

THE RESPONSABILITY OF PUBLIC INSTITUTONS IN COORDINATING SOCIAL SECURITY SYSTEMS IN THE EU

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ABSTRACT: *In the context of globalization, migration represents an ever-growing phenomenon. The creation of a common labour market at the level of the European Union represents a complex and lengthy process that entails major responsibilities for both European and national institutions, in coordinating the legislation and the systems of EU member states. Given the development and growth of labour force migration, the regulations at EU level and at the level of member states in the field of coordinating social security systems are extremely necessary.*

The first regulations in the field of coordination of social security systems have been adopted in the year 1958. Since then, certain alterations have been made in order to modernize and manage in a coordinated manner national social security systems, through the adoption of Regulation no. 883 of 2004 on the coordination of social security systems and Regulation no. 987 of 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems. The consolidated versions of these two regulations establish certain attributions and responsibilities for the institutions competent in the field, in coordinating social security systems, including the requirement to comply with the regulations concerning personal data.

KEYWORDS: *social security; public institutions; responsibility; security; personal data.*

JEL Code: *K31, K37*

1. INTRODUCTION

Globalization and Europeanization have an extremely strong impact on the continuously increasing migration phenomenon. The creation of a single labour market entails also a correlation of the social security systems. Ensuring equal treatment in the field of social security for migrant workers is a major responsibility for the effective coordination of the social security systems of the Member States of the European Union.

A social security system is a set of regulations by which the states provide for their citizens, in certain situations and conditions, social protection. The citizens of the states, in exchange for some material contributions, can benefit from pensions, unemployment benefits, medical assistance, allowances for temporary incapacity for work, etc. (Contineanu, p. 187).

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Due to the fact that the European Union is made up of Member States with different legal systems, including for the social security systems, it has been necessary to coordinate them so that the rights of all citizens are respected, even when they move, establish and work on the territory of other states. It is important to mention that the regulations of the European Union do not aim at establishing a unique social security system but a strict coordination of the states' social security systems. Thus, each Member State establishes on the basis of its own regulations the types of social benefits, the way they are calculated, the conditions for granting them and the types of contributions. At the level of the European Union, only the common principles and rules that must be respected by all institutions involved in the field of social security are established, even in the case when national provisions are applied. The purpose of coordinating social security systems is to ensure that no injuries are inflicted upon the persons who exercise their right to free movement and the right to stay on the territory of the EU countries, when national laws are applied. Under these circumstances, a worker cannot be put in a more disadvantageous situation in relation to a national of the respective Member State (Continued, p.188).

At the level of the European Union, since 1958¹, there have been regulations regarding the coordination of social security systems. Over the years, several changes have been adopted in order to expand the personal domain or regulatory material. The increase in the number of countries that joined the European Union has also led to the emergence of new regulations that improve and complement the basic principles by cooperation between administrative institutions with responsibilities in the field of social security² (ILO Report, 2010). In 1971 there were adopted two regulations³ on the application of social security schemes through which the previous regulations were repealed. Against the background of the enlargement of the European Union and the amplification of the phenomenon of migration, it has been necessary to update the regulations in the field of social security in order to face the new challenges. Thus, Regulation (EC) no. 883/2004 on the coordination of social security systems and Regulation (EC) no. 987/2009 establishing the procedure for the implementation of Regulation (EC) no. 883 / 2004. Starting with 2009 the regulations regarding the coordination of social security systems have undergone modifications in order to coordinate the national provisions of the Member States in this field.⁴

¹ Regulation no. 3/1958 and no. 4/1958 on the social security of migrant workers entered into force in 1959.

² Coordination of Social Security Systems in the European Union: Explanatory report on Regulation (EC) no. 883/2004 and its Implementing Regulation (EC) no. 987/2009, International Labor Office, ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe. - Budapest: ILO, 2010

³ Regulation (EEC) no. 1408/71 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community and Regulation (EEC) no. 574/72 laying down the procedure for implementing Regulation no. 1408/71.

⁴ Regulation (EC) no. 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) no. 883/2004 on the coordination of the social security systems and determining the content of its annexes; Regulation (EU) no. 1244/2010 of the Commission of 9 December 2010 amending Regulation (EC) no. 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) no. 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) no. 883/2004; Regulation (EU) no. 465/2012 of the European Parliament and of the Council of 22 May 2012 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; Regulation (EU) no. 1224/2012 of the Commission of 18 December 2012

One of the principles underlying the coordination of social security systems is the "principle of good administration", which concerns the obligation of the institutions of the Member States to cooperate with the other institutions and to provide mutual assistance for the benefit of the citizens. The legal provisions in force provide for an enhanced cooperation that refers to the information that must be brought to the attention of citizens, to the problems and errors solving and the rapid provision of information.

2. THE INSTITUTIONAL SYSTEM FOR COORDINATING SOCIAL SECURITY SYSTEMS

For a responsible accomplishment of the coordination of social security systems, a complex institutional system consisting of the Administrative Commission, the Technical Commission for data processing, the Audit Board, the Advisory Committee for the coordination of social security systems has been created at EU level.

The Administrative Commission for the coordination of social security systems consists of a representative of the government of each Member State, assisted if necessary by specialized advisers. A representative of the European Commission who is a consultant participates in its meetings. The European Commission, through its services, provides the Secretariat of the Administrative Commission.

According to art. 72 of the basic Regulation⁵, the Administrative Commission has the task of addressing any administrative or interpretative questions that result from the provisions of the regulations regarding the coordination of the social security systems or from any agreement or understanding, without bringing any prejudice to the right of the persons, institutions or authorities to resort to the procedures and jurisdictions of the Member States; to assist the application of Community law by facilitating the transfer of information on the exchange of experiences and good administrative practices; to achieve enhanced cooperation between institutions and Member States in solving special problems of certain categories of persons; carrying out cross-border cooperation actions in the field of coordination of social security systems; encouraging the use of new technologies, by adapting and modernizing the procedures necessary for the exchange of

amending Regulation (EC) no. 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) no. 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) no. 883/2004; Regulation (EU) no. 517/2013 of the Council of 13 May 2013 adapting certain regulations and decisions in the fields of free movement of goods, free movement for persons, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, transport policy, energy, taxation, statistics, trans-European networks, judiciary and fundamental rights, justice, freedom and security, environment, customs union, external relations, foreign, security and defense policy and institutions, by reason of the accession of the Republic of Croatia; Regulation (EU) no. 1372/2013 of the Commission of 19 December 2013 amending Regulation (EC) no. 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) no. 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) no. 883/2004; Regulation (EU) no. 1368/2014 of the Commission of 17 December 2014 amending Regulation (EC) no. 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) no. 883/2004 on the coordination of social security systems and of Regulation (EU) no. 1372/2013 of the Commission amending Regulation (EC) no. 883/2004 on the coordination of social security systems and Regulation (EC) no. 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) no. 883/2004.

⁵Art. 72 of Regulation 883/2004 on the coordination of social security systems, consolidated version

information and by achieving the inter-institutional flow of information through electronic systems, taking into account the evolution of data processing in each Member State; adopting common structural rules for electronic data processing, taking into account security issues and establishing modalities for the operation of the common part of the respective services; elaborating relevant proposals to the European Commission in order to improve and modernize the legislation; determining the factors to be considered when creating the accounts of the costs incurred by the institutions of the Member States on the basis of the Audit Board.

Within the Administrative Commission, a Technical Commission for data processing has been set up; this makes structural proposals for the management of electronic data processing services, for security and for the way standards are applied. This commission prepares reports and issues reasoned opinions before decisions are made by the Administrative Commission. The Technical Commission collects the relevant technical data and performs the necessary studies and actions in order to fulfil the tasks it has or have been assigned to it by the Administrative Commission; it presents reasoned reports and opinions and provides the direction of the pilot projects for the use of electronic data processing services and operating systems using data processing services.⁶

Within the Administrative Commission an Audit Board is also established and its mission is to check the methods of establishing and calculating the annual average costs presented by the Member States. The Audit Board collects the necessary data and performs the calculations to establish the annual situation of the debts of the Member States; presents periodic reports on the results of the implementation of the regulations; provides important and necessary data and reports for the decisions of the Administrative Commission; carries out actions and studies on the issues transmitted by the Administrative Commission.⁷

Another institution is the Advisory Committee for the Coordination of Social Security Systems, which includes for each Member State a government representative, a representative of the workers' union organizations, a representative of the employers' organizations and for each of them an alternate member is appointed from each Member State. The members and the alternate members shall be appointed by the Council. The Advisory Committee is empowered at the request of the European Commission, the Administrative Commission or on its own initiative to examine the general issues, the basic ones or those that result from the implementation of the regulations and to formulate opinions for the Administrative Commission, making proposals for their revision.

At the level of the Member States, their authorities have the obligation to communicate the information on the measures for the implementation of the Regulation but also on the modification of the national legislation that could affect the application of the Regulation; to offer each other professional support and to act in the application of European regulations the same way as in the case of the application of their own legislation, having the obligation to inform each other and to cooperate for the correct application of the regulation. Usually, administrative assistance is free. Also, the

⁶Art. 73 of Regulation 883/2004 on the coordination of social security systems, consolidated version

⁷ Art. 74 of Regulation 883/2004 regarding the coordination of social security systems, consolidated version

authorities and institutions of the Member States can communicate directly with each other but also with the persons involved or their agents.

3. INSTITUTIONAL COOPERATION

In accordance with the principle of good administration, institutions have the obligation to respond to all requests by sending to the persons involved any information necessary for the exercise of the rights conferred, within a reasonable time. Equally, the persons involved have the obligation to inform the institutions of the competent Member State and the Member State of residence of any changes in their personal or family situation, which infringe the rights of the different benefits provided by the law. Failure to comply with the information obligation may be punished proportionately in accordance with national law. The measures must be equivalent to those applied in similar situations so that applicants do not find it impossible or difficult to exercise the rights conferred by European law. If there are difficulties in interpreting or applying European law, the competent institutions of the Member States or of the Member State of residence of the person concerned shall contact the institutions of the Member States involved to identify a solution, within a reasonable time. If a solution cannot be identified, the Administrative Commission will be notified. The applications or documents submitted cannot be rejected by the authorities, institutions or jurisdictions of a Member State on the grounds that they have been drafted in the language of another Member State, if this is recognized as the official language of the European Union.⁸

4. DOCUMENTS ISSUED IN A STATE OTHER THAN THAT OF RESIDENCE

Documents issued by the institution of a Member State, which certify for the status of a particular person, as well as the supporting documents on the basis of which the documents were issued are accepted by the institutions of the other Member States as long as these documents have not been withdrawn or declared invalid by the Member State where they were issued. If there is any doubt as to the validity of a document or the accuracy of the factual elements on which its content is based, the institution of the Member State receiving the document shall request the issuing institution the necessary clarifications and, if applicable, the withdrawal of that document. The issuing institution shall review the reasons for issuing the document and withdraw it, if necessary. If there are doubts about the information provided by the data subject, the validity of the document or supporting documents or the accuracy of the factual elements on which the information contained therein is based, the institution from the place of residence, at the request of the competent institution, may, as far as possible, check the information or the document in question. If no agreement is reached between the institutions concerned, the case may be brought to the attention of the Administrative Commission by the competent authorities not earlier than one month from the date on which the institution that received the document submitted its request. The Administrative Commission tries to reconcile the views within six months from the date on which the case was notified.

⁸ Art. 76 of Regulation 883/2004 regarding the coordination of social security systems, consolidated version

If there is a divergence of opinion between the institutions or authorities of two or more Member States, regarding the applicable law, the persons concerned enter, provisionally, under the legislation of one of the Member States, the order of priority being determined by the following criteria:

- The legislation of the Member State where the person actually pursues his employment or self-employment, if these activities are carried out in a single Member State;
- The legislation of the Member State of residence in which the person performs part of the activity or in which the person is neither employed nor self-employed;
- The legislation of the Member State the application of which was first requested if the person performs an activity or activities in two or more Member States.

If there are differences of views between the institutions or authorities of two or more Member States regarding the identification of the competent institution in the provision of benefits in cash or in kind, the person concerned can claim benefits on a provisional basis as if there was no such divergence from the institution of the place of residence. If the person does not reside in the territory of one of the Member States concerned, he can claim from the institution he first submitted the request. If the institutions do not reach an agreement, then, the case is settled by the Administrative Commission within 6 months from the receipt of the case.

If it is established that the applicable law is not that of the Member State in which the provisional membership was established, or that the institution which granted the provisional benefits was not competent to do so, the competent institution will be considered retroactively competent as if the difference of views had not existed, at the latest from either the date of provisional membership or of the first provisional granting of the benefits concerned. If necessary, the institution identified as competent and the one which provided the benefits on a provisional basis or received provisional contributions shall settle the financial situation of the person concerned. The benefits in kind provided provisionally by an institution will be reimbursed by the competent institution.

If a person is entitled to receive a benefit or is in the situation of being forced to pay a contribution and the competent institution does not have all the information about the situation in another Member State, necessary for the definitive calculation of the amount of the benefit or contribution, the institution at the request of the person in cause awards the benefits or calculates the contribution on a provisional basis based on the information it holds and shall make the recalculation based on the supporting evidence or documents subsequently received.

5. EXCHANGE OF DATA BETWEEN THE PARTIES INVOLVED

The exchanges of information between the authorities, institutions and persons of the Member States are based on the principle of public service, of rapid delivery and accessibility, on the principle of active assistance including e-accessibility, especially for the elderly or the disabled. The institutions will exchange or provide as quickly as possible the data needed to establish the rights and obligations of the persons concerned. The data must be transmitted either directly between the Member States, through the institutions or indirectly via the liaison bodies. If a person has mistakenly submitted documents, information or claims to an institution from a Member State other than the

competent one, he or she has the obligation to resend the information to the competent institution with mention of the date on which the documents were initially submitted, the date being important to that institution. If the data has been transferred indirectly, via the liaison body of the Member State of destination, the time limits for responding to claims will start from the date the liaison body received the claim, as if it had been received by the institution in that Member State.⁹

For the correct implementation of the regulation, the competent institutions and the data subjects have the obligation to provide information and to mutually cooperate. The Regulation provides for a number of obligations both for the Member States, institutions and for the data subjects, namely, the obligation to inform the data subjects about the amendments brought to the European legislation. In accordance with the principle of good administration, the institutions must answer all questions addressed within a reasonable time and provide the persons concerned with the information necessary to exercise their rights. Informing the data subjects about their rights and obligations is the basis of a sound relationship with the competent authorities and institutions of the Member States. The information should include guidance on administrative procedures but also special rules regarding the formalities to be followed for different types of benefits or the applicable law.

When collecting, transmitting or processing personal data, Member States must ensure that data subjects exercise their rights regarding the protection of personal data and the free movement of such data in accordance with the relevant Community provisions. In accordance with European law, the relevant institutions send the information and issue the documents to the interested persons, promptly, within the time limits set by the national law of the respective state. The competent institution has the obligation to notify the applicant residing or staying in the territory of another Member State either directly or through the liaison body of the Member State of residence or stay. In case of refusal of benefits, this will indicate the reasons for refusal, the remedies and the periods allowed for appeal. The copy of the decision shall be sent to all the institutions involved.

Also the data subjects have the obligation to inform the institutions of the competent Member State and of the Member State of residence, as regards any changes in the personal or family status that could affect the right to benefits. They must also submit to the competent institution the documents, the information and the evidence necessary to determine their situation or that of their families in order to establish or maintain their rights and obligations and to determine the applicable law and the obligations arising therefrom.

If the obligation to inform is not complied with, the appropriate measures may be applied in accordance with the national law of the Member State, but the measures must be equivalent to those applicable in similar situations and must not make it impossible or difficult to exercise the rights of applicants.¹⁰

⁹Art. 2 Regulation (EC) no. 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) no. 883/2004 on the coordination of social security systems.

¹⁰Art. 3 Regulation (EC) no. 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) no. 883/2004 on the coordination of social security systems.

6. FORMAT AND METHOD OF EXCHANGING DATA

The Administrative Commission shall determine the structure, content, format and detailed arrangements for the exchange of documents and structured electronic documents. The regulations provide that the transmission of data between institutions or liaison bodies is to be carried out by electronic means, either directly or indirectly, through access points, in a common secure framework through which both confidentiality and exchange of data protection can be guaranteed. The practical arrangements for sending information, documents or decisions by electronic means to the person concerned are established by the Administrative Commission.

Electronic communication is a fast and reliable way to exchange data between Member States' institutions. By electronic data processing, the procedures should be accelerated for the benefit of all involved. The data subjects should benefit from all the guarantees provided by the European provisions regarding the protection of natural persons with regard to the processing and the free movement of personal data. Electronic information exchanges facilitate and accelerate the decision-making process for calculating and paying benefits; allow efficient verification of data; offer a flexible and easy-to-use interface between different systems; can accurately provide statistical data.

The Commission has established data processing services, each state being responsible for managing the assigned share of data processing services in accordance with the provisions on the protection of natural persons with regard to the processing and free movement of personal data. Transmission of data between institutions or liaison bodies are carried out through the Electronic Exchange of Social Security Information - EESSI,¹¹ directly or indirectly, through the access points in a common secure framework that can guarantee the confidentiality and protection of the data exchange. These services must contain all necessary safeguards to prevent alterations, disclosures or unauthorized access to registration. Although it is no longer necessary to use printed documents, the information must exist in a format that can be read immediately. When an electronic document is transferred from one social security institution to another, appropriate security measures shall be taken in accordance with the provisions on the protection of natural persons with regard to the processing and free movement of personal data. The Administrative Commission establishes the practical ways to send information, documents or decisions by electronic means to the person concerned.

An electronic document sent or issued by an institution may not be rejected by any authority or institution in another Member State, on the grounds that it has been received by electronic means, if the receiving institution has declared that it can receive electronic documents. The copying and recording of these documents is supposed to be a correct

¹¹EESSI is an institutional database with public access, which is used for sending documents, as well as an online directory. It allows the exchange of social security information via structured electronic documents, the use of a secure communication protocol and the use of TESTA secure network; it has 1-5 access points for each EU country. Allows online transaction facilities for handling the European Health Insurance Card. It involves the mandatory use of a central node, hosted by the European Commission, for interstate distribution and for the flexible use by EU countries of a reference implementation software (RI) developed by the Commission.

and accurate reproduction of the original document or a representation of the information to which it refers, if there is no evidence to the contrary.

An electronic document is considered valid if the computer system in which it was registered contains the security elements necessary to prevent any modification, disclosure or unauthorized access to the registration. Where an electronic document is transferred from one social security institution to another, appropriate security measures shall be taken in accordance with Community provisions on the protection of natural persons with regard to the processing and free movement of personal data.

7. CONCLUSIONS

The drafting of legislation in the field of social security systems coordination has constituted and is still a very complex aspect, given the constraints and characteristics of the different social security systems in the Member States of the European Union.

The obligations established by legislation both for the European institutions with responsibilities in the field and for the Member States, national institutions and even the citizens have the purpose of facilitating their access to social security benefits and the exercise of their rights on equal terms, decision-making transparency and access to information compliant with the rules on personal data protection.

Updating rules and their correlation with the ever growing phenomenon of migration is possible and necessary and, even though the result is not necessarily the desired one, considerable benefits can be identified from the perspective of citizens.

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