



GES NewsFlash

European Union — International Social Security — New Rules for Multi State Workers in the EU

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Overview

On 18 April 2012, the European Parliament adopted proposed amendments to the social security coordination regulations EC 883/2004 and 987/2009 (the "Regulations"), which will affect the social security position of employees working in employment in two or more EU member states for two or more employers. The changes will come into force on 28 June 2012.

Summary of changes

Currently, the Regulations state that an individual with separate employments in different member states is subject to the social security scheme of his or her state of habitual residence, even if he or she carries out little or no work activity there.

Under the amended provisions, the employee will only remain subject to the social security scheme of the member state of residence if:

- he pursues substantial activity there; or
- regardless of the level of employment activity in the member state of residence:
 - all the employers concerned are situated in the member state of residence; or
 - the employment is with two or more employers, and at least two of the employers are located in different states other than the member state of residence.

Other than above, if no substantial activity is performed in the member state of residence:

- the liability will arise in the member state in which the employer is situated where only one employment is involved (as per the current rules); or
- the liability will arise in the member state in which the employers are situated where two or more employments are involved and those employers are based in the same member state; or
- if the individual has at least one employer in his or her country of residence and at least one in one other member state, i.e., if there are only two member states involved as far as the employing undertakings are concerned, the liability will arise in the member state in which the 'other' employer(s) is situated.

Example

Gerald resides in the United Kingdom and works there for 20 percent of his time for a UK employer. He also has a French employer for whom he works 80 percent of his time outside the United Kingdom, split equally between France and Spain. He would

have remained subject to UK National Insurance contribution under the previous version of Article 13.

Under the revised Article 13, he will be subject to French social security, as he does not have substantial activity in the member state of residence (United Kingdom), and he has one employer in the member state of residence and one in another member state (France).

However, if Gerald's situation changes and he concludes a third employment contract with an employer based in Spain under which he performs Spanish duties, his social security liability will switch to his state of residence, i.e., to the United Kingdom. This is because at least two of his employers are situated in member states other than his state of residence.

Impact of revised rules

Once the amended provisions come into force, multistate workers with two or more employments will be more likely to fall out of the social security legislation of the country of their habitual residence than under the current rules.

However, the substantial activity test will not impact the case of a multistate worker holding employment contracts with at least two employers in member states other than the state of habitual residence.

Deloitte's view

The European Union (EU) has recognized that there may have been opportunities to structure the employment of senior employees to reduce the overall social security burden. In particular, the amended provisions may affect:

- individuals with dual contract arrangements involving minimal work in the home state; or
- those with a series of directorships across the EU (whether executive or nonexecutive) where that type of directorship is considered to be employment rather than self-employment

The EU are clearly aiming at limiting the possibility of establishing multiple employment contracts solely for the purpose of keeping a person in the social security scheme of the member state of residence and are applying the substantial activity rule in order to achieve this.

They do not apply the same logic where at least two of the (multiple) employers are located outside of the country of residency.

There is little commentary to date about the impact on arrangements that enjoy grandfathering provisions under EC 1408/71. We presume that the proposed changes will not affect arrangements in place before 1 May 2010. It remains to be seen whether arrangements that commenced after 1 May 2010 but before the adoption date will also be allowed to continue.

Action to take

It is a good time to review your current population of multistate working employees who hold more than one contract of employment, whether or not the other employment is in the same group of companies. The amended provisions may result in a change in the applicable social security legislation and affect both the overall social security costs and employee's access to benefits.

In particular, senior individuals with numerous board appointments may pose a compliance risk and any new arrangements need to be reviewed carefully prior to implementation to consider the potential social security costs involved.

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