(English version)

Question for written answer E-000190/20
to the Commission
Marc Botenga (GUE/NGL)
(14 January 2020)

Subject: Administrative burden of the most beneficial social security system

In its answer to Written Question E-003378/2019, the Commission states that the rules that allow posted workers access to the most beneficial social security system impede the free movement of workers. According to the Commission, if workers were to change affiliation with each posting, and thus enter into a new social security arrangement each time the worker went to work in a different Member State, this would result in a heavy administrative burden.

Does the Commission have empirical evidence to support its reasoning?

If so, what is the effect of such a measure on the freedom to provide services?

Answer given by Mr Schmit on behalf of the European Commission
(26 March 2020)

As the Court of Justice of the European Union confirmed, the aim of Title II of Regulation (EC) No 883/2004 is 'to overcome obstacles likely to impede freedom of movement of workers and also to encourage economic interpenetration whilst avoiding administrative complications, in particular for workers and undertakings' ([1]).

The applicable legislation is derived objectively from the provisions of the regulation and these rules, which do not harmonise but only coordinate national social security systems at EU level, cannot guarantee that a move to another Member State will be always neutral or financially more beneficial for the person concerned. This will depend on the case ([2]).

As regards posted workers, Regulations (EC) No 883/2004 and 987/2009 seek to ensure stability by maintaining the applicable legislation of the home Member State. If posted workers were to be insured under a different legislation for every posting, the person concerned would have to register with a different social security system with each change of Member State of employment. For workers, such an unstable applicable legislation would not only bring about administrative complications, but potentially also losses of rights ([3]).

For employers, this would cause administrative complications, as they would have to comply with different legislation for work of short duration ([4]), which would hinder their freedom to provide services. This would also imply a change in the Member State competent for providing benefits (including healthcare and family benefits) and any benefit provided in advance would also have to be reimbursed. This burden, which the regulations try to overcome, may constitute an obstacle to the free movement of workers and the freedom to provide services.

([1]) For example, Case 35/70, *Manpower v Caisse primaire d'assurance maladie de Strasbourg*, EU:C:1970:120; Case C-202/97, *Fitzwilliam Executive Search Ltd v Bestuur van het Landelijk instituut sociale verzekeringen*, EU:C:2000:75; Case C-359/16, *Altun and Others*, EU:C:2018:63

([2]) C-443/11, *Jeltes and Others*, EU:C:2013:224, para 44.

([3]) See by analogy Case 35/70, *Manpower v Caisse primaire d'assurance maladie de Strasbourg*, EU:C:1970:120, para 12. If performed correctly, aggregation of periods and assimilation of facts should preserve many, but not all, rights (see e.g. Case C-134/18, *Vester v Rijksinstituut voor ziekte- en invaliditeitsverzekering*, EU:C:2019:212, in particular para 44).

([4]) See by analogy Case 35/70, *Manpower v Caisse primaire d'assurance maladie de Strasbourg*, EU:C:1970:120, para 11.