

GMS Flash Alert

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European Union – ECJ Rules on Social Security during Successive Postings

On 20 May 2021, European Court of Justice (ECJ) ruled in a case (no. C-879/19¹) concerning whether a person who works for more than 12 months in the territory of one EU member state falls under rules for social security for multi-state employees.

If a person is posted from one European Union (EU) member state to another EU member state, then social security coverage must be determined applying the rules for posting. If the conditions for posting are not met, the person is then covered by social security in the country where the work is performed.

WHY THIS MATTERS

This ruling offers more clarity about the distinction between posted employees and multi-state employees in the context of social security in the EU.

The ECJ is sending a signal that the EU rules for social security for multi-state workers are to be interpreted with care and applied more strictly than has been the case thus far in many EU member states. This can lead to a more restrictive application of the rules for multi-state workers in future.

Whether an employee is considered a multi-state employee or a posted employee can mean a difference in terms of which country's rules on social security apply, what the cost of social security is for the employer and employee, and what the coverage is with regards to social security benefits for the employee.

Background

About the Case

A Polish national residing in Poland had a single employment contract with a company whose registered office is in Poland. The employment contract was issued on a fixed-term basis from 20 October 2006 to 31 December 2009.

During the employment contract, the employee worked in France from 23 October 2006, in the U.K. from 5 November 2007 to 6 January 2008, then again in France from 7 January 2008. Each of the working periods in France exceeded 12 months, while the working period in the U.K. lasted only two months.

The Polish social security institution and, later, the Polish Court (*Sąd Najwyższy*) determined that the working pattern described above does not fall under the provision for multi-state workers in the EU regulation² for social security. The case was forwarded to the ECJ.

Highlights from ECJ Considerations

Some of the ECJ's most important considerations:

- During an employment contract of around three years and two months, the employee worked in France for three years and each working period in France exceeded 12 months.
- Employees can fall under the provision for multi-state employees when work in the territory of one EU member state does not exceed 12 months.

MEIJBURG & CO. NOTE

The outcome of this case is not surprising because the employee's working periods in one EU member state lasted too long to be considered as work in multiple states. However, the considerations of the ECJ are interesting and important, mainly for two reasons:

- a) **Clarification** – We now have clarification that multi-state workers must change the country of work at least once during a 12- month period;
 - b) **Question Raised** – Can these considerations impact employees who, from a safety perspective (COVID-19), extend their work in the territory of one EU member state?
1. **A distinction between work in one and work in two or more EU member states** is a recurring subject for discussion between EU member states in fora for social security.

In this case, it is important to note that the ruling was delivered based on the old EU Regulation³ for social security where a posting was limited to 12 months. This means that the Regulation defined temporary work as work that did not exceed 12 months in the territory of one EU member state.

This is the time limit that the Court relied on when determining if the employee in this case is a multi-state employee.

In the new EU Regulation⁴ for social security the posting is limited to 24 months; so, one can ask whether the ECJ would reach the same result if the employee in question did not exceed 24 months working in the territory of one EU member state.

MEIJBURG & CO. NOTE (cont'd)

In order to distinguish between work in one member state and work in two or more member states, some EU member states have interpreted article 14 (10) in Regulation (EC) 987/2009⁵ as saying that a person must change the country of work at least once during a 12-month period in order to be considered as working in multiple states.

It will be interesting to see if the 12-month limit will be applied uniformly across the EU following this ruling, or if the ECJ will be asked whether this can apply under the new EU Regulation for social security.

2. **EU member states have generally been lenient in accepting that the applicable law for social security does not change when employees are prevented from working abroad due to COVID-19 restrictions.** However, the restrictions are being lifted, more people are being vaccinated, testing capacity is easily available across Europe, and yet companies and employees are announcing that remote working has become a permanent part of working.

It is therefore interesting not only to see how the EU member states will make a distinction between work in one member state and work in two or more member states, but even more interesting to see when they will begin to calculate 12 months of work in the territory of one EU member state.

In conclusion, employers and employees should pay attention to this and similar developments in the interpretation of social security legislation and particularly the distinction between work in one member state and work in two or more member states. The difference between being considered an employee who works in one EU member state and an employee who works in two or more EU member states can mean a difference in terms of which country's social security applies, a difference in the amount of cost for social security, and last but not least a difference in the coverage and the amount of social security benefits.

FOOTNOTES:

1 European Court of Justice, [Format Urządzenia I Montaż Przemysłowe v Zakład Ubezpieczeń Społecznych w Warszawie](#), C-879/19 (20 May 2021).

2 Article 14 (2)(b) in the [Regulation \(EEC\) 1408/71 for coordination of social security systems](#). This Regulation was replaced from 1 May 2010 by the [Regulation \(EU\) 883/2004 for coordination of social security systems](#). The Court applied Regulation 1408/71 because the case concerns work performed from 2006-2009.

3 See footnote 2.

4 See footnote 2.

5 [Regulation \(EC\) 987/2009 for implementation of the Regulation \(EC\) 883/2004](#). Article 14 (10) stipulates that when determining applicable law for social security for a multi-state employee, the authorities shall take into account the situation projected for the following 12 calendar months.

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