



Council of the
European Union

Brussels, 17 March 2023
(OR. en)

**Interinstitutional File:
2016/0397(COD)**

7489/23
ADD 2

LIMITE

SOC 182
EMPL 129
CODEC 389

NOTE

From: Presidency

To: Delegations

No. Cion doc.: 15642/16 - COM(2016) 815 final

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and Switzerland)
- Questions and answers

Delegations will find in Annex a question and answers document related to the presidency compromise proposal as laid out in document 7489/23 ADD1.

QUESTIONS AND ANSWERS

Pluriactivity

Article 14(5a) Regulation 987/2009

Question: How should the information about the relevant factors for determining the registered office or place of business e.g., turnover or taxes be collected?

It is primarily up to the undertaking to show where the registered office or place of business is and therefore also to provide information regarding the criteria. The determination shall be carried out in the framework of an overall assessment. The purpose of the list of factors is to provide examples of factors which indicate where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out or where the undertaking performs genuine activity.

Question: What role will the Administrative Commission play in this regard. Can the Administrative Commission come up with a tie-breaker rule?

The AC can further clarify the different factors, other factors which might be taken into account and how the overall assessment should be performed. The Administrative Commission cannot go beyond the wording of the Article and establish rules different to it.

Prior notification

Article 15 in Regulation 987/2009

Question: The three days horizontal exception within one calendar month, can it be uninterrupted and interrupted?

Yes, as this is not specified both situations are included.

Question: The proposal for prior notification currently only covers posting situations under Article 12 of the basic Regulation. What about PD A1 issued on the basis of Article 13 of the basic Regulation for multi-state activities, given that these PD A1 currently represent one third of the total PD A1 issued by the Member States?

The procedural requirement for informing the institution in the Member State of residence in the cases covered by Article 13 of the basic Regulation is regulated in Article 16 of the implementing Regulation. They are thus not covered by the material scope of Article 15 of the implementing Regulation.

Question: Should the Member State where the activity is pursued be informed by the competent institution before or after the PDA1 has been issued? Can this be clarified by reversing these two actions in Article 15 (1) of the implementing Regulation?

The Presidency does not see the need of such a replacement. In practice the issuing of an attestation and the information to other Member State is done at more or less the same time, a normal case handling would be to first inform the person concerned of the result of the assessment, and as a second step to inform the third person, in this case the institution in the other Member State.

Question: Is there an added value of a prior notification?

There is already an obligation to notify today. The Presidency is of the opinion that the prior notification procedure provides the institution with information that an assessment is needed on whether the person is to be considered as posted and therefore would continue to be covered by the legislation of the competent Member State. Furthermore, it will also clarify the social security status for the person concerned as the competent institution will issue the attestation.

Question: How do we address the rise in telework, e.g. workcations?

This issue is not subject to the present revision of the rules on social security coordination. An impact assessment is needed to address this issue which was not part of the proposal by the Commission or the report from the European Parliament and has therefore to be addressed in a future revision. Furthermore, Article 16 of the basic Regulation allows already today for dealing with this.

Question: Will Articles 19a and 20(4) of the implementing Regulation apply to the exceptions of prior notification?

Since a person who is subject to one of the two exceptions in Article 15 (1) of the implementing Regulation is excluded from the requirement of notification, presumably there will be no request for an attestation to be issued and therefore no document to contest. It is however up to the person concerned to provide evidence showing that he or she has informed the competent institution or falls under one of the exceptions in Article 15(1) of the implementing Regulation.

Unemployment benefits chapter

Question: How can the competent institutions ensure effective control of the availability and activation of the jobseeker during the period during which the unemployment benefit is exported under Article 64 and 65(3) of the basic Regulation?

The institution in the Member State to which the unemployed person has gone will be obliged to send monthly reports on the follow-up of the unemployed person's situation to the state responsible for paying benefits, according to Article 55(4) of the implementing Regulation. These reports on the follow-up should also contain information on the compliance of the unemployed person with organised checking procedures.

This is different from the current implementing Regulation where sending monthly reports is not obligatory but something that the Member State responsible for unemployment benefits can request.

Question: Does the Presidency's proposal allow for the Member State of last activity to require the beneficiary to stay or to be present in its territory in order receive benefits from that state?

The Presidency considers there are no changes in substance in the presented compromise proposal as regards the rights and obligations laid down for unemployed person receiving unemployment benefits from the state of last activity in accordance with Article 65. In particular, the requirements of stay or to be present in its territory are a matter for the relevant applicable national legislation.

Question: Will the Presidency’s proposal to introduce a 6 months’ uninterrupted affiliation period not lead to seasonal workers being left without access to unemployment benefits?

As to the principle of equal treatment and the prohibition of discrimination, this is to ensure that all persons to whom the Regulation applies shall enjoy the same rights and have the same obligations under the social security legislation as the persons in a comparable situation. A seasonal worker enjoys the same rights as persons residing in the Member State of work according to Article 65(2) last subparagraph as he or she is entitled to benefits in that Member State of work even if the work has been for less than the proposed 6 uninterrupted months. At the same time, a seasonal worker might chose to enjoy benefits as a worker in its Member State of residence in accordance with Article 65(2) first and second subparagraph, provided that the competent Member State’s national legislation grants unemployment benefits for a period that has been shorter than six uninterrupted months. The purpose of the proposed affiliation period of 6 months is to share the responsibility between Member States and cannot, in our view be viewed as discriminatory as such.

Question: How is the provision in Article 65(3b) of the basic Regulation, which refers to aggregation of periods completed in the State of residence with periods completed in the State of last activity or States of previous activities, to be applied?

Paragraph 3b clarifies that unemployed persons applying for unemployment benefits in their State of residence, once the export period has ended, should have completed periods of insurance within the reference period of the state of residence aggregated with periods completed in the Member State of the last activity and other Member States of other previous activities.

This paragraph is to ensure that unemployed persons can continue receiving the benefits that they are entitled to also in their Member State of residence as if they had completed all periods in that State, provided that work has been carried out in that State and can be aggregated with work carried out in other Member States.

Paragraph 65 (3b) is applicable under the double condition that the wholly unemployed person has 1) completed periods of insurance, employment or self-employment under the legislation of the state of residence, aggregated with periods carried out in other Member States and 2) he or she decides to seek work in the Member State of residence. This puts a time and geographical limit to the provision as work shall have been carried out in the state of residence and as aggregation is done for the purpose of acquiring and retaining the rights to benefits. Therefore, the periods of insurance, employment or self-employment shall have been completed within the reference period laid down in the Member State of residence and in accordance with the legislation of that Member State.