



15.4.2019

## NOTICE TO MEMBERS

**Subject: Petition No 0615/2018 by Wolfgang Gerber (German) on the issuing and verification of form A1 certificates**

### 1. Summary of petition

The petitioner describes the complex procedures for obtaining a form A1 certificate in Germany. He is a retired civil servant and is occasionally active as a self-employed tour guide for German tour operators. He frequently makes brief stays in a number of Member States, provides tour guide services for short periods. The petition poses specific questions as to the validity of certain procedures in Germany for obtaining form A1 certificates and whether they comply with Union law on free movement, in particular as regards possible discrimination of retired civil servants because of the specific social security scheme under which they are insured.

### 2. Admissibility

Declared admissible on 8 November 2018. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 15 April 2019

#### The Commission's observations

1. The cardinal principle of the regulations<sup>1</sup> on the coordination of social security schemes is that only one set of legislation is applicable, i.e. persons to whom they apply are subject to the legislation of a single Member State only (Article 11(1) of Regulation 883/2004). The aim is to rule out the complications which might arise if more than one set of national legislation

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<sup>1</sup> Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1) and implementing Regulation 987/2009 (OJ L 284, 30.10.2009, p. 1).

applied simultaneously, and to eliminate the unequal treatment of persons moving within the Union that would result if applicable sets of legislation applied cumulatively (either in part or in whole). As a rule, a person pursuing an activity as an employed or self-employed person in a Member State is subject to the legislation of that Member State.

2. In some very specific circumstances, however, criteria other than actual place of employment may be taken into account, in particular where multiple activities are pursued, i.e. where remunerated activities are pursued in two or more Member States (Article 13 of Regulation 883/2004).

Where, accordingly, a person normally pursues an activity as an employed person, the first point to be established is whether a substantial part of that activity is pursued in the Member State of residence. If that is the case, Article 13(1) stipulates that the legislation of the Member State of residence is applicable. If that is not the case, other specific provisions apply. To determine whether a substantial part of an employed activity is pursued in a Member State, the following indicative criteria are taken into account: working time and/or remuneration. If an overall assessment establishes that at least 25% of working time is spent in the Member State of residence and/or at least 25% of remuneration is earned there, that is an indicator that a substantial part of all the worker's activities is pursued in that Member State. Working time and/or remuneration must be taken into account; but they are not the only criteria that may come into play. It is for the designated institutions to take account of all relevant criteria and, prior to determining which legislation is applicable, to carry out an overall assessment of a person's circumstances.

3. Marginal activities are activities that are permanent, but are insignificant in terms of time or economic return, and are not taken into account in order to determine which legislation is applicable. Activities representing less than 5% of the normal working time of a worker and/or less than 5% of his or her overall remuneration can be regarded as marginal. For instance, anyone pursuing 'activities of a marginal extent' in one Member State who also works in another Member State cannot be regarded as normally pursuing an activity in both Member States and is therefore regarded as pursuing an activity in a single Member State. The Court of Justice of the Union has ruled accordingly in the recent X and Szoja judgments (Cases C-570/15 and C-89/16 respectively). If a marginal activity involves membership of a social security scheme, contributions will be paid in the Member State which has competence in respect of all income from all activities.

4. Where multiple activities are pursued, the A1 certificate is issued by the competent body; it may also be issued retrospectively and may have retroactive effect. In its Banks judgment (C-178/97, paragraph 53) the Court of Justice ruled that: '... when issuing the ... certificate ..., the competent institution of a Member State does no more than state that the self-employed person concerned remains subject to the legislation of that Member State throughout a given period in the course of which he carries out a work assignment in the territory of another Member State. Although it should preferably be made before the beginning of the period concerned, such a statement may also be made during that period or indeed after its expiry.'

5. The regulations lay down that persons who are no longer employed or self-employed, and who are in receipt of a pension, are subject to the social security legislation of their Member State of residence. Retirees are not normally regarded as persons pursuing a remunerated activity as an employed or self-employed person within the meaning of the regulations. If the legislation of the Member State of residence allows retirees to pursue remunerated activities, however, the Commission takes the view that the rules expounded above can be applied to them *mutatis mutandis*.

### Conclusion

If, then, the activities of the petitioner are marginal, as seems to be the case, he must be subject only to the legislation of the country of residence (Germany). The competent German authorities must provide him with the form A1 certificate. It emerges from the petition that the certificate was ultimately issued (albeit belatedly). In that connection the Commission would point out that according to consistent Court of Justice rulings, and according to the circumstances, there is nothing to prevent the A1 certificate from producing retroactive effects.