



2024/1754

24.6.2024

RECOMMENDATION No 1/2024 OF THE SPECIALISED COMMITTEE ON SOCIAL SECURITY COORDINATION ESTABLISHED BY ARTICLE 8(1)(P) OF THE TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART,

of 5 June 2024

as regards further guidance on the implementation of the Protocol on Social Security Coordination to the Trade and Cooperation Agreement (the 'Protocol') concerning the interpretation of Article SSC.11 of the Protocol on the legislation applicable to detached workers and self-employed persons temporarily working outside the competent State [2024/1754]

THE SPECIALISED COMMITTEE ON SOCIAL SECURITY COORDINATION,

Having regard to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ⁽¹⁾ (the 'Trade and Cooperation Agreement'), and in particular Article SSCL74 of Annex SSC-7 to the Protocol,

Having regard to Article SSC.11 of the Protocol,

Having regard to Article SSC.14 of the Protocol and Articles SSCL5, SSCL6 and SSCL13 to SSCL18 of Annex SSC-7 to the Protocol,

Whereas:

- (1) Pursuant to Article 8(4)(c) of the Trade and Cooperation Agreement, the Specialised Committee on Social Security Coordination (the 'Specialised Committee') has the power to adopt recommendations in respect of all matters where that agreement so provides, acting in accordance with the conditions laid down in Article 10 of the Trade and Cooperation Agreement.
- (2) Pursuant to Article SSCL74 of Annex SSC-7 to the Protocol, the Specialised Committee may adopt further guidance on the implementation of the Protocol and its Annex SSC-7.
- (3) The provisions of Article SSC.11(1) of the Protocol, which provide for an exception to the general rule laid down in Article SSC.10(3)(a) of the Protocol, aim in particular to avoid, for workers, employers and social security institutions, the administrative complications which would result from the application of the general rule laid down in Article SSC.10(3)(a) of the Protocol where the period of employment is of short duration in a State other than the State in which the undertaking sending the worker has its registered office or a place of business or the State in which the self-employed person normally pursues his or her activity.
- (4) To this end, the first decisive condition for the application of Article SSC.11(1)(a) of the Protocol is the existence of a direct relationship between the employer and the worker it engages.
- (5) The protection of the worker and the legal security to which he or she and the institution with which he or she is insured are entitled require full guarantees that the direct relationship be maintained throughout the period of temporary work activity in the other State (period of detachment).
- (6) The second decisive condition for application of Article SSC.11(1)(a) of the Protocol is the existence of ties between the employer and the State in which it is established. The possibility of a period of detachment in the other State should therefore be confined solely to undertakings normally carrying on their business in the territory of the State whose legislation remains applicable to the detached worker; assuming therefore that the above provisions apply only to undertakings which ordinarily perform substantial activities in the territory of the State in which they are established.

⁽¹⁾ OJ L 149, 30.4.2021, p. 10.

- (7) Indicative periods for employed persons and self-employed persons should be specified without prejudice to a case-by-case evaluation.
- (8) There can no longer be any guarantee of maintaining the direct relationship if the detached worker is made available to a third undertaking.
- (9) It is necessary to be able to carry out, throughout the period of detachment, all the checks, in particular with regard to the payment of contributions and the maintenance of the direct relationship, required to prevent wrongful use of the abovementioned provisions, and to ensure that administrative bodies, employers and workers are suitably informed.
- (10) The worker and the employer should be duly informed of the conditions under which the detached worker is allowed to remain subject to the legislation of the country from which he or she has been sent.
- (11) The duty of mutual information and cooperation laid down in Article SSC.59(5) of the Protocol places a number of obligations on the competent institutions for the purpose of implementing Article SSC.11(1) of the Protocol,

HAS ADOPTED THIS RECOMMENDATION:

- (1) The provisions of Article SSC.11(1)(a) of the Protocol should apply to a worker subject to the legislation of a State (sending State) by virtue of the pursuit of an activity in the employ of an employer and who is sent by that employer to another State (State of employment) in order to perform work there for that employer.

The work should be regarded as being performed for the employer in the sending State if it has been established that this work is being performed for that employer and that there continues to exist a direct relationship between the worker and the employer that sent the worker.

In order to establish whether such a direct relationship continues to exist, assuming therefore that the worker continues to be under the authority of the employer which sent him or her, a number of elements should be taken into account, including responsibility for recruitment, employment contract, remuneration (without prejudice to possible agreements between the employer in the sending State and the undertaking in the State of employment on the payment to the workers), dismissal and the authority to determine the nature of the work.

For the application of Article SSCL.13(1) of Annex SSC-7 to the Protocol, as an indication, having been subject to the legislation of the State in which the employer is established for at least 1 month can be considered as meeting the requirement referred to by the words 'immediately before the start of that person's employment'. Shorter periods would require a case-by-case evaluation taking account of all the other factors involved.

In order, where necessary and in cases of doubt, to determine whether an employer ordinarily performs substantial activities in the territory of the State in which that employer is established, the competent institution in the latter is required to examine all the criteria characterising the activities carried on by that employer, including the place where the undertaking has its registered office and administration, the number of administrative staff working in the State in which it is established and in the other State, the place where detached workers are recruited and the place where the majority of contracts with clients are concluded, the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other hand, the turnover during an appropriately typical period in each State concerned and the number of contracts performed in the sending State. This is not an exhaustive list, as the criteria should be adapted to each specific case and take account of the nature of the activities carried out by the undertaking in the State in which it is established.

- (2) (a) 'Cross-border telework' is an activity which can be pursued from any location and could be performed at the employer's premises or place of business and
 - is carried out in a State or States other than the one in which the employer's premises or the place of business are situated; and

- is based on information technology to remain connected to the employer's or business's working environment as well as stakeholders/clients in order to fulfil the employee's tasks assigned by the employer or clients, in case of self-employed persons.
- (b) The term 'sent by that employer' in Article SSC.11(1)(a) of the Protocol should also apply to those employees who have the agreement of their employer, either formally or informally, to perform cross-border telework on behalf of their employer for 100 percent of their working time for a temporary period which takes place on a random basis and is not part of the habitual working pattern. The other conditions for a period of detachment laid down in Articles SSC.11 of the Protocol and SSCL.13 of Annex SSC-7 to the Protocol would need to be fulfilled in such situations.
- (3) For the application of Article SSCL.13(3) of Annex SSC-7 to the Protocol, the fulfilment of the requirements in the State where the person is established is assessed on criteria such as having use of office space, paying taxes, having a professional card and a VAT number or being registered with chambers of commerce or professional bodies. As an indication, pursuing one's activity for at least 2 months can be considered as meeting the requirement referred to by the words 'for some time before the date when they wish to take advantage of the provisions of that Article'. Shorter periods would require a case-by-case evaluation taking account of all the other factors involved.
- (4) (a) Pursuant to the provisions of point (1) of this Recommendation, Article SSC.11(1)(a) of the Protocol should continue to apply to the detached worker if the detached worker, sent by an undertaking in the sending State to an undertaking in the State of employment, is also sent to one or more other undertakings in the same State of employment, as long as the worker continues to carry out his or her work for the undertaking which sent that worker. This may be the case, in particular, if the undertaking sent the worker to a State in order to perform work there successively or simultaneously in two or more undertakings situated in the same State. The essential and decisive element is that the work continues to be carried out on behalf of the sending undertaking.

Periods of detachment to different States which immediately follow each other should in each case give rise to a new period of detachment within the meaning of Article SSC.11(1)(a) of the Protocol.
- (b) Brief interruption of the detached worker's activities with the undertaking in the State of employment, whatever the reason (holidays, illness, training at the sending undertaking ...), should not constitute an interruption of the period of detachment within the meaning of Article SSC.11(1)(a) of the Protocol.
- (c) Once a worker has ended a period of detachment, no fresh period of detachment for the same worker, the same undertakings and the same State can be authorised until at least 2 months have elapsed from the date of expiry of the previous period of detachment. Derogation from this principle is, however, permissible in specific circumstances.
- (5) The provisions of Article SSC.11(1)(a) of the Protocol should not apply or should cease to apply in particular:
 - (a) if the undertaking to which the worker has been sent places him or her at the disposal of another undertaking in the State in which it is situated;
 - (b) if the worker sent to a State is placed at the disposal of an undertaking situated in another State;
 - (c) if the worker is recruited in a State in order to be sent by an undertaking situated in a second State to an undertaking in a third State.
- (6) (a) The competent institution of the State to whose legislation the person concerned remains subject pursuant to Article SSC.11(1)(a) of the Protocol, in the cases provided for by this Recommendation, should duly inform the employer and the worker concerned of the conditions under which the detached worker may continue to be subject to its legislation. The employer should thus be informed of the possibility of checks throughout the period of detachment so as to ascertain that this period has not come to an end. Such checks may relate, in particular, to the payment of contributions and to the maintenance of the direct relationship.

The competent institution of the State in which the person concerned is established, to whose legislation the self-employed person remains subject pursuant to Article SSC.11(1)(b) of the Protocol, should duly inform the self-employed person of the conditions under which he or she may continue to be subject to its legislation. The person concerned should be informed of the possibility of checks throughout the period during which he or she pursues a temporary activity in the State in which he or she is active, so as to ascertain that the conditions applying to that activity have not changed. Such checks may relate, in particular, to the payment of contributions and the maintenance of the infrastructure needed to pursue his or her activity in the State in which he or she is established.

- (b) Moreover, the detached worker and his or her employer should inform the competent institution of the sending State of any change occurring during the period of detachment, in particular:
 - if the period of detachment applied for has in the end not taken place,
 - if the activity is interrupted in a case other than that provided for in point (4)(b) of this Recommendation,
 - if the detached worker has been assigned by his or her employer to another undertaking in the sending State, in particular in the event of merger or transfer of an undertaking.
 - (c) The competent institution of the sending State should, where appropriate and upon request, provide the institution of the State of employment with the information referred to in point (6)(b) of this Recommendation.
 - (d) The competent institutions of the sending State and of the State of employment should cooperate in carrying out the abovementioned checks and where there is any doubt concerning the applicability of Article SSC.11(1) of the Protocol.
- (7) The competent institutions should assess and monitor the situations covered by Article SSC.11(1) of the Protocol. In particular, the criteria used for assessing whether an employer normally carries out its activities in the territory of a State, whether a direct relationship exists between the undertaking and the worker, or whether a self-employed person maintains the infrastructure needed to pursue his or her activity in a State, should be applied consistently and evenly in the same or similar situations.
- (8) The Specialised Committee should encourage cooperation between the competent institutions in the States for the purpose of implementing Article SSC.11(1) of the Protocol as well as the exchange of information, experience and good practice when fixing and grading the criteria for assessing the situations of undertakings and workers, and in connection with the control measures put in place. To this end, it may draw up in stages, for the benefit of administrative authorities, undertakings and workers, further guidance concerning detached workers and the pursuit by self-employed persons of a secondary activity outside the State in which they are established.

Done at Brussels, on 5 June 2024.

*For the Specialised Committee on Social Security
Coordination*

The Co-chairs

Jordi CURELL GOTOR

Ronan O'CONNOR