



Global Employer Services Social security

Employers to pay EU social security on non-EU activities of employees

In principle, EU Regulation 883/2004 determines the applicable social security legislation for cross-border situations within the European Union.

However, the Court of Justice of the European Union (CJEU) recently rendered a noteworthy judgment, which may have consequences for certain cross-border employment situations where the employee is working outside of the EEA or Switzerland, while maintaining clear links within these territories.

The CJEU case: facts and decision

A Latvian national residing in Latvia worked as a seafarer for a company established in the Netherlands. He performed professional activities on board a vessel flying the flag of a non-EEA country (Bahamas) and sailing outside European Union waters.

Holding the individual liable for the payment of Dutch social security contributions on these activities, the Dutch authorities issued the Latvian national a notice of assessment regarding his income tax and social insurance contributions.

The CJEU concluded that such situation falls within the Regulation's scope, based on the fact that:

- The individual concerned is a European Union citizen residing in an EU Member State;
- His employer is established in another EU Member State.

In addition, the Court determined the applicable social security legislation on the basis of Article 11 (3) (e), i.e. the social security scheme in the Member State of residence.

The Court appeals to the residual rule of Article 11, (3) (e), since the employment situation at hand does not fall under any other rules on applicable legislation foreseen by the Regulation.

Taking the above into account, the Court concludes that the residence state rule of Article 11 (3) (e) applies to each person (whether economically active or not) finding themselves in a situation that is not specifically governed by other provisions in Regulation 883/2004.

EU social security liabilities on non-EU activities

The judgment's scope goes beyond maritime trade and the transport industry, affecting all sectors and industries.

Consequent to this case law, the residence state's statutory social security scheme will apply to professional activities performed outside the territory of the EEA or Switzerland if:

- The worker resides in an EEA Member State while performing activities abroad;
- The employer is established in another EEA Member State;
- The employment situation at hand does not fall under any other rules foreseen by Regulation 883/2004.

This also means that similar situations, where a voluntary social security scheme is usually applied, may be impacted in that statutory social security contributions will become due. For example, an employee residing in The Netherlands and working on behalf of a Belgian employer, while subject to the Belgian statutory social security scheme, will become subject to the Dutch statutory social security scheme when being assigned to Singapore. Such situations however, usually trigger an affiliation to a voluntary social security scheme, such as the Belgian Overseas Social Security Scheme (OSS).

One remaining question is whether this case law impacts employment situations with activities performed in treaty countries, where the bilateral Treaty on social security would allow the employer to apply for a Certificate of Coverage.

Deloitte is closely following up with the Belgian authorities on further details as to how and when they will concretely implement this case law.

Deloitte's recommendation

Although this case law has unexpected and impactful consequences, the affected population seems to be marginal. This is mainly because employees working outside the EEA will also move their residence outside the EEA, or will otherwise have their residence where their assigning employer is

established. In these cases, mandatory affiliation in the residence state would not be applicable.

Although a small population may be affected, Deloitte nonetheless recommends a screening of all existing employment situations within companies that may be impacted by this new case law, as there may be significant consequences with respect to the applicable social security scheme, employer cost and employee benefits.

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