



NEW EU RULES ON SOCIAL SECURITY: HOW DOES IT WORK

Background:

The European Parliament adopted on 18th April a proposal for a Regulation containing new rules for the determination of the social security regulations applicable to air crews (pilots and cabin crew). This decision from the Parliament confirms and follows the General Approach position adopted by the Council on 2 December 2012. The Council is expected to confirm the General Approach position in the meeting of 21 June (t.b.c.), opening the way for its formal adoption and publication in July this year.

What is this about?

- Today, the EU considers that pilots should pay social security in their place of residence (if they have substantial activity there) or in the place where their company has its registered office. This allows some companies to employ pilots in different Member States and pay social security in only one country instead of paying social security in the different countries where the pilots are based.
- What will the new law do:
 - All pilots, whether self-employed or employed (directly or through temporary agencies), will pay social security in the Member State where their home base is located.
 - A company will not be able to pretend that all pilots working in different Member States should pay social security in the place where the airline's registered office is located. They will now have to pay social security where the pilot has the home base.
 - Companies will have to follow the social security related procedures and deadlines when transferring crews from one home base to another home base in a different Member State.
- What the new law will not do?
 - This will not solve all the problems. The new rule does not deal with tax law, agency work or self employment as such. The objective of the new law is to set a clear rule for the determination of the place where air crews should pay social security.
 - The new law does not prevent pilots from seeking employment in other Member State or change home base into another Member State. The new rule does not govern this issue. Therefore, employers can continue to ask their pilots to change bases to another Member State (if this is allowed by the applicable laws and collective agreements). However, the change in home base must now be declared

to the competent social security authority and respect the necessary procedures and delays.

- The EU law on social security is designed to ensure that the citizens moving from one Member State to another do not lose rights. However, there are differences in the benefits received in one Member State and the other. This is especially true for pension rights. Member Associations should be able to inform their members about the consequences linked to changes in home bases.

What will the new Regulation say?

- The Basic Regulation on the coordination of social security systems will have a new article specifically dedicated to aircrews. This article reads:

4a. An activity as an aircrew member performing air passenger or freight services shall be deemed as an activity pursued in the Member State where the home base, as defined in Annex III to Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, is located.

Before this, pilots were considered to work in as many countries as they would be flying over or to. Pilots were allowed to pay social security in their place of residence if the pilot also had substantial work activity in that country (substantial activity was difficult to define).

If there is no substantial activity in the country of residence, the pilot would pay security in the place where the employer has its registered office.

All this was difficult to apply for aircrews. With the new regulation pilots who regularly work from one single home base (or changing basis in the same country) will no longer be considered as working in two or more Member States but in the Member State where they are based. The home base will determine where social security is paid.

- The regulation implementing the above regulation will add a new paragraph to article 14 to address situations where aircrew members truly work in 2 or more member states. This new article reads:

For the purposes of Article 13(1) [workers working in two or more Member States] of the basic Regulation, an employed aircrew member normally pursuing air passenger or freight services in two or more Members States shall be subject to the legislation of the Member State where the home base as defined in Annex III to Council Regulation (EEC) No 3922/91 is located."

The improvement related to the old Regulation is that, for crew members truly working in two member states, the substantial activity will not have to be calculated.

When will the new rule apply?

- The rule will enter into force 20 days after its publication.
- All contracts concluded after the entry into force of the Regulation have to comply with the new rules.

- The contracts concluded before the entry into force can continue to apply the previous rules for a **maximum period of 10 years**. However:
 - The “**relevant situation**” shall remain unchanged: This is an open sentence left to the interpretation of the national authorities. Does the relevant situation change if the pilot changes home base? Each national authority will evaluate what this means.
 - Any party (the pilot or the airline) can ask for the application of the new law which then will automatically apply.
 - The request shall be submitted within 3 months of the entry into force of the regulation
 - Requests made after the 3 months following the entry into force will be enforced on the first day of the following month.

Where is the legislative procedure now?

- The European Parliament has followed the Council’s General Approach, which means that the Regulation can be adopted directly by the Council (“in first reading,” without needing a second vote from the Parliament) if the Council confirms its General Approach
- The Ministers of Labour meet on of 21 June. This is the most probable date for the formal adoption of the Regulation. The new Regulation will then be published in July or September 2012.