

GMS Flash Alert

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European Union – ECJ Rules on Social Security in Case of Mariners

The European Court of Justice (“ECJ” or “Court”) ruled in the case *C-631/17 SF v Inspecteur van de Belastingdienst* that mariners who work on board a ship flying a flag of a third country are covered by social security in their country of residence.¹

The case concerns a mariner who resides in Latvia and who is employed by a company in the Netherlands. The mariner works onboard a ship flying the Bahamas flag and sails over the German part of the continental shelf of the North Sea.

Although the ECJ ruled that the competent country for social security is the country in which the mariner in this case resides, **this decision has broader implications for cross-border workers.**

WHY THIS MATTERS

The implications of this decision go beyond what this means for mariners. The Court’s ruling changes the interpretation of applicable law for social security for workers who work outside of the EU, and who reside in an EU country, and their employers are located in another EU country.

Until this ruling was delivered, the interpretation of these working arrangements rested on a perception that the competent country for social security was the country in which the employer is located. This interpretation stems from the old EC Regulation 1408/71 on coordination of social security and is by and large supported by the case law. However, the Court now finds that this interpretation cannot be maintained under new EC Regulation 883/2004 on the coordination of social security.

The effect of this ruling means that the employers in the EU must register and comply with the social security legislation in every EU country where their employees reside when the employees work in non-EU countries. This is a significant change, as the employers until now complied only with the social security legislation in the country where they are located. This change may present a significant administrative burden to the employers whose employees reside in several EU countries and work outside the EU.

Court Case in Detail

“SF” is a Latvian national residing in Latvia. From 13 August until 31 December 2013, he was working as a steward for a transportation company (a Dutch “B.V.”) based in the Netherlands. SF worked on board a ship flying the flag of the Bahamas, which sailed over the German part of the continental shelf of the North Sea. SF did not find that he was liable for social security in the Netherlands during this time period.

The ECJ made the following important arguments in this case:

1. Even though the mariner works in a non- EU country, the fact that he resides in one EU country and his employer is located in another EU country is a sufficient link that allows the application of EC Regulation of 883/2004.
2. The social security legislation in the country of SF’s residence applies according to article 11 (3)(e) in EC Regulation 883/2004. According to this article, the legislation in the country of residence applies ‘to any other person’ who otherwise is not covered by article 11 (3) (a-d) in EC Regulation 883/2004. ‘Any other person’ should not be interpreted strictly. This provision is therefore not limited only to apply to economically inactive persons, as it appears that a general perception is that article 11 (3)(e) in EC Regulation 883/2004 is intended only to cover economically inactive persons.
3. The general perception that article 11 (3)(e) in EC Regulation 883/2004 only applies to economically inactive persons is confirmed in the case *C-308/14 EU Commission v the U.K.* where the Court held that this provision covers in particular economically inactive persons. This is no longer a valid interpretation. The Court explained in the present case that the broad formulation of article 11 (3)(e) in EC Regulation 883/2004 combined with the objective of the coordination rules calls for a broad interpretation regarding the application of this provision.
4. The ECJ noted that the EU Practical Guide published by the Administrative Commission² and whose objective is to provide guidelines for the interpretation of the coordination rules in EC Regulation 883/2004 is not a legally binding document. As such, the Court is not bound to follow the views represented in the Practical Guide. The views represented in that Guide show that article 11 (3)(e) in EC Regulation 883/2004 covers only economically inactive persons.

KPMG NOTE

In general, EC Regulation 883/2004 applies when there are at least two EU member states involved. EC Regulation 883/2004 applies to situations where the work is performed outside of the EU, as long as the worker and the employer are situated in two different member states. In such case, the worker is covered by social security in the country of residence.

EU employers must comply with the social security legislation in each member state where their employees reside when the employees work in a non-EU member state. This means that when an employee carries an A1 certificate for social security which states that he is covered by social security in the country where his employer is located, the social security shifts to the country of his residence when he works in a non- EU member state. This situation commonly occurs for multi-state workers, business travelers, etc.

It is therefore important to emphasize that the outcome of this case does not only affect shipping and offshore industry, it also applies to all other sectors that display the same pattern: employer is situated in a member state, worker resides in another member state and works outside of the EU.

FOOTNOTES:

1 For text of the case and the Court's conclusion, [click here](#).

2 See "[Practical Guide on the Applicable Legislation in the European Union \(EU\), the European Economic Area, and in Switzerland](#)."

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Annual Conference on EU Social Security Law 2019" in Trier, Germany

DATE & TIME: 20-21 May 2019

LOCATION: ERA Conference Centre, Metzger Allee 4, Trier, Germany

Amongst other panels, come hear the author of this *Flash Alert*, Daida Hadzic, present on "Brexit preparedness — how to prepare your organisation for the mobility and social security implications."

For more information, [click here](#). *(Please note this is a third-party (non-governmental, non-KPMG) website. Provision of this link does not represent an endorsement of this site by KPMG.)*

Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in the Netherlands:



Daida Hadzic

Director

Tel. + 31 6 5324 54 599

Haidzic.Daida@kpmg.com

The information contained in this newsletter was submitted by the KPMG International member firm in the Netherlands

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