



21.5.2019

## NOTICE TO MEMBERS

**Subject: Petition No 1016/2018 by K.O. (Swedish) on EU regulations on free movement being allegedly discriminatory**

### 1. Summary of petition

The petitioner considers that Regulations (EC) No 883/2004, (EC) No 987/2009, (EU) No 492/2011 and (EU) No 465/2012 are discriminatory against citizens in public employment, part-time employment and other part-time work, thus hindering free movement in the European Union. The petitioner argues that Regulation (EC) No 883/2004 imposes an obligation on civil servants to be insured in their country of residence, without taking into consideration whether the individual is gainfully employed in other EU countries. The petitioner believes that citizens should be able to work freely across the Union, and have the choice of whether to opt in for insurance in a particular Member State. The petitioner claims this situation results from differing interpretations of the legislation in different Member States and from the disparities in national social security arrangements for civil servants.

### 2. Admissibility

Declared admissible on 20 February 2019. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 21 May 2019

The first point to be made is that the regulations to which the petitioner refers are in place precisely to avoid the types of situation described in the petition. The second point is that responsibility for social security rests with the Member States. However, in exercising their powers in that field, Member States must comply with Union law, observing in particular the

principle of workers' freedom of movement. Regulation (EC) No 883/2004<sup>1</sup> on the coordination of social security systems and the corresponding implementing regulation, Regulation (EC) No 987/2009<sup>2</sup>, aim to secure workers' freedom of movement and to protect those who move from one Member State to another from conflicts of laws arising through the simultaneous application of differing national rules. They provide for a uniform, comprehensive and mandatory system of rules on conflicts of laws, making it possible, in social security matters, to determine the applicable law in every case. Neither states nor employers nor individuals can select the applicable law: it is determined in accordance with objective criteria – for example, the law of the country where the activity is carried out – which are laid down in the above regulations.

Under the principle, set out in Regulation (EC) No 883/2004 that only one set of laws is applicable, people are subject to the legislation of a single Member State only (Article 11(1)). 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. Civil servants are subject to the legislation of the Member State in whose administration they are employed (Article 11(3b) of Regulation (EC) No 883/2004), irrespective of where they live.

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 it is not the case, other specific provisions apply in different situations. 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.

Marginal activities are activities that are permanent, but are negligible in terms of time or economic return, and are not taken into account in determining 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

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<sup>1</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *OJ L 166, 30.4.2004, p. 1.*

<sup>2</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *OJ L 284, 30.10.2009, p. 1.*

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 entails 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.

The Commission would also point out that, in 2013 – in order to assist national authorities in the correct application of the conflict-of-laws rules set out in Regulation (EC) No 883/2004 – the Administrative Commission for the Coordination of Social Security Systems drew up a Practical Guide on the Applicable Legislation in the European Union, the European Economic Area and Switzerland<sup>3</sup>.

### Conclusion

Civil servants are thus subject to the legislation of the Member State in whose administration they are employed (Article 11(3b) of Regulation (EC) No 883/2004), irrespective of where they live. If that legislation permits them to exercise other professional ‘activities of a marginal extent’, the Commission takes the view that the rules described above are applicable to them as a protection against the simultaneous application of more than one set of national rules.

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<sup>3</sup><https://ec.europa.eu/social/keyDocuments.jsp?advSearchKey=4944&mode=advancedSubmit&langId=en&policyArea=&type=0&country=0&year=0#>