



SEGURANÇA SOCIAL

APPLICATION FOR THE WORKER TO BE SUBJECT TO THE PORTUGUESE SOCIAL SECURITY LEGISLATION

INFORMATION

General Rules [Article 11 of Regulation (EC) no. 883/2004]

In accordance with Regulation (EC) no. 883/2004, a person carrying out an activity as an employed or self-employed person in the territory of a Member State shall be, in principle, subject to the legislation of that Member State, even if he/she resides in the territory of another Member State or if the employer has its registered office or place of business in the territory of another Member State [Article 11(3)(a)]. Therefore, if a Portuguese employer hires a person in another Member State to work there, the worker shall be subject to the legislation of that Member State.

However, in the case of civil servants and similar personnel, the general rule is that they shall be subject to the legislation of the Member State to which the administration employing them is subject [Article 11(3)(b)].

In what concerns employees and self-employed persons who normally carry out an activity on board a vessel at sea flying the flag of a Member State, they shall be subject to the legislation of that Member State [Article 11(4)].

Special rule/posting of employees [Article 12(1) of Regulation (EC) no. 883/2004]

However, if an employee who carries out an activity in the territory of a Member State, on behalf of an employer to which he/she normally depends on, is sent by that employer to work in the territory of another Member State, he/she shall continue to be **fully** subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another worker who has completed his/her posting period.

Essential conditions for the workers to continue to be subject to the legislation of the posting Member State are the following: **the posting employer must regularly and continuously carry out a substantial part of his activities in the territory of this Member State and the posted workers must maintain a direct relationship with the sending company and continue to be under the supervision and direction of this company.**

The worker must have the **document A1** ⁽¹⁾, issued by the District Centre of the Social Security Institute, P.I. (ISS, I.P. - Instituto da Seguranga Social, I.P.), must be covered by an insurance policy against accidents at work and must also have the European Health Insurance Card (EHIC) for medical assistance in the event of sickness or a non-occupational accident.

⁽¹⁾ The application for this document issuing must be submitted **before the start date of the employee's posting period in the other Member State.**

In the case of staff hired by a company to be posted in another Member State, Regulation (EC) no. 883/2004 continues to be applied when, simultaneously:

- the direct relationship between the company and the worker still exists during the posting period;
- the company concerned normally carries out its activity in the territory of the first Member State and usually employs its staff there.

Situations in which the special posting rule, established in Article 12(1) of Regulation (EC) no. 883/2004, does not apply

When the conditions provided for in Article 14 of Regulation (EC) no. 987/2009, in conjunction with Decision no. A2 of 12 June 2009 (ACSSS) are not met and when:

- the company to which the worker is posted places him/her at the disposal of another company in the State where the first company is located;
- the worker is posted to a Member State and then is placed at the disposal of a company located in another Member State;
- the worker is hired in one Member State in order to be sent by a company located in a second Member State to a company located in a third Member State.

Special rule/ "posting" of self-employed persons [Article 12(2) of Regulation (EC) no. 883/2004]

A person who normally carries out an activity as a self-employed person in the territory of a Member State, who goes to carry out a **similar** activity in another Member State, shall also continue to be **fully** subject to the legislation of the first Member State, provided that the anticipated duration of such activity does not exceed 24 months. The criterion for determining whether the activity carried out as a self-employed person in another Member State is "similar" to the self-employment activity normally carried out, is based on the real nature of the activity and not on the way an activity performed by an employee or self-employed person is eventually qualified by the other Member State.

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INFORMATION (continuation sheet)

Special rule/Pursuit of activities in two or more Member States [Article 13(1)(a)(b) and (2)(a)(b) of Regulation (EC) no. 883/2004]

Employees

A person who normally carries out an activity as an employed person in two or more Member States shall be subject to:

- the legislation of the Member State of residence if he/she carries out a substantial part of his/her activity in that Member State, or if he/she is employed by various companies or employers whose registered office or place of business is in different Member States;
- the legislation of the Member State in which the registered office or place of business of the company or employer that employs him/her is situated if he/she does not carry out a substantial part of his/her activities in the Member State of residence.

Self-employed persons

A person who normally carries out an activity as a self-employed person in two or more Member States shall be subject to:

- the legislation of the Member State of residence if he/she carries out a substantial part of his/her activity in that Member State;
- the legislation of the Member State in which the centre of interest of his/her activities is situated if he/she does not reside in one of the Member States in which he/she carries out a substantial part of his/her activity.

Therefore, in order to determine the legislation applicable to the employee or self-employed person it is necessary to check certain elements, such as, whether a **substantial part of the activity** is carried out in the Member State of residence, the place where the **centre of interest of the activities carried out by the self-employed person** is situated, when they are carried out in two or more Member States, etc. For this reason, and **in order to avoid difficulties for the persons concerned, the implementing regulation [Regulation (EC) no. 987/2009] establishes that the applicable legislation shall be determined, without delay, on a provisional basis, by the designated institution of the Member State of residence.**

In Portugal, the designated institution in this context is the International Coordination Unit (UCI - Unidade de Coordenação Internacional) of the Social Security Institute, P.I. (ISS, I.P. - Instituto da Segurança Social, I.P.), which is thus responsible for the determination of the applicable legislation, on a provisional basis, establishing the due communication with the designated institution(s) of the other State(s).

Hence, when an activity is normally carried out by an employee or self-employed person in two or more Member States, the application for the worker to be subject to the Portuguese Social Security legislation must be **previously** submitted to the ISS, I.P. District Centre of the place where the employer's registered office or the self-employed person's place of business is situated, so that the application is immediately forwarded to the designated institution – **the international Coordination Unit (UCI) of the Social Security Institute, P.I. (ISS, I.P.)** – that will examine it, taking into account the relevant provisions of the EU Regulations, with a view to determining the applicable legislation as soon as possible.

Special rule for the contract staff of the European Communities [Article 15 of Regulation (CE) no. 883/2004]

Contract staff of the European Communities may opt to be subject to the legislation of the Member State in which they are employed, to the legislation of the Member State to which they were last subject or to the legislation of the Member State whose nationals they are. The option right shall take effect from the date the employment contract is signed.

If the person concerned opts to be subject to the Portuguese social security legislation, the respective application must be submitted at the ISS, I.P. District Centre where he/she was registered in last place, or at the Lisbon District Centre of the ISS, I.P., if he/she has never been registered in Portugal.

APPLICABLE LEGISLATION

Regulation (EC) no. 883/2004, of 29 April, published in the Official Journal of the European Union L 166, of 30 April 2004, as amended by Regulation (EC) no. 988/2009, of 16 September, published in the Official Journal of the European Union L 284, of 30 October 2009.

Regulation (EC) no. 987/2009 of 16 September, published in the Official Journal of the European Union L 284, of 30 October 2009.

Regulation (EU) no. 1231/2010, of 24 November, extending Regulations (EC) no. 883/2004 and no. 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, published in the Official Journal of the European Union L 344, of 29 December

Regulation (EU) no. 1244/2010, of 9 December, published in the Official Journal of the European Union L 388, of 22 December 2010.

Regulation (EU) no. 465/2012, of 22 May, published in the Official Journal of the European Union L 149, of 8 June 2012.

Decision no. A2 of the Administrative Commission for the Coordination of Social Security Systems (ACSSS), of 12 June 2009, published in the Official Journal of the European Union C 106, of 24 April 2010.

Decision of the EEA Joint Committee no. 76/2011, of 1 July, published in the Official Journal of the European Union L 262, of 6 October 2011.

Decision of the EU-Switzerland Joint Committee no. 1/2012, of 31 March, published in the Official Journal of the European Union L 103, of 13 April 2012.

Practical Guide on the applicable legislation in the European Union, the European Economic Area and in Switzerland, which is available on the European Commission website: <http://ec.europa.eu/social/main.jsp?catId=868>.