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MEETING DOCUMENT

From: To:	General Secretariat of the Council Delegations
N° Cion doc.:	15642/16
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)

In view of the Social Question Working Party meeting of 8 February, Delegations will find attached the contributions received from the CZ and LV delegations.

Comments and questions of CZ delegation on the Presidency proposal on revision 883/04

WPSQ meeting on 8 February 2023

Pluriactivity:

Value of contracts –When number of services and income was used in previous text, it did not refer only to MS of establishment. Current proposal limits the assessment only to this state. In CZ view the aim of the provision should be not only to determine that a company does not have a seat in a given MS, but also to assist to find out where the seat actually t is. Therefore, the collection of information about the services and contracts should not refer only to MS of establishment but to all states of activity.

Moreover, there may be the same difficulties with attribution of value of a contract to individual MS as with turnover. Example: a company A, established in MS A concludes contract on provision of a service to company B established in MS B, but on the territory of MS C (director of A needs an interpreter from B to attend a meeting in C) – to what MS this value should be attributed?

Reference to payment of taxes – What type of taxes is concerned? Does the reference to taxation mean that the way how tax authorities assess the company should be taken into account without further individual assessment by the soc. sec. institution? Before authorities declare a companie´s tax domicile in a MS, there usually is thorough assessment of different criteria, that we are not familiar with and, therefore, it is hard do determine the value and impact of this criteria. Is it possible to give some more detailed explanation how this criteria is to be used and with what effect?

Use of office space – In practice, the companies including brass plate companies have some office space even with some minimal activity in a MS they claim to have a seat in, therefore, we do not see big added value in referring to it, as it would be fulfilled in majority of cases. It may even be counterproductive as indicating that having an office in use is an important factor.

Prior notification:

Regarding the period of 30 days used in Art. 15, how it is supposed to be counted, in other words at what moment it starts? Is it a moment at the beginning of first 3 days

posting - meaning that for the following 30 days, every posting needs to be notified and only after 30 days expired, short posting without notification is possible? This would mean that every employee of the same employer may have different beginning of this period which may bring complications. May be a reference period of calendar month could be considered.

Could it be confirmed, that 3 days may be used in one row but also can be separated (three postings for 1 day) during one 30 days?

Unemployment benefits:

Comments and question on Art. 65(2):

The proposed requirement of uninterrupted period of 6 months of insurance/employment in order to receive UB from the State of last activity effectively disqualifies the category of seasonal workers from having recourse to the unemployment scheme of the State of last activity. This is despite the fact that seasonal workers often repetitively rotate periods of work in the State of activity with periods of unemployment in the State of residence between the seasons. This result, in our point of view, violates the principle of equal treatment and results in the discrimination of seasonal workers who – unlike regular workers – due to the nature of their work would never be able to obtain UB from the social scheme to which they contribute.

Moreover, such regime would undermine the financial equilibrium between MSs, because while the MS of activity would systematically collect contributions from the wages of seasonal workers, it would be for the MS of residence to bear the costs their UB and healthcare between the seasons. Under the current rules, this inbalance is at least partially compensated by the reimbursement of UB (although limited in scope), however, the SE proposal of Art. 65 does not contain any refund mechanism at all and therefore makes it even worse.

CZ wonders whether SE PRES discussed this aspect with the CLS in terms of compatibility of the proposal with the principle of equal treatment and non-discrimination?

Question on Art. 65(3b):

CZ is uncertain about the part of the provision 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:

„Where a wholly unemployed person as referred to in paragraphs 3 or 3a decides to seek work in the Member State of residence and he or she completed periods of insurance, employment or self-employment under the legislation of that Member State, aggregated with periods completed in the Member State of the last activity and other Member States of other previous activities, he or she may...“

We wonder how this provision is to be applied in situation where – although insurance periods in the MS of residence do exist - no aggregation of these periods needs to be applied or even cannot be applied.

Example 1:

Mr X is a Czech resident. He worked 2001 – 2021 in CZ, during 2022 he worked as a cross-border worker in DE. After becoming unemployed in January 2023, he was granted German UB and had them exported to CZ for some time. Once the export ended, he claims Czech UB and relies on Art. 65(3b). However, since the Czech legislation only requires 12 months of insurance, this requirement is met by taking into account merely German insurance periods – there is no need to aggregate Czech insurance period completed in 2021 or before. Does this prevent paragraph 3b from application?

Under the Czech legislation, the reference period in which insurance periods are considered for the UB entitlement is 2 years (in other words, a jobseeker must have completed 12 months of insurance in last 2 years before becoming unemployed – periods completed before 2 years cannot be considered). In example 1, it would be theoretically possible to aggregate the Czech insurance period, as it still falls within the national reference period, however it is not needed for opening entitlement to UB (to this end, Art. 6 lais down that periods are taken into account to the extent necessary).

How would paragraph 3b be applied, if the insurance completed in the State of residence were only outside the reference period provided under that legislation?

Example 2:

Mrs Y is a Czech resident. She worked 2001 – 2018 in CZ, during 2019 - 2022 she worked as a cross-border worker in DE. After becoming unemployed in January 2023, she was granted German UB and had them exported to CZ for some time. Once the export ended, she claims Czech UB and relies on Art. 65(3b). However, since the Czech legislation provides for 24 months reference period, her Czech insurance falls outside this reference period and cannot be taken into account – not even theoretically. Does this prevent paragraph 3b from application?

Comments of LV delegation

LV delegation's comments on the Presidency steering note "Revision of Social Security Coordination", SQWP meeting on 08 February 2023 (Cion doc.: 15642/16, doc. WK 1232/23)

Latvia appreciates the steering note and the efforts of the Presidency towards compromise solution. However, although Latvia could be quite supportive regarding the 3 day period within 30 days as exemption, there are still concerns regarding Applicable Legislation and Unemployment Benefits chapters.

B. Applicable Legislation Chapter

Latvia is not convinced a fair balance between the objective to fight fraud and error and the necessity to avoid unnecessary administrative burden has been reached. In fact, social security administrations, when applying the list of factors as provided under proposed Article 14 (5a), Regulation 987/2009, are likely to find themselves in a weaker position than expected by the General Approach. We would prefer to return to the relatively stable criterion of **turnover**. The place where the undertaking uses office space – actually will be an address, with little practical possibility to check if real physical meetings take place there. There are almost no cases where this factor will not be fulfilled.

Also, value of contracts – this factor will not always correspond to real income gained, as not all contracts are fulfilled as intended initially or remain unamended. In addition, now the approach seems to look at the income only in the country of establishment. Such limitations would reduce administrative burden, however, MS will be poorly equipped with information and tools to determine the applicable law properly and to assess claims for PDA-1. Reference to payment of taxes also requires some clarification. Even brass plate companies pay some taxes usually.

Regarding the proposal for Article 15, Regulation 987/2009, on the exception for 3 days within a period of 30 days, it could be accepted by our side. However necessary clarifications need to be provided to the questions flagged by the CZ delegation.

We should reiterate once again, Latvia is not satisfied with prior notification concept in general, as it will put additional burden in businesses and administrations. In addition, it will add to uncertainties when differentiating from situations under Directive 2014/67. Situation of seafarers also remains unclear to our understanding. Can we expect a transition period for prior notification?

C. Unemployment Benefits Chapter

Art. 65(2):
The proposed requirement of an uninterrupted six-month period of insurance is too long. We would prefer a 3-month period. That would be more favourable for seasonal and temporary work. MS of residence would bear all the costs in these cases, without receiving any contributions mostly. Currently there is a reimbursement mechanism in place, and although exist limitations.

Latvia is also interested in answers to CZ delegation question and given examples regarding proposed Art. **65(3b)** about the part of the provision which refers to aggregation of periods completed in the MS of residence with periods completed in the MS of last activity or MS of previous activities. Currently the competence issues are not clear enough to implementing agency.

Art. 65(3a):
Latvia does not support a fragmented export system and the provision of 10 or more month's export of benefits to workers in cross border situations having 24 uninterrupted months of insurance completed (also most recently). In our view, there is no evidence-based justification for such rapid increase in the period of benefits export.

As regards the Chapter of unemployment benefits, Latvia supports 3 months of uninterrupted affiliation period and not more than 6 months of export for any category of unemployed. Even this solution would be a difficult compromise for us requiring additional expenditures and changes in the national legislation. Overall, Latvia does not see how current Unemployment Benefits chapter with many different qualifying periods will add to simplification goal.