



GMS Flash Alert



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European Union – Important Ruling for Third-Country Nationals by European Court

The right of third-country nationals in the European Union (EU) to claim coverage under EC Regulation 883/2004 for social security has long been disputed. Now, the European Court of Justice (“ECJ” or “Court”) has ruled on the position of social security for third-country nationals during their temporary stay and work in the EU.

In Case C-477/17 *Holiday on Ice*, the Court ruled contrary to the opinion of the Advocate General and stated that third-country nationals who are staying and working legally in the EU are covered by the EC Regulations on social security.¹

WHY THIS MATTERS

Third-country nationals who stay and work temporarily in an EU country do not have a legally registered residence in EU territory. As the EU Regulations for social security apply specifically to persons with residence in EU territory, many EU countries have determined that EU Regulations do not apply to third-country nationals with temporary stay and work in the EU.

This means that third-country nationals who are only on temporary stay in an EU country cannot carry valid A1 certificates of coverage and they, as well as their employers, could be subject to social security liabilities in more than one country at the same time if they move across the EU for work purposes.²

The ruling in this case helps to ensure that third-country nationals with temporary legal stays and work in EU territory can claim the rights and protections under EU Regulations for social security and thereby be covered by social security in only one country at a time and be subject to only one country’s social security charges. From a future benefits entitlement standpoint, rights to benefits will still be determined according to national law, but the individual will have the longest possible coverage in one country due to his or her affiliation with a single country’s social security system.

Summary of Case

The Dutch employer “Holiday on Ice” organizes ice skating shows each year between October and May. Several of their employees come from third countries – e.g., Russia and Ukraine – and they prepare and perform in the Netherlands and in other countries, predominantly in France and Germany. They all stay legally in the Netherlands and carry work permits where necessary.

Even though the Dutch competent institution (“SVB”) issued A1 certificates to these individuals initially, the issuance of the certificates was terminated upon discovery that they did not meet the criteria for legal residence in the Netherlands.

The question that the referring Dutch court submitted to the European Court of Justice is whether the requirement for third-country nationals to have legal residence³ in an EU country includes legal temporary stay and work in an EU country.

If “legal temporary stay and work” is not within the scope of legal residence, EU Regulations on social security could not apply and these persons would be subject to social security legislation in more than one country when they perform work in several EU member states. This could induce liabilities for the payment of social security contributions (and all that that entails) in several countries and the individual could find it more difficult to acquire rights to benefits.

Contrary to the opinion of the Advocate General, the ECJ ruled that legal temporary stay and work is within the scope of the legal residence and third-country nationals in this situation can rely on the rights and obligation outlined in EU Regulations on social security.

KPMG NOTE

Denmark has an exemption to the application of EC Regulations on social security to third-country nationals,⁴ and that is not changed with this judgment. However, Denmark is a part of the Nordic Convention on social security that extends the application of EC Regulations on social security to third-country nationals within the Nordic countries.⁵ In this context, Denmark has applied the requirement for residence in a Nordic country strictly and according to national legislation.⁶ At this point it is unclear if Denmark will apply the Nordic Convention to third-country nationals with temporary stay and work in a Nordic country.

When U.K. nationals become third-country nationals – following the U.K.’s exit from the EU – the ruling in this judgment will apply to them.

FOOTNOTES:

1 Case C-477/17:

- To see Opinion of the Advocate General dated 27 September 2018 (in English) click [here](#).
- To see Judgment of the Court (First Chamber) dated 24 January 2019 (in English) click [here](#).

2 Some countries, for instance Cyprus, have issued A1 certificates to these workers, but the assumption is that the majority of EU countries have refused to issue A1 certificates to third-country nationals if these did not have legally registered residence in the territory of the EU.

3 EU Regulation 1231/2010, Article 1

4 EU Regulation 1231/2010, no. 19.

5 Parties to the Nordic Convention on social security: Denmark, Sweden, Norway, Finland, and Iceland.

6 Article 5 in Nordic Convention on Social Security from 12 June 2012.

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