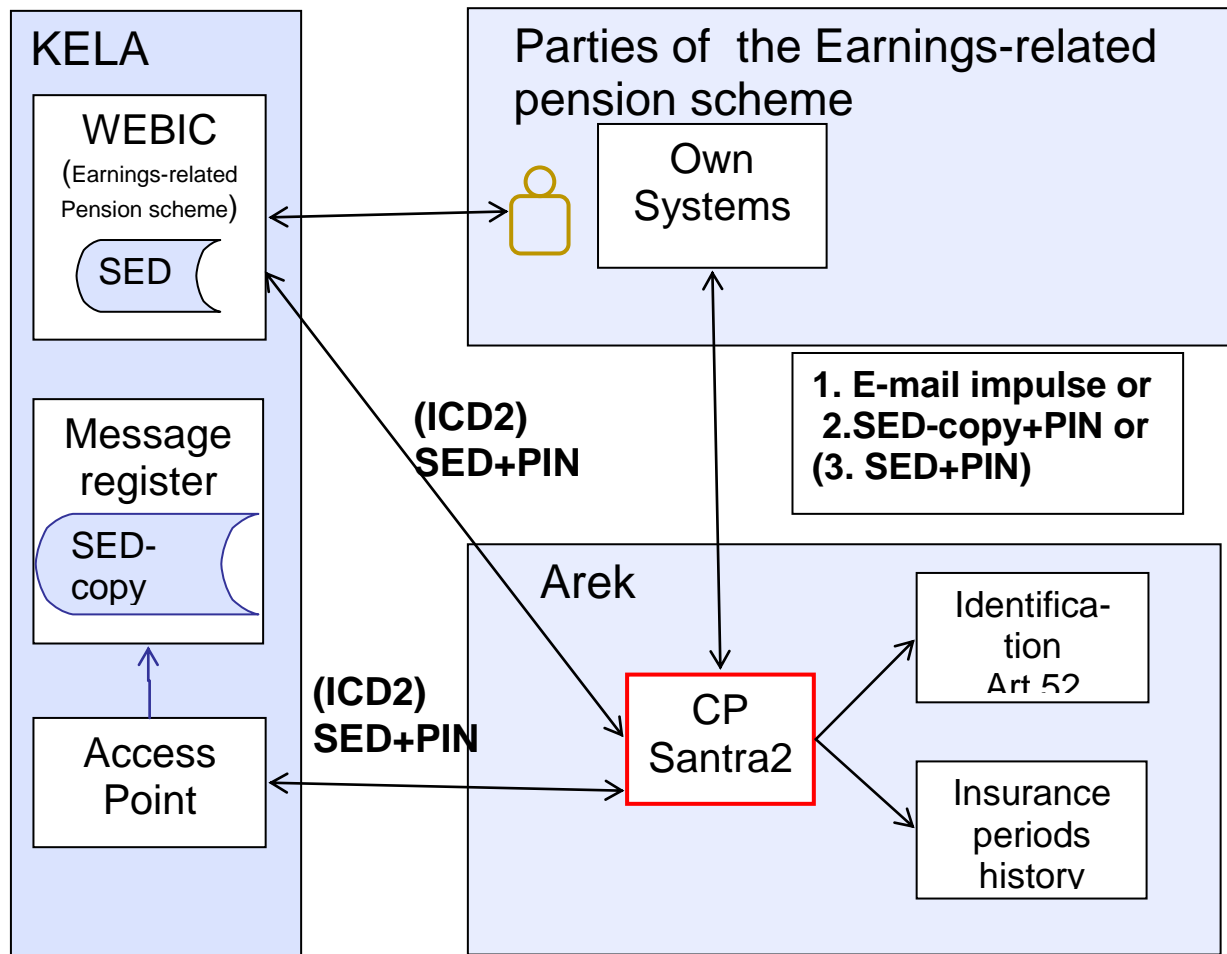
- Central Point “Santra 2”: Routing of SEDs
- WEBIC: SEDs are sent and received through “Santra 2”
- Own system + WEBIC: Moving from WEBIC’s import –functionality to ICD2+ (option 3) through “Santra 2”

Earnings-related pension scheme





Central Point “Santra 2”



3.2.6. EESSI testing in Finland

EESSI testing among the pilot countries (Bulgaria, the Netherlands, Italy, Austria, Germany, Finland) is referred to as "Live test" by the Commission. It is the State Treasury who is in charge of sTesta management in Finland and the connections are currently set for the Live test. The tele operator has opened the firewalls. AP_RI and WEBIC have been installed and installation verification is done. A bug fix has been installed. NDS server was already previously set up.

The first model (flows and SEDs) has been loaded to AP. It is a minimalistic, technical version including only one flow with two SEDs (one reply and one request). The model will be incrementally modified and a full model in English, usable for testing should be available in March. Login to WEBIC has been made, but no actual testing has yet been started. Next, Finland will test the connections with DG EMPL, create user accounts for testing and start the technical tests of WEBIC and RI. Institution testing as well as bilateral tests with other pilot countries (Germany) should start in March.





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The testing specialists of the Finnish AP project have used the following documentation set and found it useful.

- Note on establishment of AP Servers v2.3 – document defining IP addresses and the protocols to be used, especially table on chapter 8
- EESSI RI Installation Manual V 2.0 – installation is fast when the installation script is used. Note that also a bugfix must be installed.
- EESSI Testing Manual v. 1.0 (published by EU Commission Jan 27th) summarizes the installation, the verification procedures, and post-installation steps – highly recommended!

Concerning the testing itself the following test documentation has been used in technical testing by AP project.

- Functional Specifications of Webic
- Functional Specifications of AP_RI
- User Guide

The Finnish institutions participating in Live test with other pilot countries are the following:

- Pensions: KELA, ETK and three employment pension institutions Ilmarinen, Varma and Porasto (pension consultancy company) (with Germany)
- Family Benefits: KELA (with Germany)
- Applicable Legislation: KELA, ETK (with the Netherlands)

Bilateral live testing is preliminarily planned also between Finland and Bulgaria. It is possible that even other piloting countries could take part in the Live test with Finland, but this is not sure yet. The other sectors (sickness, unemployment and occupational diseases & accidents at work) are not yet defined, but the intention is that they will take part in Live testing as well.

The institutions themselves (not the Finnish AP project) are responsible for testing the flows and SEDs and their suitability for the business scenarios. Thus, the test cases are defined and executed by the institutions. Careful test case planning and co-operation between the testing partners in bilateral testing are needed. During the test phase a careful reporting is carried out to EU's reporting system JIRA through AP project.

AP project coordinates the Live test in Finland. Preparations and test planning are under way at the moment. Bilateral testing among pilot countries in pension, family benefits and legislation applicable will begin in March. Testing with partners in pilot countries in other sectors (sickness, unemployment and accidents at work and occupational diseases) are due in late March – April. All pilot countries will participate in the Live test on the joint testing week (week 14, i.e. 4.-8.4.2011).

In addition to this there are preliminary plans for testing with other Nordic Countries (especially Sweden) and Estonia. For Finland the most important counterparties in implementing the coordination Regulations are Sweden and Estonia. When looking at the volumes of exchange of information these countries can be estimated to form up to 50-70 % of all our cross-border cases. Therefore Finland's goal is to plan cooperation with these two countries even for the testing purposes.





Testing with WEBIC could start at earliest in May because the Finnish AP project is occupied by the Live test for pilot countries. However, it might be possible to make some dry tests via email (not using WEBIC) already before May. This will be clarified later in spring 2011.

3.2.7. Other current issues related to the AP project

The Finnish AP project currently clarifies – together with the cooperation partners - questions concerning archiving periods of SEDs and flows, statistical questions (for instance what information should be stored and where and what kind of statistical needs the stakeholders/institutions have) and log information (for instance what log information is needed and how long it needs to be stored). Also the description of roles and responsibilities of the users of AP and WEBIC are looked upon at the moment. Contents of MD/PAI for Finland have recently been updated and sent to the Commission to be uploaded to the MD/PAI.

4. Final remarks

In conclusion, the implementation of the new Regulations and the preparation for the EESSI system in Finland has progressed as planned. Both projects have been forced to readjust their time tables and make new plans as new information and documentation has been received. For the legal and administrative implementation of the new Regulations there are still many open questions to be solved. The Finnish authorities and institutions are prepared to take part in the discussions concerning the interpretive questions in the Administrative Commission. For the EESSI system the planned time table of 1 May 2012 is still our goal.

For preparing to the EESSI some plans for the testing have been made. The live testing is going to be done for pensions and family benefits with Germany and for legislation applicable with the Netherlands. Some bilateral live testing is preliminarily planned between Finland and Bulgaria too.

Ideas for further cooperation with other PROGRESS countries will be looked upon in the national seminars.

