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Global Social Security Newsletter

June 2013

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Introduction

Welcome to the first edition of our global social security newsletter, bringing you updates on changes in the social security regimes of various countries across the PwC network. The first edition provides updates on changes announced in the period from 1 January 2013 to 31 May 2013. Going forward, the newsletter will issue on a quarterly basis.

We hope that you enjoy reading the updates and as always, please feel free to contact us should you have any queries or require further clarification on any of the issues raised in the newsletter.

Regards

Bart Elias
Social Security Leader - Europe, Middle East, Africa and India

Please visit our dedicated website for details on the social security regimes in place in over 100 countries in the PwC network: *www.pwc.com/socialsecurity*

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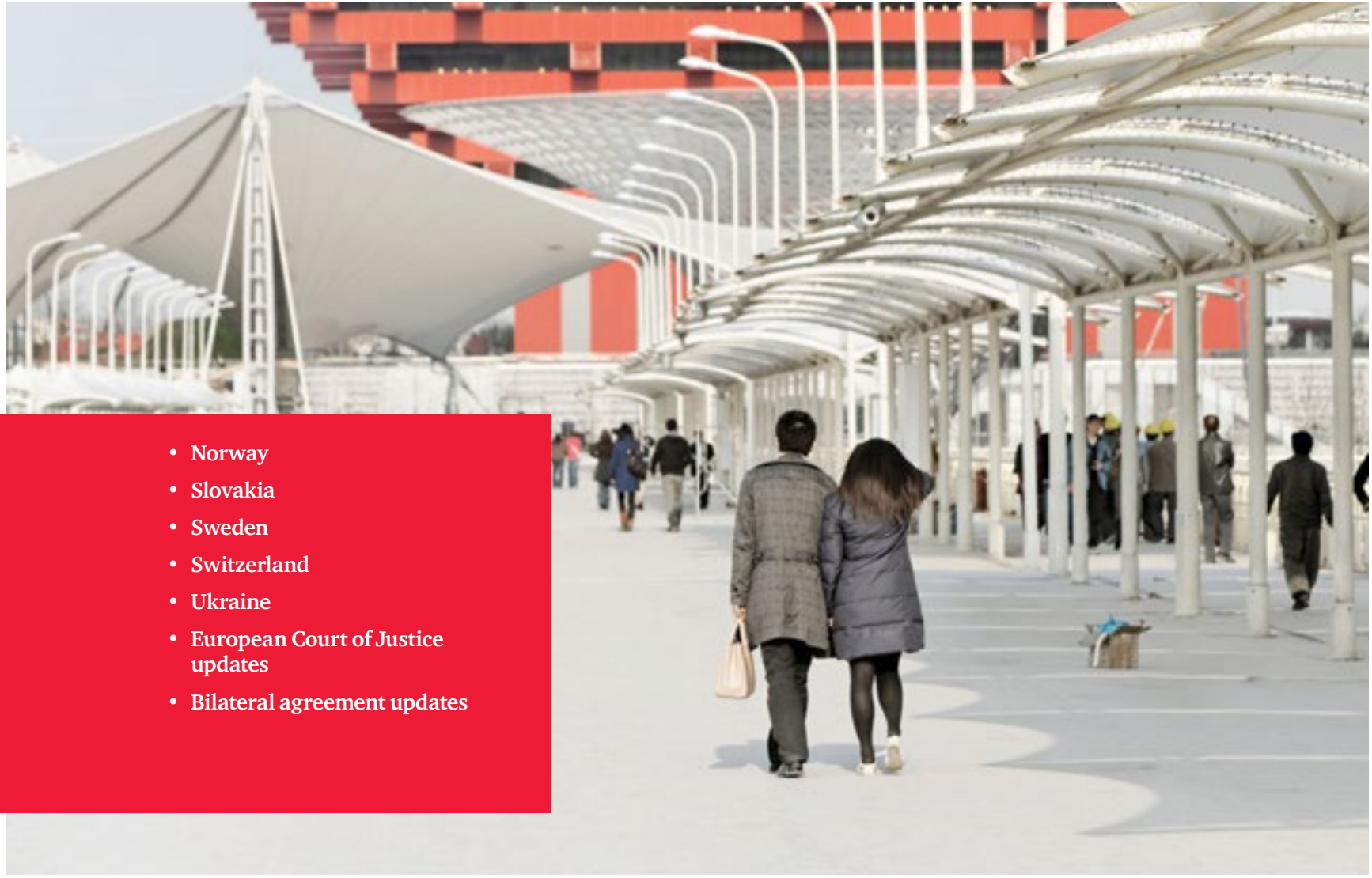
Countries & topics



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Your country information

Belgium

1. "Limosa" (Commission vs Belgium , ECJ C-577/10)

The decision concerns the cross-border reporting system introduced in 2007 for the registration of foreign nationals who are temporarily working in Belgium, named "LIMOSA." The aim of the notification was to address social welfare fraud and to simplify certain administrative requirements.

In a judgement handed down on 19 December 2012, the ECJ stated that the notification system runs counter to the free movement of services (art. 56 TFEU). Please refer to "ECJ updates" for an overview of the case.

2. The Programme Act of 27 December 2012

Belgium's Programme Act of 27 December 2012 allows national courts, public social security institutions and manpower inspectors to declare that the Belgian social security legislation applies even if an A1 form has issued by another national social security authority.

If one of the above finds that there has been abuse with respect to the reference rules for the purpose of deciding the applicable social security legislation, then Belgian social security law applies as of the first day on which the conditions for it to apply are fulfilled.

According to these provisions, there is deemed to be abuse wherever the European coordination provisions are applied to a situation in which there has been failure to comply with the eligibility conditions with the aim of avoiding the effects of Belgium's social security laws. Note that it is up to the inspector or institution to prove the abuse cited by them.

It is as yet unclear how these new provisions will be applied in practice. Furthermore, it is possible that these provisions will be challenged at a European level since an A1 form issued by another member state can only normally be reviewed by that member state in accordance with procedures outlined in EU regulations and it must be considered valid by the authorities of the 'host' country.

Czech Republic

In the Czech Republic, there are two compulsory state schemes with separate legislations and separate conditions – the State Health insurance scheme and the State Social security scheme. In 2013, there is a maximum annual cap to the assessment base for calculating contributions to the social security scheme, i.e. CZK 1,242,432. Cap for the payment of insurance premiums for public health insurance applied in the past was cancelled for three years as of 1 January 2013.

Denmark

From 1 January 2013, there has been an adjustment in the level of benefits for persons covered by Danish social security.

Danish legislation has been subject to minor changes in terms of employer contributions. A 12% charge has been placed on accidents at work compensation benefits, which is payable by an employer. An additional 17 % charge has been placed on contributions to the Danish labour market fund for occupational diseases. It has been assumed that this charge will ultimately be covered by employers.

Ghana

Although Ghaneian social security laws do not exempt expatriate employees from making social security contributions, the practice had been that if such employees could prove that they were making similar contributions in their home country then they would be exempt from Ghaneian social security contributions. The stance of the regulatory body has since changed. In this regard, expatriate employees are now required to make social security contributions, unless they are specifically exempt, with the deadline given by SSNIT to amend contracts without social security clauses by 30 June, 2013. SSNIT further intends to embark on an exercise on 2nd July, 2013 to prosecute employers found to be in breach of this clause.

Your country information

Greece

Laws 4093/2012, and 4111/2013 provide for the following changes to the Greek social security regime:

1. Insured salaried-income

As of 1 January 2013, the maximum threshold for insured salaried-income for old (subject to social security up to 31.12.1992) and new (subject to social security after 1.1.1993) insured employees has been harmonised at a gross salary level of €5,543.55.

2. Repeal of Employers' Contributions

As of 1 November 2012, employer contributions in respect of the Organisation for Labour Housing have been removed.

3. Increase of age retirement thresholds

As of 1 January 2013, with some exceptions, the retirement age threshold for individuals insured under social security funds managed by the Ministry for Labour, Social Security and Providence and the Bank of Greece have been increased by 2 years.

Any already established retirement rights for individuals who retired before 31 December 2012 remain in place.

4. Pensions

As of 1 January 2013, cuts will be imposed to all pensions that exceed €1,000 per month as follows:

- For pension from 1.000,01 to 1.500,00 Euros – 5% cut
- For pension from 1.500,01 to 2.000,00 Euros – 10% cut
- For pension from 2.000,01 to 3.000,00 Euros – 15% cut
- For pension over 3.000,00 Euros – 20% cut

However, the new laws ensures that in all of the above cases, the amount of the lowest minimum pension, after the cuts, cannot fall below €1,000.01, €1,425.01, €1,800.01, €2,550.01 for each respective category.

Ireland

The weekly employee PRSI exemption threshold of €127 has been removed with effect from 1 January 2013. In summary, for a single individual earning €50,000 per annum, this is equivalent to a reduction in take home pay of 1%.

PRSI is to be extended to all other sources of income (e.g. dividends, interest, rental income) for certain public servants from 1 January 2013. Currently, such public servants who are liable to PRSI on employment income are exempt from a PRSI liability on other sources of income, if certain conditions are satisfied.

In addition, the draft Social Welfare and Pensions (Miscellaneous Provision) Bill 2013, published in May 2013, provides that an individual who is a beneficial owner of a company or who is able to control 50% or more of the ordinary share capital of the company will be liable to Class S self-employed contributions on remuneration from the company.

Malta

Maltese security rates have increased from 1 January 2013 as follows:

1. Salaried persons

Social security contributions amount to 10% of the employee's basic weekly wage, payable by both the employee and the employer subject to a minimum and maximum contribution. The maximum contribution varies depending on the age of the insured person - for employees born before 1 January 1962, the current maximum weekly contribution is €33.90 and for employees born on or after 1 January 1962, the current maximum weekly contribution is €40.32.

2. Self-employed persons

Social security contributions amount to 15% of the self-employed/ self-occupied person's annual net income earned during the previous year and are also subject to a minimum and maximum contribution. The maximum contribution varies depending on the age of the person - for persons born before 1 January 1962, the current maximum weekly contribution is €50.85 and for persons born on or after 1 January 1962, the current maximum weekly contribution is €60.47.

Your country information

Mongolia

The overall social insurance contribution rate 10% still applies, however, the allocation to different insurance schemes has changed as follows:

Social insurance scheme	Rates to 31 Dec 2012:	Rates from 1 Jan 2013:
Pension insurance	7%	7%
Benefits insurance	0.5%	0.8%
Health insurance	2%	2%
Unemployment insurance	0.5%	0.2%

Netherlands

1. Transfer of social security withholding obligation to Dutch host company

In principle, tax and social security contributions should be withheld by the formal employer of an employee. In case of a secondment to the Netherlands this is usually the home country employer (foreign company). In the past it was already possible to transfer the withholding obligation of wage tax to the host country employer (Dutch company) under certain conditions, however, this was not possible with respect to social security withholdings. This was an issue for companies who seconded employees to the Netherlands and who became subject to Dutch social security on the basis that they did not have an A1 statement or Certificate of Coverage.

From 1 January 2013 it is possible to transfer the withholding obligation of Dutch social security contributions from the home country employer (foreign company) to the host country employer (Dutch company). In order to transfer this obligation the employee should be seconded within a group of companies. Please note that the authorities have stated that the withholding obligation cannot be transferred in salary split situations (when an employee has multiple employment contracts in multiple countries). The transfer of the withholding obligations for tax and social security contributions should be requested with the wage tax inspector of the Dutch company.

2. Multiple employment contracts

Each formal employer, Dutch or foreign, who employs a person subject to Dutch social security is required to withhold social security contributions and pay these amounts to the authorities via a wage tax return. For employees with two or more employers, it was possible that the contributions were paid in excess of the maximum annual rate of €9,000. After the calendar year the authorities would refund the excess contribution pro-rated per employer.

From 1 January 2013, the Dutch authorities will no longer refund the excess amount of contributions for the employee's insurances and health insurance levy. This will result in increased costs for the employers, especially if an employee has a formal salary split within a group of companies (salary split with separate contracts per country). A salary split with three formal employers can result in a total cost of three times the maximum contribution amount when the employee earns more than the capped income with each individual employer. Please note that this change in legislation can result in increased monitoring of the Dutch authorities on the registration of foreign employers for the payment of social security premiums in the Netherlands.

3. Working on the continental shelf or working as a seafarer on a ship

The Dutch Supreme Court referred a case to the ECJ concerning a Dutch resident individual employed by a Swiss company and working on a ship registered in Panama. Under EU regulations, an employee who is working on a ship flying the flag of an EU Member State is deemed to work in that Member State, however, this would not appear to apply in this case.

The Dutch Supreme Court has asked the ECJ to confirm whether the employee was working outside the EU because the ship was flying a non-EU flag or whether the employee was working inside the EU because the activities were performed while 'floating above' the continental shelf of the EU.

If the answer of the ECJ is that the employee is working inside the EU, the Dutch Supreme Court has asked the ECJ to clarify whether EU regulations apply during the days work duties are exercised 'above' the continental shelf of an EU Member State or also whether such regulations apply during the period the ship is outside the EU.

The response of the ECJ may have major consequences on the social security position of employees working on vessels in offshore industries like towing vessels, lifting vessels, pipe-laying vessels, etc.

Your country information

Norway

1. Implementation of EU social security regulations

Regulation (EU) No 465/2012 (amending Regulation (EC) No 883/2004 on the coordination of social security systems) and the implementing Regulation (EC) No 987/2009 entered into force in Norway (as well as in Iceland and Liechtenstein) on 2 February 2013.

Persons who are working in Norway on 2nd February 2013 are not affected by the new rules if their situation remains unchanged and they do not elect to be subject to the new legislation. If an individual living in Norway elects to be treated by the new rules, they should contact NAV International.

2. New regulations on parental benefit

The period for parental benefit will be altered from 1 July 2013. The new benefit period will be 49 weeks (present 47) for full benefit, or 59 weeks (present 57) at 80 % of full benefit.

Slovakia

With effect from January 2013, amendments to the health insurance and social insurance laws have been introduced. The aim of these amendments is to unify the maximum assessment bases for insurance contributions in order to achieve an increase in contributions. The maximum assessment base for all types of social insurance (except for injury insurance of 0.8% that is not capped) and health insurance contributions has been set at five times the average salary in Slovak economy two years ago (i.e. in 2013, the average salary of 2011 is taken into account). For 2013 it is set at EUR 3,930. Although the rates of health and social insurance contributions remain unchanged (i.e. 13.4% for employee and 35.2% for employer), the change in the maximum assessment base resulted in a significant increase of the contributions for employees with the monthly income exceeding approximately EUR 3,000.

For self-employed individuals, the minimal assessment base for the purpose of social and health insurance has been set at 50% of the average salary in Slovak economy two years ago. At the same time, in the following years (from 2013 to 2015) the assessment base of self-employed individuals will be increased by changing the coefficient for calculating the assessment base of social and health insurance contributions.

Your country information

Sweden

The old age pension commission in Sweden has recently suggested changes to the old age pension ages based on its review of the sustainability of the Swedish pension system. Following the review, the commission has suggested a system where the retirement age rises in line with increased life expectancies. Retirement age increase goals include raising the early retirement age from 61 to 63 by 2019 and the target retirement age from 65 to 68 by 2038. The commission also suggests that older employees are allowed to work until age 69 as from 2016. Further, additional studies on the premium pension system and investment rules for AP pension funds (buffer funds for the state pension) are expected to be finalized before the end of May 2013.

Switzerland

1. Equity-based reward schemes

As of January 1, 2013 new tax rules on equity-based reward schemes came into force in Switzerland. The new rules contain instructions on the liability to Swiss tax of equity-based reward schemes in international cases, for example where an individual is granted or exercises a share option while tax resident of Switzerland or where the individual was tax resident in Switzerland during the vesting period of the option. In general, the Swiss tax authorities will "pro-rate" the liability to Swiss tax of the equity reward scheme by reference to time spent working in Switzerland during the vesting period.

For social security purposes, such cases with an international element will need to be examined on a case-by-case basis to determine the extent of the charge to Swiss social security. A "pro-rated" liability to Swiss social security may apply if a ruling is obtained from the Swiss Federal social security authorities.

2. New social security agreement with the US

The Swiss Federal Council has approved and submitted to parliament a new social security agreement (SSA) with the United States, according to a May 15 release from the Swiss government.

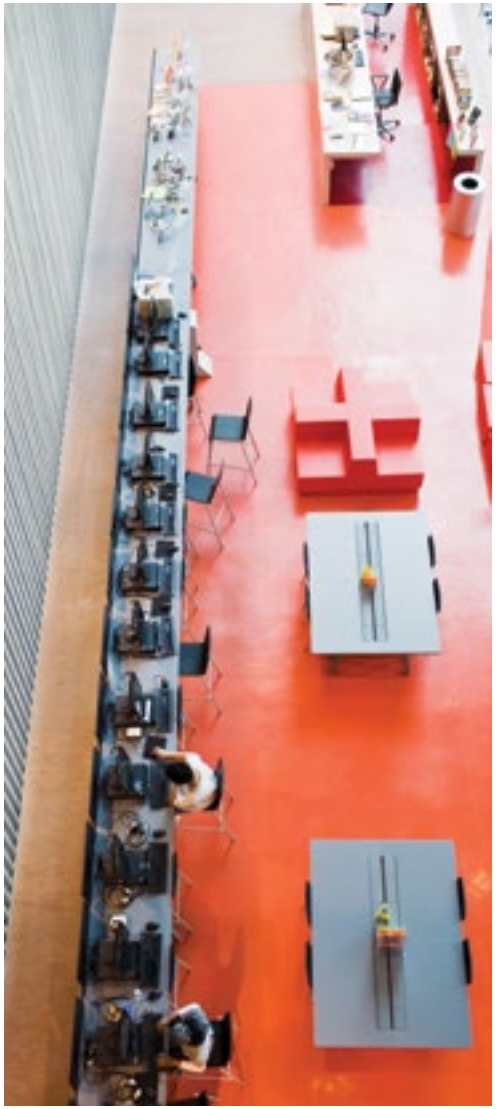
Signed in Bern on December 3, 2012, the SSA is expected to enter into force in the first half of 2014, if the United States completes its ratification procedures by then, according to the release.

Ukraine

The maximum monthly basis for the Unified Social Contribution (USC) will amount to UAH 19,499 (USD 2,439.50) from 1 January 2013 and a further UAH 20,706 (USD 2,590.50) from 1 December 2013. As a result, the USC will increase as follows:

- Employee's monthly USC (3.6%) will amount to:
  - from 1 January 2013 – min UAH 41.29 (USD 5.2) to max UAH 701.96 (USD 87.80);
  - from 1 December 2013 – min UAH 43.85 (USD 5.5) to max UAH 745.42 (USD 93.30).
- Employer's monthly USC (based on approximate 38% rate) will amount to:
  - from 1 January 2013 – min UAH 435.86 (USD 54.50) to max UAH 7,409.62 (USD 927);
  - from 1 December 2013 – min UAH 462.84 (USD 57.9) to max UAH 7,868.28 (USD 984.40).

In addition to the above, from 1 January 2013 employers can receive a partial (50%) or full refund of the Unified Social Contributions paid by employer provided that certain conditions are met.



Your country information

European Court of Justice updates

Jeltes (Case C-443/11)

The Court of Justice of the European Union (ECJ) has provided new guidelines on how the transitional rules from Regulation 1408/71 to Regulation 883/2004 are to be applied.

The case involved three frontier workers who were living in Belgium and Germany but working in the Netherlands. Two of the individuals, one living in the Belgium and one in Germany, became unemployed prior to 1 May 2010 and claimed Dutch unemployment benefits in accordance with Regulation 1408/71.

Both individuals subsequently took up new employment or commenced self-employment activities after 1 May 2010 when Regulation 883/2004 came into force, but with a continuing right to Dutch unemployment benefits (under Dutch rules), if they became unemployed once more. Both individuals subsequently became unemployed after 1 May 2010 and claimed Dutch unemployment benefits. Their claims were rejected by the Dutch authorities, as Regulation 883/2004 provides that unemployment benefit is governed by the legislation in the country of residence (i.e. Belgium and Germany).

The ECJ ruled that under Regulation 883/2004 the individuals could not claim Dutch unemployment benefit. However, the ECJ was asked to decide whether or not the individuals could retain their rights to Dutch unemployment benefit under 1408/71 after 1 May 2010 under transitional rules.

The transitional rules in Regulation 883/2004 provide that a person is automatically covered by Regulation 883/2004 from 1 May 2010, unless an individual is covered under Regulation 1408/71, their situation remains "unchanged" and they do not elect to be covered under Regulation 883/2004.

The ECJ reached the following conclusions:

1. The transitional rules do not wholly consider the case unemployed frontier workers, but must be applied by analogy.

2. The term "unchanged situation" does not fall within the scope of the EU-interpretation. This means that each EU Member State may determine its own definitions according to national laws.

In summary, the ECJ ruled that it is for the national courts to establish whether frontier workers satisfy the conditions provided for in legislation to be able to claim resumption of payment of unemployment benefit which was paid to them in accordance with Regulation No 1408/71.

This gives rise to numerous uncertainties. In general the judgment implies that despite the fact that a person is transferred to new rules – typically on the date when such rules come into force – old coordination rules may yet be reapplied.

According to the Court, each Member State may determine the meaning of when the situation may be regarded as being "unchanged". This may give rise to substantial compliance difficulties, as national legislations must be scrutinized in order to apply the transitional rules correctly.

Format (Case C-115/11)

In the case of Format, the ECJ clarified that someone who works under consecutive employment contracts but in each case only in the territory of one member state for the term of that contract cannot be regarded as someone who 'performs activities in the territory of two or more member states' (within the meaning of article 14(2) of Regulation 1408/71), even if the employment contracts cite "the territory of different member states" as the place of employment.

By way of background, the employees of Format, a subcontractor established in Poland, were deployed on ongoing construction projects in various member states. Various full-time fixed-term employment contracts were signed. Each of these employment contracts stated that the place of employment were "building sites [...] in the territory of the European Union, according to the employer's instructions." However, the Polish social security authorities (ZUS) refused to issue an E101 form because they took the view that this case fell under the general rule (work state principle).

As stated above, the ECJ decided that such employees were not to be considered multi-state workers a separate employment contract was concluded for each project in each Member State. The ECJ stated the general principle that to determine whether or not an individual is considered a multi-state worker under EU regulations, account must be taken of the expected work pattern in the following 12 months.

Resulting from the case, the European Commission has updated the 'Practical Guide: The legislation that applies to workers' to include additional information and examples where activities are performed in alternation under the definition of multi-state worker.

Your country information

Partena (Case C-137/11)

A Belgian social security fund for self-employed persons, called Partena, made a Portuguese-resident director of a Belgian company together with the company liable for the payment of Belgian social security contributions for self-employed persons (RSVZ/INASTI contributions). This was on the basis that Belgian national legislation states that company officers of companies subject to Belgian tax are deemed to carry on a self-employed activity in Belgium.

In 2004, the Belgian Constitutional Court held that this clause was unconstitutional with respect to company officers carrying out their duties in Belgium; they could refute the presumption if they could show that their office was de facto and de iure unremunerated. However, the clause was upheld for officers of Belgian companies that that carry out duties outside Belgium, i.e., such individuals are deemed to carry on a self-employed activity in Belgium.

The ECJ held that this distinction violated EU rules. On the basis of this judgment, a 'foreign' company officer has to be given a chance to show that he does not carry on a (self-employed) activity in Belgium. To date, the National Institute for Social Insurance for the Self-employed has not yet taken any official position in this regard.

Limosa (Case C-577/10)

The decision concerns the cross-border reporting system introduced in 2007 for the registration of foreign nationals who are temporarily working in Belgium, named "LIMOSA." The aim of the notification was to address social welfare fraud and to simplify certain administrative requirements.

In a judgement handed down on 19 December 2012, the ECJ stated that the notification system runs counter to the free movement of services (art. 56 TFEU).

The ECJ accepted that Belgium's objectives could qualify as overriding requirements of general interest, justifying a barrier to the free provision of services. However, the ECJ held that the provisions of Belgian law were disproportionate to those objectives, as the notification requirementis not limited to cases where a check is required to determine whether tax and social security obligations have been met. Furthermore, very detailed information is required from the service provider without it necessarily being justified.

The judgment reveals that article 56 TFEU is not necessarily an objection to a system of prior notifications but does preclude a generalised notification requirement and the extensive information that has to be submitted in that connection.

Interestingly, the ECJ ruling applies to self-employed workers only and not to employees. A modified Limosa notification (for employees and self-employed) will commence in June.

Your country information

Bilateral agreement updates

Signed:

Austria – India	4 February 2013
India – Portugal	4 March 2013
Canada – France (revised)	14 March 2013
Belgium – Tunisia (revised)	28 March 2013
Germany – Uruguay	8 April 2013
Switzerland – Uruguay	11 April 2013
Canada – Serbia	12 April 2013

Entered into force:

Israel - Romania	1 January 2013
Australia - Latvia	1 January 2013
Luxembourg – Morocco	1 February 2013
Bulgaria – Serbia	1 February 2013
Luxembourg - Tunisia	18 February 2013
Korea – Spain	1 April 2013
Brazil - Germany	1 May 2013

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