



Press and Information

Court of Justice of the European Union

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Judgment in Case C-33/21
INAIL and INPS

Ryanair flight and cabin crew not covered by E101 certificates who work for 45 minutes per day in that airline's premises intended to be used by staff located at Bergamo airport and who, for the remaining working time, are on board that airline's aircraft are subject to Italian social security legislation

Following an inspection, the Istituto nazionale della previdenza sociale (the INPS) took the view that the 219 Ryanair employees assigned to the airport of Bergamo (Italy) were employed on Italian territory and were required, pursuant to Italian law and Regulation No 1408/71¹, to be insured with the INPS for the period from June 2006 to February 2010

The Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (the INAIL) also took the view that, under Italian law, those employees had to be insured with the INAIL for risks connected with non-air work for the period from 25 January 2008 to 25 January 2013 since they were, according to that body, connected to Ryanair's operating base located in Orio al Serio airport.

The INPS and the INAIL therefore demanded that Ryanair pay the social security contributions and insurance premiums relating to those periods, which Ryanair challenged before the Italian courts.

The Italian appeal court examined the E101 certificates issued by the competent Irish institution, certifying that Irish social security legislation was applicable to the employees referred to therein. However, those certificates did not cover all of the 219 Ryanair employees assigned to Orio al Serio airport during the whole of the periods concerned. It concluded that, as regards the employees for whom no E101 certificate had been shown to exist, **it was necessary to determine the social security legislation applicable**. Since that court had taken the view that Italian social security legislation was not applicable, the INPS and the INAIL appealed on a point of law to the Corte suprema di cassazione (Supreme Court of Cassation, Italy).

That court submitted to the Court of Justice a question seeking to ascertain, in accordance with the relevant provisions of Regulation No 1408/71 and Regulation No 883/2004, the social security legislation applicable to flight and cabin crew of an airline, established in one Member State, where that crew is not covered by E101 certificates and where that crew works for 45 minutes per day in premises intended to be used by staff, known as the 'crew room' which that airline has in the territory of another Member State in which that flight and cabin crew reside, and, for the remaining working time, that crew is on board that airline's aircraft.

¹ Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2), in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004 (OJ 2004 L 100, p. 1), repealed and replaced by 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), itself amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 1) and by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 (OJ 2012 L 149, p. 4).

By the judgment of today's date, **the Court finds that the social security legislation applicable, during the periods concerned, to Ryanair employees assigned to Orio al Serio airport who are not covered by the E101 certificates adduced by Ryanair is, subject to verification by the referring court, Italian legislation.**

As regards, first, the periods falling under Regulation No 1408/71, the Court recalls the principle that **a person who is a member of the flight and cabin crew of an airline operating international flights and is employed by a branch or permanent representation owned by that airline in the territory of a Member State other than that in which it has its registered office or place of business, is subject to the legislation of the Member State in whose territory such branch or permanent representation is situated** ².

The application of that provision requires that **two cumulative conditions** are satisfied: (i) **that the airline concerned has a branch or permanent representation in a Member State other than that where it has its registered office** and (ii) **that the person concerned is employed by that entity.**

As regards the first condition, the Court states that the concepts of 'branch' and 'permanent representation' must be understood as referring to a form of secondary establishment, with an appearance of stability and continuity, intended for the carrying out of an actual economic activity and having, for that purpose organised material and human resources and a certain autonomy in relation to the main establishment. As regards the second condition, the Court has pointed out that the work relationship of flight and cabin crew of an airline has a significant connection with the place from which they principally discharge their obligations to their employer.

Accordingly, the Court holds that **the premises intended to be used by Ryanair staff ('crew room'), located at Orio al Serio airport, constitute a branch or permanent representation in which the Ryanair employees assigned to Orio al Serio airport not covered by the E101 certificates were employed during the periods concerned, with the result that, those employees are, pursuant to Regulation No 1408/71, subject to Italian social security legislation.**

As regards, next, the periods falling under Regulation No 883/2004, the Court recalls the principle that **a person who normally pursues an activity as an employed person in two or more Member States is to be subject to the legislation of the Member State of residence if he or she pursues a substantial part of his or her activity in that Member State** ³.

The Court specifies that in order to determine whether a substantial part of the activities is pursued in a Member State, account must be taken, in the case of an employed activity, of working time and/or remuneration and that that is not the case if less than 25% in respect of those criteria are met.

Consequently, the Court finds that if, during the periods concerned, the Ryanair employees assigned to Orio al Serio airport not covered by E101 certificates pursued a substantial part of their activity in Italy, which it is for the referring court to verify, Italian social security legislation applies.

Finally, the Court recalls that, since 2012 ⁴, Regulation No 883/2004 has laid down a new rule under which the activity of a member of the flight crew or cabin crew performing air passenger services is to be deemed to be an activity pursued in the Member State where the home base is located, which is the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period or a series of duty periods and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned.

² Article 14(2)(a)(i) of Regulation No 1408/71.

³ Article 13(1)(a) of Regulation No 883/2004.

⁴ Article 11(5) of Regulation No 883/2004.

Therefore, the Court considers that the premises intended to be used by the Ryanair staff located at Orio al Serio airport constitutes a home base with the result that the Ryanair employees not covered by the E101 certificates who are assigned there are, in accordance with Regulation No 883/2004, subject to Italian social security legislation.

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 European Union 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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