



**Mobility of personnel in ERICs –
International aspects of taxes, social security and labour law**

International aspects of labour law

Overview

Contracts

Business travel	Assignment (active service)	Secondment (passive service)	Contracts with two or more employers	Localisation
Existing contract remains in force	Existing contract remains in force; additional agreement (assignment agreement) is concluded	Leasing an employee to another company or within group of companies	Employment relationship is maintained and additional employment relationship established	Local employment contract is concluded
Temporary work abroad (e.g. seminars or project work for a few days)	No integration in the host company; assigning company keeps authority ; personnel costs are borne by assigning company	Integration in the host company and authority to give directives ; personnel costs are charged to host company	Two or more employers at the same time with the right to authority and to give directives ; each one bears the personnel costs	Company has the authority to give directives, bears the personnel costs and has the employer function
Employee works in the name and on account/risk of the employer	Employee works in the name and on account/risk of the assigning company	Employee works in the name and on account/risk of the host company	Special rules for social security within EU/EEA area („multi-state workers“) apply	Employee works in the name and on account/risk of the employer

Caution: This can result in a permanent establishment in the host country

Caution: possibly immediate tax liability in the host country

International aspects of labour law

› Rome I Regulation, European Convention on Contracts, Posted Workers Directive

› In principle, **free choice of the labour law** that applies to the employment contract in international contexts. Otherwise the labor law of the state in which the work is usually carried out or the labor law in which the employer is located applies.

› But in case of locally recruited employees, the overriding **mandatory provisions** of the respective country are to be observed (in accordance with the favourability principle); these include:

- Minimum salary
- Maximum work time
- Rest periods
- Annual leave



Austrian Act on Salary and Social Dumping („LSD-BG“)

In case of **assignments** or **secondments** to Austria, the employee is entitled to the following:

Remuneration in accordance with the applicable collective bargaining agreement:

- › Monthly gross salary for the working days/hours in Austria
- › Aliquot gross special payments (13th, 14th payment) for the activity in Austria
- › Overtime payments (gross)

Annual leave in accordance with the Austrian Annual Leave Act:

- › Right to paid annual leave for the duration of secondment

Only in case of **secondments** to Austria, the employee is additionally entitled to:

Further claims of employees:

- › Continued salary payment in the event of sickness and national holidays
- › Protection from termination or dismissal and termination compensation

The **favourability principle** applies.



Austrian Act on Salary and Social Dumping („LSD-BG“)

In case of **assignments** or **secondments** to Austria, the following **documents** must be held available in Austria:

Salary documents (in German language):

- › employment contract (can also be in English)
- › monthly pay slip
- › record of the salary payment (e.g. bank transfer receipt)
- › documents for the job classification
- › working time records

Certificate of social security coverage (A1 form)

Notification of assignment or secondment (ZK03, ZK04)

- › Electronic form via website of the Central Coordination Office of the Federal Ministry of Finance

Severe fines can be imposed in case of underpayment or if the required documents are not held available in Austria (EUR 1.000 to EUR 10.000; if more than 3 employees are affected: EUR 2.000 to EUR 20.000).

The Act stipulates **exemptions** from the beforementioned rules and obligations (e.g. for **training** or **attending seminars** and **conferences**).

International aspects of taxes

Tax effects of cross-border cases

Checklist (simplified depiction)

1. Taxation according to national law?

criteria

Unlimited tax liability

- Residence or habitual abode (6 months) in Austria
- Taxation of worldwide income

Limited tax liability

- No residence or habitual abode in Austria
- Taxation of source income

2. Restriction of taxation right by a double tax treaty?

criteria

Personnel scope/material scope of the double tax treaty

(Article 1/2 OECD Model Convention)

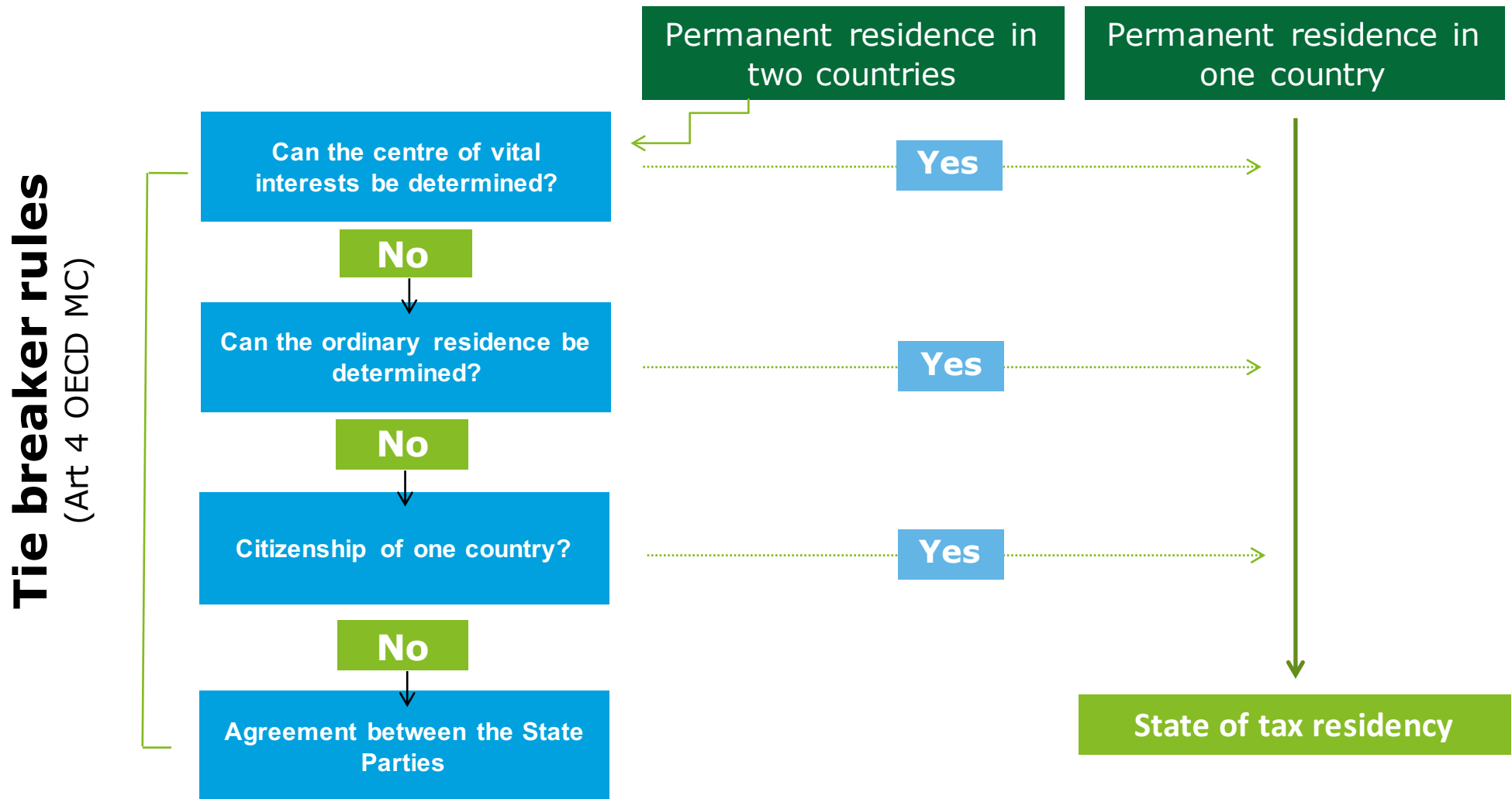
Determination of state of tax residency (Article 4 OECD MC)

Distribution of taxation rights on **income from employment**
(Article 15 OECD MC)

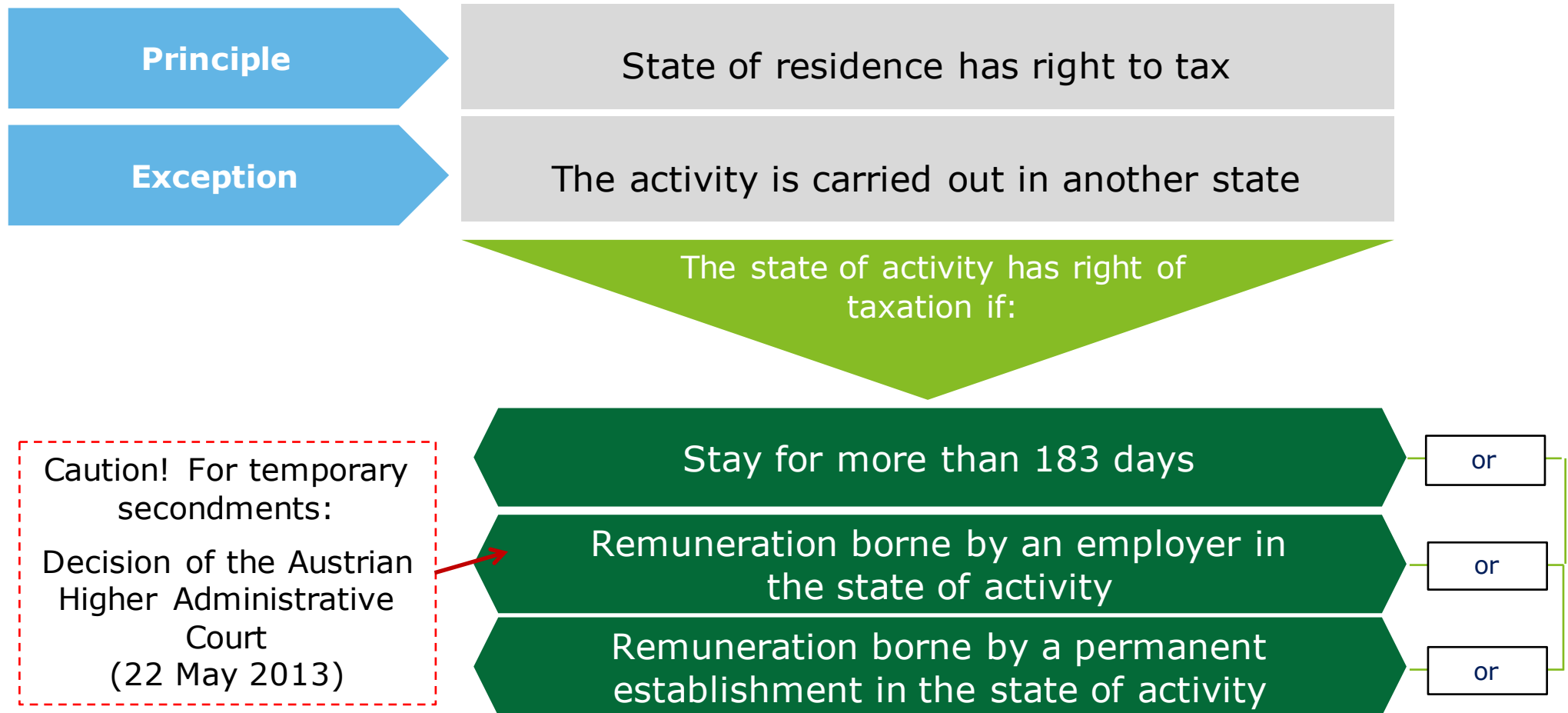
Prevention methods of the double tax treaties
Exemption or Credit Method (Article 23 OECD MC)

3. Determination of the effective tax burden in Austria

Determination of the tax treaty residency (in accordance with Article 4 OECD Model Convention)



Taxation rights for income from employment (in accordance with Article 15 OECD Model Convention)



The concept of the „economic employer“ (in accordance with Article 15 OECD Model Convention)

Decision of the Higher Administrative Court of 22 May 2013 respectively Decree of the Federal Ministry of Finance of 12 June 2014:

- In case of **secondments**, the **host company** is regarded as “economic employer”
- Only in case of **typical passive services**: Personnel costs are borne by the host company and employee is integrated in the host company
- **183-day-clause** is **not applicable** in this case
- **Tax liability** in the host country as of **1st working day**



Decree of the Federal Ministry of Finance
of 12 June 2014

The right to tax can be enacted through 2 alternative options:

Option 1. Tax deduction in the amount of **20 %** of the personnel leasing remuneration by the host company

OR

Option 2. Voluntary wage tax deduction (payroll) by the employer or an authorized Austrian representative (e.g. tax advisor)



International aspects of taxes

Case study



Example: Alexandra is a Swedish citizen and concludes an employment contract with an Austrian ERIC

Case 1

- She rents out her house in Sweden and moves to Austria with her family

Case 2

- She keeps her family house in Sweden
- She mainly works in Sweden but spends 2 days per month in Austria
- She stays in a hotel when she is in Austria

International aspects of taxes

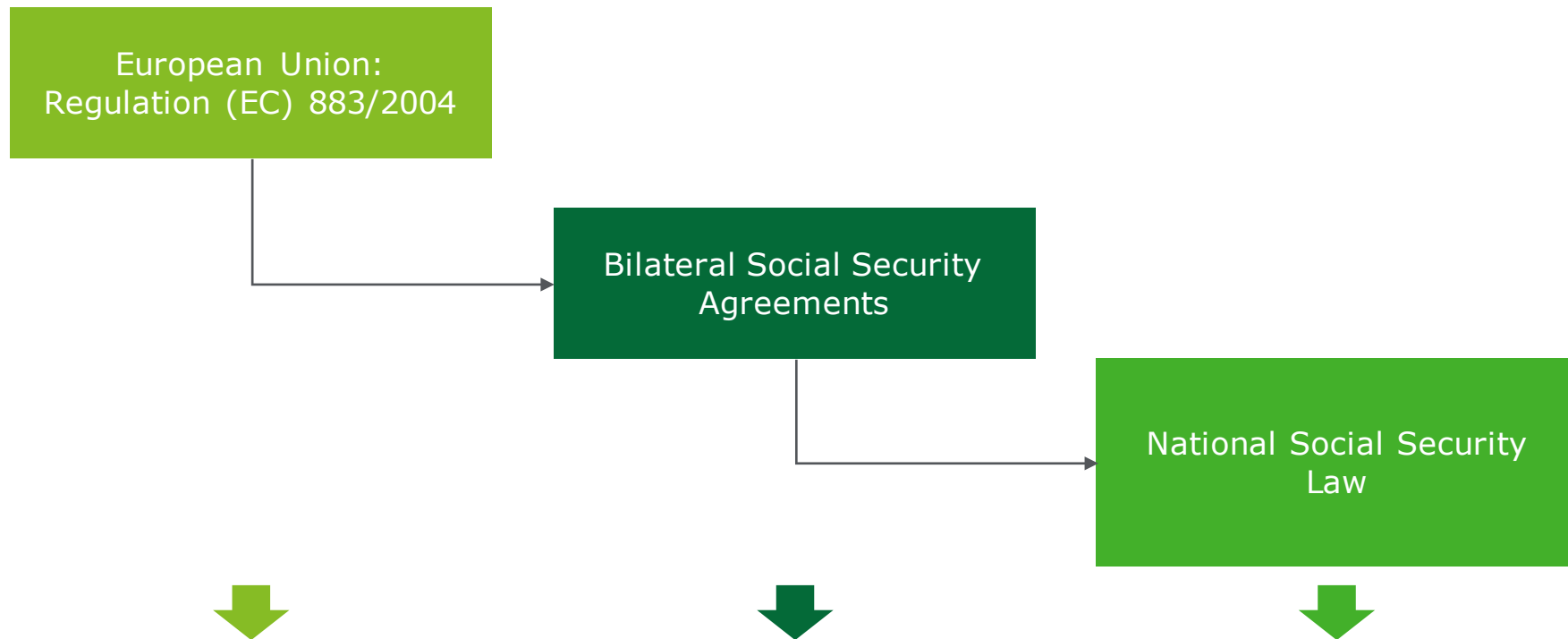
Case study

		Case 1	Case 2
National legislation	National tax law	Residence shifts from Sweden to Austria	Residence in Sweden is maintained
		Unlimited tax liability in Austria	Limited tax liability in Austria
		World income is taxable in Austria	Only source income in Austria is taxable
DTT	Tax treaty rules	Tax treaty residency shifts to Austria	Tax treaty residency in Sweden is maintained
		World income is taxable in Austria, source income is taxable in Sweden	World income is taxable in Sweden, source income is taxable in Austria
Impacts		100 % of the income is taxable in Austria; Swedish taxes on rental income can be credited in the Austrian Income Tax Return (Credit Method in the DTT)	Austria taxes the employment income attributable to the 2 days spent in Austria p.m.; 100% of the employment income is taxable in Sweden but Sweden credits the Austrian tax (Credit Method in the DTT)

International aspects of social security

Social security of cross-border employees

Overview



In connection with cross-border contexts it is necessary to examine each individual case in detail in order to determine which social security law applies.

Regulation (EC) 883/2004

Scope

Personal scope of the regulation – To whom does the Regulation apply? (Article 2)

- Nationals of Member States
- Members of their families and their survivors.

e.g. employees, former employees, self-employed persons, officials, pensioners, students or inactive persons (non-economically active)

Material scope of the Regulation – For which branches of social security is the Regulation applicable? (Article 3)

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

* The “**credit principle**” applies: Austria credits insurance periods of other Member States for an Austrian pension entitlement (minimum of 180 months of pension insurance in Austria); each Member State then calculates the amount of the pension in accordance with its national rules.

Regulation (EC) 883/2004

General rules

General Rules (Article 11)

Principle of single insurance

Persons are subject only to the legislation **of one Member State**; also in case of activities in several countries.

Territory principle

Persons are subject to the legislation of the Member State, **in which they work**.

Coordination function

No harmonization of the legislation of the Member States, **only coordination of the national systems**.

Exceptions

Assignment (Article 12)

Multi-state work (Article 13)

Exemption Agreement (Article 16)

Regulation (EC) 883/2004

Details

Assignment (Article 12)

- Person is assigned/seconded from the employer to carry out work in another Member State
- Home Member State remains in charge of social security
- The duration of this work may not exceed 24 months

Multi-state work (Article 13)

- Carrying out an activity in two or more countries (either based on one or two employment contracts)
- Key criteria: working time/salary/number of employers

Exemption Agreement (Article 16)

- The authorities of the Member States may grant exceptions from the before mentioned rules by mutual agreement in case of justified reasons

Regulation (EC) 883/2004

Article 13 – Multi-state work

Activities in two or more Member States:

simultaneously or alternately for the same employer or for several employers in two or more Member States

Essential part of the activity:

at least 25% working time and/or salary, observation period 12 months

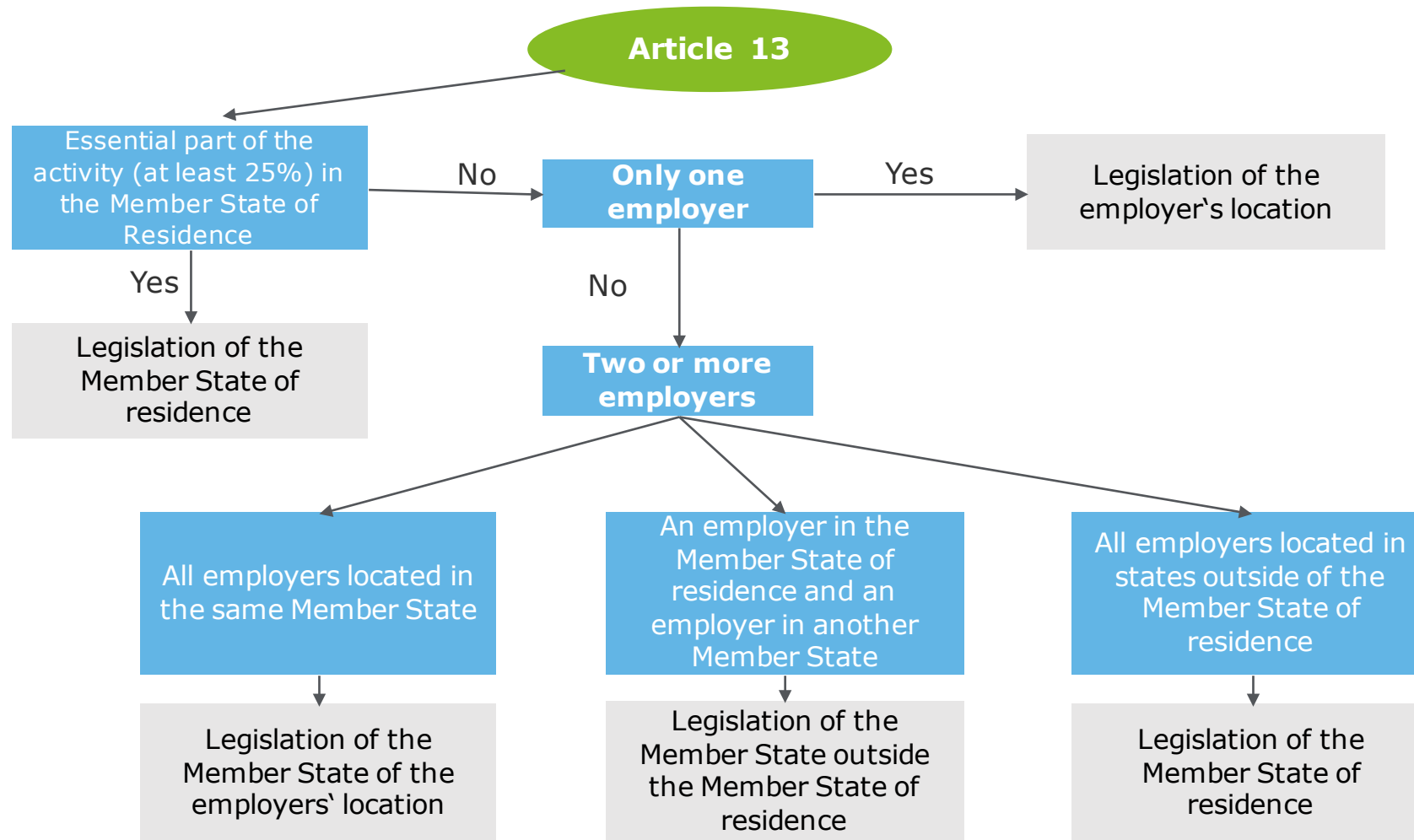
Insignificant activities:

not subject to Article 13, activities not exceeding 5% working time and/or salary

Special rule for **public officials**: They are always subject to the social security system of the Member State in which the public authority is located.

Regulation (EC) 883/2004

Article 13 – Multi-state work



Regulation (EC) 883/2004

Certificate of Coverage

Application

- **Form PD (portable document) A1**
 - If the form A1 is issued = confirmation of the applicable social security system
 - Submitting the application: to the competent national social security authority
 - Electronic information exchange between the national authorities
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International aspects of social security

Case study



Example: Alexandra is a Swedish citizen and has an employment contract with a Swedish university (no public official status). She concludes an additional employment contract with an Austrian ERIC

Case 1

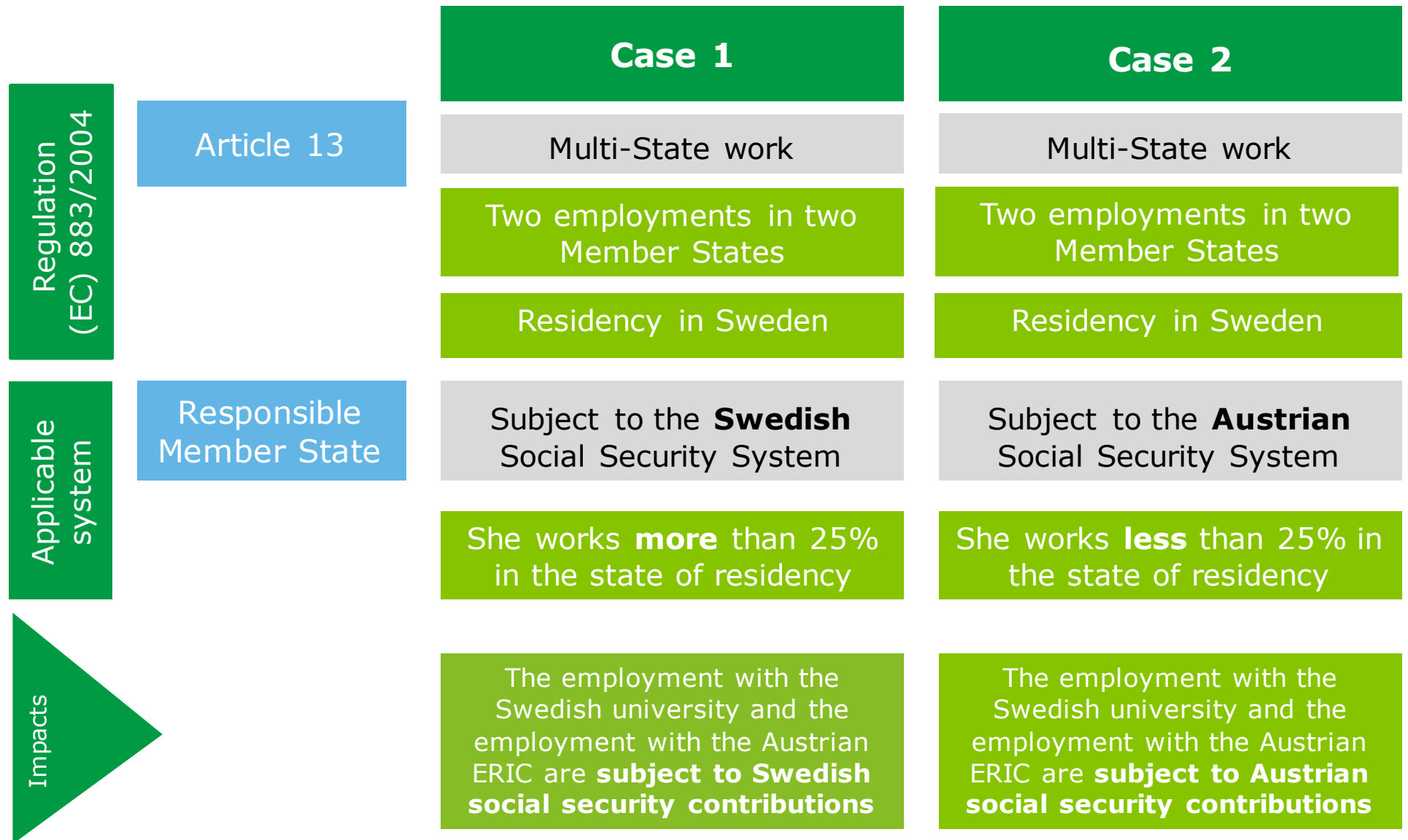
- She keeps her family residence in Sweden
- She works 50% of the time in Sweden and works the remaining time in Austria

Case 2

- She keeps her family residence in Sweden
- She works 20% of the time in Sweden and works the remaining time in Austria

International aspects of social security

Case study





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