



Press and Information

Court of Justice of the European Union

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Judgment in Case C-631/17

SF v Inspecteur van de Belastingdienst

A seafarer who maintains his residence in his Member State of origin, whilst working for an employer established in a Member State on board a vessel flying the flag of a third State and travelling outside of the territory of the EU falls within the scope of the regulation on the coordination of social security systems

In accordance with that regulation, the national legislation applicable to that person is that of his Member State of residence

Between 13 August and 31 December 2013, SF, a Latvian national residing in Latvia, worked as a seafarer for an undertaking established in the Netherlands. He carried on that activity on board a vessel flying the flag of the Bahamas which sailed outside the territory of the EU. The Netherlands tax authorities issued a notice of assessment declaring that SF was liable for social security contributions to the Netherlands social insurance scheme for that period. Taking the view that he does not come under that scheme, SF brought an action before the Netherlands courts.

The Hoge Raad der Nederlanden (Supreme Court of the Netherlands) has doubts over the interpretation of the provisions of the regulation on the coordination of social security systems¹ for determining the applicable legislation in a situation such as SF's and therefore decided to refer questions to the Court of Justice for a preliminary ruling.

In today's judgment, the Court of Justice first recalls its case-law according to which the mere fact that a worker carries on his activities outside the territory of the EU is not sufficient to exclude the application of the EU rules on free movement of workers, in particular the regulation at issue, as long as the employment relationship retains a sufficiently close connection with that territory. The Court states that that is particularly the case where an EU citizen, residing in a Member State, was employed by an undertaking established in another Member State for which he carries on his activities.

In the present case, the Court considers that the employment relationship retains a sufficiently close link with EU territory, given that, during the period at issue, SF was residing in Latvia and his employer was established in the Netherlands. Accordingly, such a situation falls within the scope of the regulation on the coordination of social security systems.

Having found that SF does not come within the special rules laid down in Articles 12 to 16 of the regulation², or the general rule on seafarers laid down in Article 11(4) of the regulation, or the situations governed by Article 11(3)(a) to (d)³ of that regulation, the Court examined whether SF came within the scope of Article 11(3)(e) of that regulation.

¹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 (OJ 2012 L 149, p. 4).

² These concern persons who have been posted, those pursuing an activity in two or more Member States, those who elected voluntary or optional insurance, and those who are contract staff of the European institutions.

³ These concern persons pursuing an activity as an employed person in a Member State, civil servants, those in receipt of unemployment benefits, or persons called up or recalled for service in the armed forces or for civilian service in a Member State.

That provision stipulates that any other person to whom subparagraphs (a) to (d) of Article 11(3) do not apply will be subject to the legislation of the Member State of residence, without prejudice to other provisions of the regulation guaranteeing him/her benefits under the legislation of one or more other Member States.

The Court stated that a restrictive interpretation of Article 11(3)(e) of the regulation limiting its scope solely to economically non-active persons (as the Netherlands Government and the Commission claimed), so that SF would be excluded from the scope of that provision, may deprive persons who do not come under the situations referred to in that article or other provisions of the regulation on social security cover because there is no legislation which is applicable to them.

Such an interpretation would be contrary to the objective pursued by that provision and, more generally, by the regulation which constitutes a complete and uniform system of conflict rules which are intended not only to prevent the simultaneous application of a number of national legislative systems and the complication which might ensue, but also to ensure that the persons covered by that regulation are not left without social security cover.

Consequently, Article 11(3)(e) of the regulation must be interpreted to the effect that it applies to all persons who are not covered by subparagraphs (a) to (d) of that provision and not only those who are economically non-active.

The Court states that that interpretation cannot be called into question by the Explanatory Notes or the Practical Guide on the applicable legislation in the EU, the EEA and in Switzerland, drawn up and approved by the Administrative Commission for the Coordination of Social Security Systems and published in December 2013. Even though those documents are useful tools for interpreting the regulation on the coordination of social security systems, they are not legally enforceable and cannot, therefore, bind the Court in the interpretation of that regulation.

The Court concludes that a person in a situation such as SF's comes within the scope of the regulation on the coordination of social security systems and, more particularly, Article 11(3)(e), so that the applicable national legislation is that of the Member State of residence of that person.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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