‘SOCIAL SECURITY FOR DIRECTORS WORKING IN MULTIPLE JURISDICTIONS’

WSG
WORLD SERVICES GROUP

2016

On the use of the brochure

Names of specialists and contact details are provided within the brochure. Should you need further advice, you should contact them directly. The brochure provides a general overview only. It summarises the general legal principles in each country. It should not be used as a substitute for legal advice.

EDI TO RIAL

As business becomes ever more international, our daily advisory work involves a greater number of matters concerning multiple jurisdictions. Clients are often (only) worried about the tax impact, but have little information on other legal consequences of cross border working. Clients therefore need in-depth advice on labour law, social security and taxes for their cross-border employment.

Indeed, not only do services and goods cross borders; employees, managers and directors all also face cross-border employment challenges.

The qualification issues regarding the social security position of a company director entrusted with a corporate mandate are dealt with in different ways in different jurisdictions. Some countries, like Belgium, qualify a company director with a corporate mandate as a self-employed person. Other countries, like Switzerland, qualify him or her as an employee. The impact of such different qualifications is often not known to clients and their directors; so, for example, a sudden change in the number of mandates spread out over different countries could lead to a change of country regarding where the director is to be registered with the social security regime. This change will have an immediate impact on the social security contributions to be paid, but also – and such is less known – on their unemployment benefits, replacement income, pension rights,

This brochure covers a number of countries that are bound by EU Regulation 883/2004, but it also covers a number of jurisdictions falling outside the scope of this Regulation.

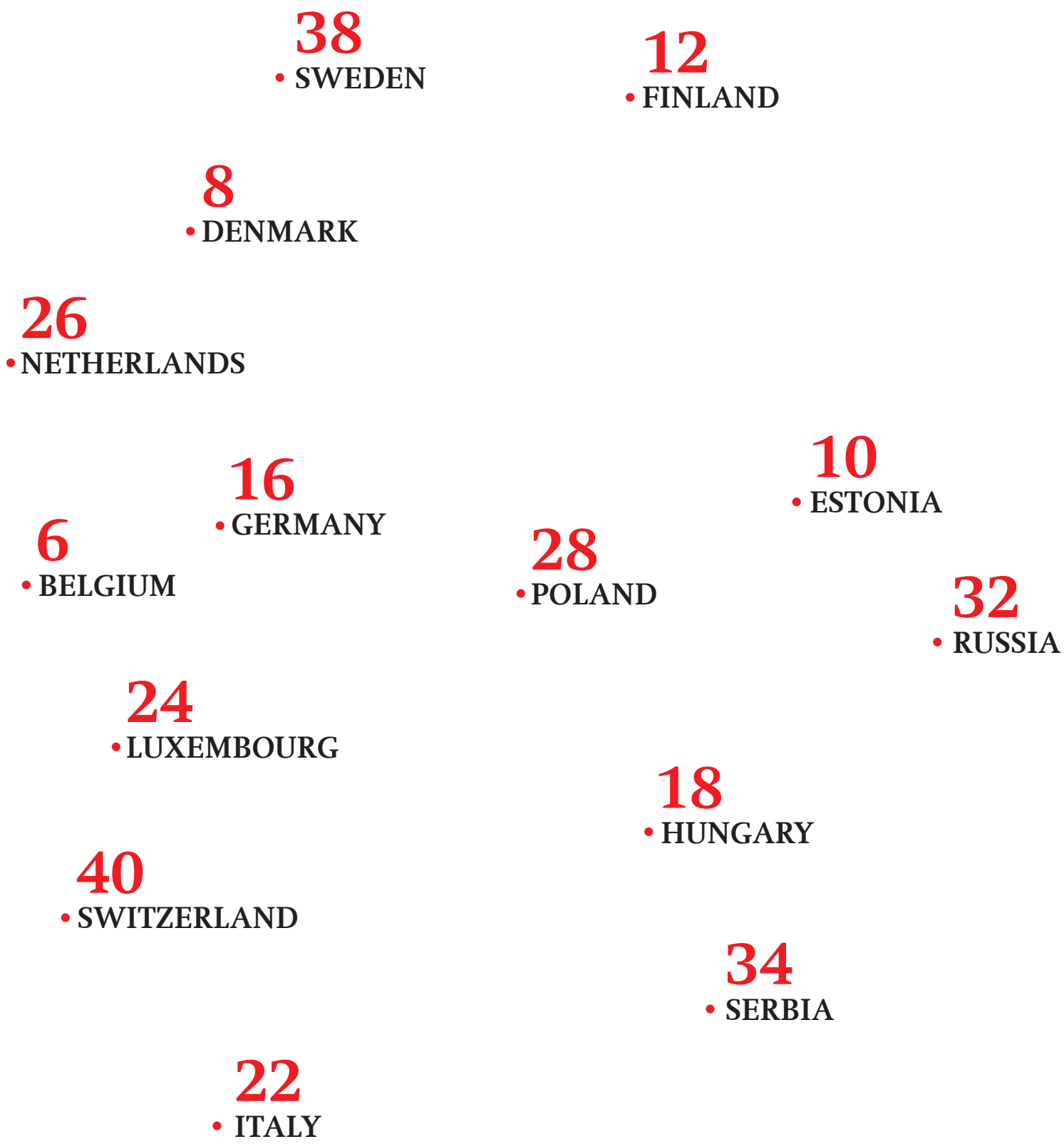
Given the complex situations we meet in our advisory work, this subject has been chosen as one of the topics for discussion during the annual WSG Labour Law Meeting in Brussels in February 2016.

We are delighted to have been able to use the strength of the WSG network to create this overview; in particular, by working together with a number of member law firms. Our sincere thanks go to all the firms who have contributed to the brochure.

Happy reading and welcome to Brussels!

Sylvie Dubois / *Partner Altius*
Brigitte Lievens / *Counsel Tiberghien*

CONTENT


38
• SWEDEN
12
• FINLAND
8
• DENMARK
26
• NETHERLANDS
16
• GERMANY
10
• ESTONIA
6
• BELGIUM
28
• POLAND
32
• RUSSIA
24
• LUXEMBOURG
18
• HUNGARY
40
• SWITZERLAND
34
• SERBIA
22
• ITALY

BELGIUM

ALTIUS

Tiberghien

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Switzerland. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

6
2016

Status for social security purposes

DOMESTIC RULES

1. Social security regime

Exercising a corporate mandate used to result in an irrefutable presumption that the company representative was subject to the social security regime for self-employed persons.

However, since 2014 two new refutable presumptions exist and allow the directors of a company to refute this presumption by demonstrating that:

- their mandate is unpaid; and/or
- they do not physically exercise an activity in Belgium.

Proving that a mandate is unpaid can be done by:

- publishing in the Belgian State Gazette of a statutory provision stating that the mandate is unpaid ; or in the absence of that,

notification to the competent social insurance fund of a decision by the competent body of the company which determines the compensation of the directors, stating that the mandate is unpaid

2. Possibility to combine the director's mandate with an employment contract

Directors cannot as such be employed under an employment contract since:

- The company (i.e. the employer) cannot exercise the authority vested in an employer over its directors. Directors exercise their mandate independently in the interest of the company.
- In some types of companies (e.g. an NV/ SA) directors may be removed at any time during the term for which they are appointed by the general shareholders' meeting) which is not compatible with the strict rules regarding the termination of employment agreements.

However, it is possible to combine a corporate mandate with an employment contract if the person who holds a corporate mandate also performs other tasks which clearly distinct from the ones which result from the mandate. These distinct tasks must however be performed in a relationship of subordination to the company, e.g. working under the authority of the president of the Board of Directors

Provided these conditions are met, this person will be subject to the social security regime for employees in his/ her capacity as an employee under the employment contract (which is clearly distinct from the capacity resulting from the corporate mandate).

IN INTERNATIONAL SITUATIONS

After the competent state has been determined on the basis of qualification by the work state(s), one state is to be declared competent under the Regulation. That competent state should in principle again qualify according to its own legislation (=so called requalification).

Although this principle is widely accepted, Belgium does not apply it. The competent authorities for self-employed persons and for employees do not share the same view and currently the system of "non-requalification" is applied (=maintaining the other state's qualification).

This leads to strange situations where one can be affiliated to Belgian social security for employees for one part and to Belgian social security for self-employed for the other part of his/her income.

Execution of a non-remunerated directorship in a Belgian company is considered non relevant and the Belgian authorities (contrary to other jurisdictions) do not take this mandate into account for determining under the Regulation which state is competent.

Sylvie Dubois
Partner Altius
+32 2 421 50 74
sylvie.dubois@altius.com

Brigitte Lievens
Counsel Tiberghien
+32 2 773 40 43
brigitte.lievens@tiberghien.com

DEN MA RK

PLESNER

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Switzerland. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

8/2016

Status for social security purposes

DOMESTIC RULES

From a domestic social security law perspective, it is the definition in the individual Danish laws that are decisive for whether or not the laws will apply to directors.
Pursuant to Danish laws, the activities of a director are generally considered as those of an employed person.

IN INTERNATIONAL SITUATIONS

Whether an activity is considered as being performed by an employed person or by a self-employed person pursuant to the EU Regulation 88/2004 is determined in accordance with the national law of the member state in which the activity is carried out. Thus, this can lead to a situation where the same activity can be characterised as being performed by an employed person when carried out in one member state and by a self-employed person when carried out in another member state.

From a Danish perspective, a director is to be considered as performing activities as an employed person rather than as a self-employed person for the purpose of the EU Regulation 883/2004.

However, if Danish social security rules are chosen as the applicable rules, it will be the definition in the individual Danish social security laws that are decisive for whether or not the laws will apply to the director and not the definition of an activity being performed as an employed person or as a self-employed person pursuant to the EU Regulation 883/2004. As mentioned, a director will in this respect generally be considered as an employed person.

Tina Reissmann
Partner
+45 36 94 13 41
tre@plesner.com

ESTONIA

COBALT

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Switzerland. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

10
2016

Status for social security purposes

DOMESTIC RULES

In Estonia, directors' remuneration is subject to social tax of 33% from gross remuneration. Social tax is fully payable by the payer of the remuneration (generally, it is the direct employer whom the director works for).

Social tax is due from director's remuneration regardless of his/her place of residence, place of performing his/her duties and the identity of the actual payer. The latter means that if a non-resident director of an Estonian resident company receives remuneration obtained for the performance of director duties of that company from a non-resident company (e.g. from a parent company), then the non-resident company should pay social tax in Estonia from that part of remuneration which was received for the performance of director duties of an Estonian resident company. A social tax exemption would apply in case an A1 certificate is in place which indicates that the person is insured in a country other than Estonia.

Directors are not regarded as employees since the relationship between a company and its director is explicitly excluded from the scope of employment laws. Thus, for performing director's duties, conclusion of an employment contract is not possible.

It is possible however to combine a corporate mandate with an employment contract provided that the person exercising a corporate mandate performs other clearly distinct tasks than the ones which result from his/ her mandate(s). If conclusion of an employment contract is justified, then the person concerned will be also subject to the social security regime for employees.

IN INTERNATIONAL SITUATIONS

After the competent state has been determined on the basis of qualification by the work state(s), one state is to be declared competent under the Regulation.

That competent state should in principle again qualify according to its own legislation (=so called requalification).

Pirkko-Liis Harkmaa
Partner
+372 665 1888
pirkko.liis.harkmaa@cobalt.legal

FIN
LAND

Krogerus

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Switzerland. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

12/2016

Status for social security purposes

DOMESTIC RULES

Under Finnish law the definition between an “employed” and “self-employed” person as defined in the EU Regulation 883/2004 is made based on the Finnish pension legislation that regulates the obligation to take either employees' pension insurance or self-employed persons' pension insurance. Based on the said rules a person in an executive position is obliged to take a self-employed persons' pension insurance and is, therefore, also considered as “self-employed person” if he owns more than 1) 30 % of the company alone or 2) 50 % of the company jointly with his family members. A managing director and other employed director of a company are deemed as “employed persons” unless the ownership requirement mentioned above is fulfilled. Therefore, they will be subject to the Finnish social security based on their position.

The pension insurance is a statutory requirement for a member of the board if the board member 1) is also an employee of the company ("employed person") or 2) owns either alone or jointly with his family members at least the above mentioned percentage of the company ("self-employed person"). Therefore, if a member of the board is not an employee or does not have the required ownership his actions as a board member are not taken into consideration when evaluating if the person is subject to the Finnish social security. Additionally, the obligation to provide an employees' pension insurance or to take a self-employed persons' pension insurance for an executive is connected to the payment of salary or income. Therefore, if an executive does not receive any income from his position he will not be subject to the Finnish social security based on the position in question.

IN INTERNATIONAL SITUATIONS

The rules regarding the social security benefits are determined based on the EU Regulation 883/2004. Based on the regulation the residents of EU, EEA and Switzerland are subject to the social security legislation of only one state at a time.

If based on the above an executive residing in Finland is considered as “an employed person” based on the above and he practises activities also in another EU or EEA member state or Switzerland he will be entitled to the Finnish social security if he practices, in general, at least 25 % of his activities in Finland.

The same applies if the executive is considered as “a self-employed person” based on the above and he is conducting business as "a self-employed person” in two or more states. If the executive is considered as “a self-employed person” under Finnish law he is not subject to the Finnish social security if he is considered as “an employed person” in another EU or

EEA state or Switzerland. On the other hand an executive working in Finland as “an employed person” would be entitled to the Finnish social security even if he would have activities in another EU or EEA state or Switzerland if he's activities in another state are considered as “self-employed” based on the national legislation of the country in question.

JP Alho
Partner
+358(0)290006264
jp.alho@krogerus.com

FRANCE

JEANTET

Executive summary of qualification of a director's mandate

(in a local or foreign company) **in view of application of EU regulation 883/2004**

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Switzerland. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

14
2016

Status for social security purposes

DOMESTIC RULES

Social security regime

Directors exercising a corporate mandate in certain types of companies must be affiliated to the general social security regime for employees in accordance with the section L.311-3 of the French social security code.

The following companies are subjected to this rule:

- private company "société anonyme" or public limited company "société anonyme cotée en bourse (simplified joint stock company),
- "société par actions simplifiée" (cooperative production society),
- "sociétés cooperatives de production" (limited liability company),
- "sociétés à responsabilité limitée" when the person exercising the corporate mandate is a minority shareholder.

Directors exercising their corporate mandate in other types of companies are affiliated to the asocial security regime for self-employed persons (i.e "régime social des indépendants").

Directors exercising a corporate mandate may be removed at any time during the term for which they are appointed by the general shareholders' meeting ("ad nutum"-revocability), and they can not benefit from the unemployment fund. However they can cover this risk by subscribing a private insurance (called "GSC").

Possibility to combine the director's mandate with an employment contract

It is possible to combine a corporate mandate with an employment contract provided that :

- The person exercising a corporate mandate performs technical functions which are distinct from its appointment resulting from his corporate mandate,
- These distinct functions must be performed in a relationship of subordination to the company. This requirement is not met if the corporate mandate empowers its holders of the largest powers in the company,
- The combination of the corporate mandate and the employment contract should not aim at circumventing the applicable laws, more specifically the « ad nutum » irrevocability of the mandate.

Once the nomination of the corporate mandate is made, it is recommended to ask to the French entity managing the unemployment fund (called "Pôle Emploi"), to validate this combination, to make sure that the person will benefit from the unemployment fund in case of termination of his employment contract. If the answer given by the unemployment is negative, the directors may subscribe the private insurance called "GSC".

IN INTERNATIONAL SITUATIONS

If a person performs an activity as an employee and an activity as a self-employed person in different states, he/she is subject to the legislation of the state where he/she performs an activity as an employee.

After the competent state has been determined on the basis of qualification by the work state(s), one state is to be declared competent under the Regulation.
That competent state should in principle again qualify according to its own legislation (=so called requalification).

France applies this principle.

Isabelle Pontal
Avocat à la Cour · Counsel
+33 (0)1 45 05 81 05
ipontal@jeantet.fr

GERMANY

HEUKING KÜHN LÜER WOJTEK

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Switzerland. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

16/2016

Status for social security purposes

DOMESTIC RULES

1. Limited liability company
Essential for the classification of the status of the director of a company as self-employed or not is the fact whether the director is bound by instructions and his integration in the work organization of the company.

According to the jurisdiction of the German Federal Social Court two groups of directors have to be differentiated:

a) company directors who own over 50 % of the shared capital or have a blocking minority are selfemployed as they have a decisive influence on the conduct of the company.
b) a company director who owns less than 50 % of the shared capital and doesn't have a blocking minority is not self-employed if his work is actually controlled by the other shareholders. This has to be evaluated in each individual case.

A company director who doesn't own any shared capital is assumed not to be self-employed and therefore social security contributions have to be paid.

There are certain cases in which the company director might be self-employed due to the following circumstances:

- The director's family owns the company and the director takes care of the business as if he is the owner.
- The company director is carrying a considerable business risk (e.g. due to a guarantee).
- The company director has special sector knowledge.
- Exemption of the limitations of the prohibition of self-dealing.

These factors are only an indication for self-employment. There always has to be an examination of all the circumstances.

2. Public limited company
Unfortunately the jurisdiction of the German Federal Social Court is not clear. The senates have different opinions and have considered board members as employed, another time as self-employed.

3. Foreign form of company (EU)
Foreign incorporated companies and their directors are either comparable to the public limited company or the limited liability company. Therefore the rules under 1. or 2. apply.

IN INTERNATIONAL SITUATIONS

Citizens of an EU-member-state and German citizen who exercise a function as outlined above and who also pursue a gainful activity in another state will be subject to the social security legislation of one state only according to the EU Regulation 883/2004. There are no deviating rules or laws in Germany.

Regina Glaser
Partner
+49 211 600 55 276
r.glaser@heuking.de

HUNGARY

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

SZECSKAY ATTORNEYS AT LAW

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Switzerland. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

18
2016

Status for social security purposes

DOMESTIC RULES

1. Social security regime

Under Hungarian law, any remuneration received by directors either under an employment agreement or under a corporate mandate over a minimal threshold are subject to social security contributions, provided that the director is subject to the Hungarian social security regime.

The director can in practice only avoid payment of Hungarian social security if he/she certifies with an A1 certificate that he/she is not subject to the Hungarian social security regime.

If the director is (1) a shareholder of the company, (2) subject to the Hungarian social security regime; and (3) does not have another legal relationship that would result in a social security insurance, even an unpaid corporate mandate results in social security payment obligations for most types of companies.

As long as the director is subject to the Hungarian social security regime under EU Regulation 883/2004, the actual place of work is irrelevant from a Hungarian perspective. This means that even work outside of Hungary may be subject to social security contributions.

If a non-Hungarian resident company makes payments to a director falling under the Hungarian social security regime, such company must register itself with the Hungarian authorities and make the payments on the director's behalf. Failure to register does not exempt the director from the payment.

Directorship under employment or corporate mandate?

Under Hungarian law, most director positions can be filled either under an employment agreement or under a corporate mandate, depending on the actual circumstances. If the director is employed via employment agreement, most of the strict rules of Hungarian employment law (e.g. on the termination of employment) do not apply or can be deviated from. From a social security perspective, there is however no material difference between the two forms of engagement.

IN INTERNATIONAL SITUATIONS

If the question of social security arises in more than one state where work is performed, one state is to be declared competent under the Regulation.

That competent state should in principle again qualify according to its own legislation (so called requalification), meaning that is will assess based on its own domestic law if the work in questions results in a social security payment obligation.

Due to the circumstances described above, requalification is in practice almost always automatic, as almost all directorship positions for remuneration will result in the payment of social security contributions. This also means that even a directorship in a foreign company can result in Hungarian social security payment obligations if the director is to be considered subject to the Hungarian social security regime under the Regulation.

Execution of a non-remunerated directorship in a company does not result in an obligation to pay social security contributions, as long as the director is not also shareholder of the company. If the company is a company limited by shares, not even a participation in the company results in a social security payment obligation.

Dr. Róbert Dezső
Associate
+36 1 472 3000
robert.dezso@szecskay.com

IRE
LAND

A&L Goodbody

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Switzerland. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

20/2016

Status for social security purposes

DOMESTIC RULES

1. The relevant rules for determining the status of a director for social security purposes are set out in the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 (the "2013 Act").
2. The 2013 Act provides that a director employed under a contract of service who is the beneficial owner of a company or controls > 50% of the company's ordinary share capital (directly or indirectly) is deemed to be self-employed and liable to social security ("PRSI") Class S contributions.
3. The 2013 Act does not stipulate which PRSI class applies where a director owns < 50% of the shares in the company. In such a situation the nature of the relationship between the company and the director will have to be considered in order to determine social security status. This analysis focuses on whether the director is working under a contract for services (self-employed) or a contract of services (employment).
4. If the director is deemed to be working under a contract of services (an employment contract) then they will pay employee PRSI Class A (4%) on their earnings. Their employer will also pay an employer PRSI contribution (up to 10.75%). PRSI Class A provides the individual with entitlement to the full range of social insurance benefits, including short term benefits in respect of illness, unemployment and maternity as well as long terms benefits, such as state pension.
5. If the director is deemed to be self-employed then the director will pay PRSI Class S on their earnings arising from the self-employment. Those paying PRSI Class S may establish entitlement to certain short term benefits (for example, maternity benefit), as well as long term benefits such as state pension.
6. Criteria for determining the existence of a contract of service is the subject of jurisprudence and local rules. Some of the key principles are as follows:
   i. Mutuality of Obligation – unless the director is obliged to accept work and the employer is obliged to provide work, then there is no mutuality of obligation and it may be difficult to assert that an employment relationship exists.
   ii. Exclusivity – exclusive rights to service indicate that the director is an employee, whereas a self-employed director may work for a number of different entities at the same time.
   iii. Regular reporting – arrangements of this type indicate that the director is an employee and obliged to account for the work he/she is performing.
   iv. Control test – a director who has to comply with instructions as to where, what, when and how work is carried out is ordinarily an employee. Where control is not a factor this could indicate that the director is self-employed.

IN INTERNATIONAL SITUATIONS

According to EU Regulation 883/2004, citizens of an EU member state who exercise a function as outlined above and who also pursue a gainful activity in another state will be subject to the social security legislation of one state only. There are no deviating rules in Ireland.

Karen Killalea
Partner
+353 1 649 2118
kkillalea@algoodbody.com

ITALY

GIANNI·ORIGONI
GRIPPO·CAPPELLI
PARTNERS

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Italy. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

22
2016

Status for social security purposes

DOMESTIC RULES

In case of appointment to a corporate office as member of the Board of Directors/Sole Director of an Italian company, in principle (and save for specific exceptions) the directorship is subject to a special social security system (other than the ordinary system applicable to employees) which triggers social security contributions up to a certain ceiling (so called "Gestione Separata") as well as insurance burdens . If there is no compensation for the performance of the corporate office, no obligation to pay social security contributions will arise.

In principle, same individual can have in parallel a corporate and an employment relationship with the same company, provided however that certain requirements are met. In particular, it is possible to combine a corporate mandate with an employment contract if: (a) the person in charge of the corporate office performs, as employee, tasks/duties other those falling under his/ her corporate mandate; and (b) the nature of the corporate office, and the relevant powers, are consistent with the parallel existence of an employer-employee hierarchical relationship (by way of example, a Sole Director cannot be an employee of the same company, given the breadth of the powers pertaining to such corporate office).

When a director has also an employment relationship with the same company (that is clearly distinct from the corporate mandate), the individual will be subject, as per the employment relationship, to the social security system provided for employees.

In case the above mentioned requirements under (a) and (b) above are not met, the Italian Social Security Authority (i.e. INPS) may challenge the existence of the employment relationship, with adverse consequences on the individual's pension entitlements (there would be the risk that the individual might not be entitled to receive the relevant retirement benefits under the social security system provided for employees, despite the regular payment of the social contributions).

IN INTERNATIONAL SITUATIONS

In principle, individuals who exercise a corporate mandate within the Italian territory and/or receive payment of corporate fees by an Italian company are subject to the above-mentioned social security regime (Gestione Separata). These general rules, however, must be properly coordinated with the applicable EU rules according to which when same individual also carries out a gainful activity in another EU-member state, he/she will be subject to the social security legislation of one state according to the EU Regulation No. 883/2004.

Pursuant to Section 13 of EU Regulation No. 883/2004, a person who normally pursues an activity as a self-employed person in two or more Member States shall be subject to: (a) the legislation of the Member State of residence if he/she pursues a substantial part of his activity in that Member State; or (b) the legislation of the Member State in which the center of interest of his/her activities is situated. Instead, in case of pursuit of an activity as an employed person and an activity as a self-employed person in different Member States, the individual shall be subject to the legislation of the Member State in which he/she pursues an activity as an employed person or, if he pursues such an activity in two or more Member States, he/she shall be subject to the complex rules governing pursuit of employment activities in two or more Member States.

Having clarified the above, in the Italian system the activity carried out by a director holding a corporate office qualifies as self-employment activity for social security purposes. Such qualification shall be relevant also for the purpose of the application of the above EU rules when the same individual performs a corporate mandate in Italy and other working activities in other Member State(s).

Alessandra Ferroni
Partner
+39-0276009628
aferroni@gop.it

Cristina Capitanio
Partner
+39-064871101
ccapitanio@gop.it

LUX
EM
BO
URG

arendt
arendt & medernach

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Italy. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

24
2016

Status for social security purposes

DOMESTIC RULES

As from the moment the director receives a remuneration for his corporate mandate, he/she has to be affiliated to social security.

From a pure social security perspective, a director may be affiliated either as an employee or as a self-employed person, depending on the circumstances, and in particular on the corporate form of the company. Unfortunately, the statutory provisions are not entirely clear and leave some room for interpretation; one may thus not exclude that in a particular case, the decision taken by the social security authorities may depart from the rules mentioned below:

Director affiliated as a self-employed person:

- Manager who is also a partner in a société en commandite simple or in a société à responsabilité limitée (S.à r.l.), who holds more than 25% of the company's shares and who is the holder of the business license for the company
- Director of a société anonyme (S.A.) who is in charge of the daily management of the company and who is the holder of the business license for the company
- Member of the board of directors of a société anonyme (S.A.)

Director affiliated as an employee:
All the directors who do not fulfill cumulatively the above mentioned conditions (e.g. a director of an S.A. who is in charge of the daily management of the company but who is not the holder of the business license or a manager of an S.à r.l. who is not a partner of the company) shall be affiliated to social security as employees.

It is possible, under certain conditions, for a director to combine his/her corporate mandate with an employment contract. In that case, he/she will be affiliated to social security as an employee as regards the employment relationship.

IN INTERNATIONAL SITUATIONS

In case where the director also pursues a professional activity in another or in several other EU Member State(s), he/she may not be affiliated to two or more social security systems pursuant to EU Regulation 883/2004.

When part of the director's activity is exercised in Luxembourg, the rules may be quite complex since, depending on the circumstances, the director might be qualified as an employee or as a self-employed person for social security purposes.

It is only if Luxembourg is the Member State of residence that the Luxembourg social security authorities ("Centre Commun de la Sécurité Sociale - CCSS") will be appraised of the situation and will be in charge of determining the legislation applicable to the person concerned, taking into account the ground rules laid out by the EU Regulation 883/2004, since the institution competent to determine the legislation applicable to the person pursuing activities in several Member States is the social security institution of the Member State of residence.

From a practical standpoint, in the past, the CCSS tended to accept each request for affiliation to Luxembourg social security, i.e. without having regard to the rules of EU Regulation 883/2004. This is no longer the case so that if the application for registration with the social security was wrongly filed in Luxembourg and if the Luxembourg institution realised the problem, it would in practice refuse the registration in Luxembourg and refer the matter to the competent social security institution.

In case of activities pursued in various Member States, the Luxembourg social security authority would accept the determination of the legislation applicable made by the social security institution of the Member State of residence and would not challenge it.

Céline Ollier
Senior Associate
+352 40 78 78 325
celine.ollier@arendt.com

NETHERLANDS

VanDoorne

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Italy. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

26
2016

Status for social security purposes

DOMESTIC RULES

There is an extensive compulsory social security system in the Netherlands. The system includes national insurances (volksverzekeringen), covering working and non-working residents and non-residents working in the Netherlands, and employee insurances (werknemersverzekeringen), covering employees working in the Netherlands. Furthermore a national health insurance plan is in place.

National insurances include general old age pension (AOW), general surviving relatives benefit acts (ANW), Act on Long lasting care (WLZ),) and general children's allowance (AKW). National insurance contributions are included in the first and second bracket of the personal income tax rate. These contributions are for the account of the employee.

Employee insurances include unemployment insurance (WW) and Work and Income according to Labour capacity Act (WIA) The sickness benefits (ZW) insurance is privatised. This means that the employer is obliged, in the event of sickness, to continue to pay 70% of the employee's salary (with a maximum of EUR 199.95 per day for 2015). The benefit is payable for no more than 104 weeks. Employee insurance premiums are calculated on gross employment income, up to a maximum amount and are only payable by the employer. In some cases the premiums depend on the type of industry in which the employee works.

No special regime for directors exists in the Netherlands. Directors are considered to be employees for the social security system, with the exception of a (statutory) director/ shareholder who will not be subject to the employee insurance system, if he holds a majority of the voting rights in the business. This means that a majority shareholder director will not be covered by the employee insurances.

Please further note that if a company hires a director as a self-employed person instead of as an employee, then the director will not be covered by the social security system, assuming that the director will in that case be considered to be an entrepreneur. The company may obtain certainty upfront with respect to the qualification of the relationship with this independent director by having the consultancy agreement assessed by the tax authorities.

Finally it is to be noted that directors of listed companies can't be employed but have to be hired as a self-employed person. However, for tax and social security purposes they are still considered to be an employee by way of a legal fiction and are accordingly subject to the social security system.

IN INTERNATIONAL SITUATIONS

In case a director of a Dutch N.V. or B.V. is working cross-border, or in case a director of foreign company is working in The Netherlands (partly), he will be covered by the Dutch system unless based on international regulations the system of another country is applicable.

Els de Wind
Advocaat, Partner
+31 (0)20 6789 242
wind@vandoorne.com

Cara Pronk
Advocaat
+31 (0)20 6789 503
pronk@vandoorne.com

POLAND

WARDYŃSKI & PARTNERS

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Italy. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

28
2016

Status for social security purposes

DOMESTIC RULES

Under Polish law it is the legal basis, and not the nature of work or function performed itself, that determines treatment of a person within the scope of social insurance.

Directors (management board members) performing managerial functions only based on formal appointment by shareholders or a supervisory board with remuneration set by these bodies in a resolution are not subject to mandatory social insurance in Poland and are not treated as employed persons in the sense of the EU Regulation 883/2004.

Directors are be subject to mandatory social insurance in Poland only if they additionally perform their functions and receive remuneration based on an employment contract or a contract of mandate (or any other similar civil law contract, such as services or managerial contract). Such directors are considered employed persons in the sense of EU Regulation 883/2004.

Any other directors managing companies in Poland without formal corporate appointment and function can, in practice, perform their duties and receive their remuneration only on the basis of contracts (if no contract was concluded, a contract would be an implied employment or civil contract). Such directors are subject to social insurance in Poland and should be treated as employed persons within the meaning of EU Regulation 883/2004.

Also, if a function is not paid or not physically performed in Poland, such director is not subject to social insurance in Poland.

In any case managing a company is not considered as self-employment under Polish law.

IN INTERNATIONAL SITUATIONS

On the basis of EU Regulation 883/2004 a director performing functions in more than one member state will be subject to the legislation of one of the subject states only.

As managing a company is not considered self-employment under Polish law, Poland makes its qualifications in international situations concerning directors in accordance with art. 13.1 of EU Regulation 883/2004. Legislation applicable is then (a) legislation of the member state of residence if a person pursues a substantial part of activity in that member state or (b) legislation of the member state in which the registered office or place of business of the employing undertaking or employer is situated, if he does not pursue a substantial part of activities in the member state of residence.

In determining which state is competent, Polish social insurance authorities do not take into account any managerial functions not based on an express (or implied) contract of employment or civil law contract to which contracts of mandate provisions apply and do not take into account performance of any managerial functions not paid.

Agnieszka Lisiecka
Partner
(+48) 22 437 82 00
agnieszka.lisiecka@wardynski.com.pl

PORTUGAL

PLMJ
SOCIEDADE DE ADVOGADOS, RL

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Italy. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

30
2016

Status for social security purposes

DOMESTIC RULES

1. Social security regime
As a rule, directors of private and public limited companies who provide services that are not governed by an employment contract with the undertaking which they are charged with managing come under social security arrangements applicable specifically to "members of company boards".
This arrangement excludes workers appointed to the position of directors at companies where they are on the payroll and whose employment contract, on the date on which the term of office begins, was executed at least one year previously and required compulsory social security registration as "employed workers".
In this case, for social security purposes, these directors continue to be covered by the legal provisions on "employed workers".
The directors of private and public limited companies are viewed as beneficiaries of the appropriate social security arrangements – as a rule, that of "members of company boards" or maintaining that of "employed workers" – regardless of nationality.

2. Possibility to combine the director's mandate with an employment contract
It is generally accepted that directors of public and private limited companies, as directors, perform their duties under a services agreement and not an employment contract. It is less clear and sometimes controversial when the same person is both a director and an employee of a private limited company.
Broadly speaking, and bearing in mind the special circumstances in private limited companies where the reality justifies the need for combined director-employee duties such a combination is not prohibited, unlike in public limited companies, where the respective board members are not permitted to carry out duties as both directors and employees (as a rule, if an employee is appointed to the position of director at a public limited company where he/she is on the payroll for over one year, his/her employment contract is suspended ex-lege until the term of his/her office as director).

IN INTERNATIONAL SITUATIONS

In Portugal, Regulation (EC) No. 883/2004 applies, along with other instruments, with a view to the combined and coherent application of the different national legislations by which national citizens and their families are or have been governed when they move, namely:

- in European Union Member States, Iceland, Liechtenstein, Norway and Switzerland;
- in countries with which Portugal has a Convention or Agreement in this field of international coordination of legislation: Andorra, Argentina, Australia, Brazil, Cabo Verde, Canada, Québec, Chile, United States, Morocco, Moldova, United Kingdom (with respect to the islands of Jersey, Guernsey, Alderney, Herm, Jethou and Man), Tunisia, Ukraine, Uruguay and Venezuela.

The coordination rules are based on the principles of equal treatment, of preservation of rights acquired and in the process of being acquired and of determining a single applicable legislation (singleness of legislation which prevents anyone from being governed simultaneously by different legislations).

This principle of the singleness of legislation adopts, as a general rule, the legislation of the work country. In order to ensure the single application of the social security legislation of another country by which they are governed, beneficiaries who carry on an activity in Portugal (exclusively or cumulatively with the activity they carry on in other EU countries) must apply in good time to be excluded from the Portuguese Social Security system, providing proof of the necessary requirements and conditions.

Nuno Ferreira Morgado
Partner
+(351) 21 319 73 00
nuno.morgado@plmj.pt

RUSSIA

A·L·R·U·D

LAW FIRM SINCE 1991

Executive summary of qualification of a director's mandate

(in a local or foreign company)

32

2016

Status for social security purposes

DOMESTIC RULES

1. Social security regime

The EU Regulation 883/2004 is not applied in Russia. Thus, a director working for a Russian company located in Russia will be subject to Russian labor and social security laws even if he/she simultaneously works in some other states within the European Economic Area and Switzerland.

As a general rule, employers are obliged to make statutory social security contributions in respect of all their employees including directors. Rules of making statutory social security contributions are the same for all employees including a director.

Social security contributions shall be made to three public funds. These are the Pension Fund (accumulates social security contributions which form state pension), the Social Insurance Fund (which provides sickness, maternity, parental and family benefits) and the Federal Compulsory Medical Insurance Fund (which provides healthcare).

General rates of the social security contributions in 2016 are as follows:

- Pension Fund - 22% payable until employee's annual remuneration is up to RUB 796,000* (appr. EUR 9,300),10% is payable over the threshold;
- Social Insurance Fund - 2,9% payable until annual remuneration is up to RUB 718,000* (appr. EUR 8,400);
- Federal Compulsory Medical Insurance Fund - 5.1% of employee's remuneration without any thresholds.

*The thresholds are established annually.

Please note that rates of social security contributions may be different for foreign employees. Rates of social security contributions for foreign employees depend on their status.

IN INTERNATIONAL SITUATIONS

The Russian Federation has a number of international social security treaties, and they mostly regulate issues related to provision of social benefits (e.g. provision of pensions, sick leave allowances, etc.), but not payment of social security contributions. The Russian Federation has concluded such treaties with Spain, Hungary, Romania, Slovakia, Bulgaria and some other countries.

The treaties do not specifically regulate issues concerned with social security regime of directors.

Irina Anyukhina
Partner
+7 (495) 2349692
IAnyukhina@alrud.com

SERBIA

karanovic/nikolic

Executive summary of qualification of a director's mandate

(in a local or foreign company)

34
2016

Status for social security purposes

DOMESTIC RULES

1. Social security regime

Registered legal representatives i.e. directors of Serbian entities (including local representative office or branch) must enter into a separate agreement with such local entity. They can be engaged on the basis of either:

- employment agreement in Serbia – when they have status of regular employees; or
- non-employment Agreement on Rights and Duties of Director (the "Managerial Agreement") - in the case when director does not wish to enter into employment or when director is already employed (abroad or with another local company). This agreement may be concluded without any remuneration due by the local entity, *if* the person in question is already employed for affiliated company at the same time and receives remuneration in that regard for the work he/she is performing as director of local entity.

For Serbian citizens, all taxes and contributions are paid locally in both cases (with certain differences regarding the type level of levies paid in the case when director enters into employment agreement and when he/she enters into a non-employment agreement).

2. Possibility to combine the director's mandate with an employment contract

Director may freely enter into employment contract with local entity, if he/she is not already full time employee with another company. Such employment contract may be concluded for indefinite term or for definite term - for the duration of director's corporate mandate.

If employment is concluded for definite term, expiry of mandate triggers automatic termination of employment. However, if the employment is concluded for indefinite term, end of term of office does not lead to automatic termination of employment, but the employer would be obliged to offer to such ex-director a new, adequate position for transfer, or to declare him/her as redundant if such position does not exist.

On the other hand, if director is already employed he/she should enter into Managerial Agreement instead. Such Managerial Agreement is regularly linked to duration of term of office and ends once the term of office expires.

IN INTERNATIONAL SITUATIONS

In the case when the foreigners establish employment in Serbia as local directors, they are locally registered as employees and fall under Serbian social security regime.

However, if the foreigners enter into the Managerial Agreement (without establishing employment locally), their social security regime depends on the fact whether they are receiving any remuneration from the local entity based on this agreement. If *remuneration* is received, his/her social security regime will depend on the principles set in the social security convention concluded between Serbia and the country of nationality of the director in question. Usually, such conventions anticipate application of Serbian social security regime in the case when the foreigner is considered as Serbian resident, depending on the length of his/her residence in Serbia, but the provisions of such conventions may differ. On the other hand, if director is not receiving any remuneration , he/she is not considered to fall under Serbian social security regime. A separate complex set of rules is applicable in the case when the director is at the same time the founder of the respective local company.

The rules presented above are equally applicable to registered director of Serbian company and to registered representative of the rep. office /branch of the foreign company registered in Serbia.

We have elaborated here only the case when foreigners in question will be acting as formally registered, legal directors of local entities. However, if foreigners would not be formally registered legal directors, their status would be equal to any other foreigner working in Serbia. If such person will be locally employed, he/she would fall under Serbian social security regime for regular employees. Otherwise, if such foreigner would only be seconded to Serbia (without establishing employment locally), the social security status would depend on the social security convention between Serbia and his/her country.

Jelena Danilović
Senior Associate
+381 11 3094 427
jelena.danilovic@karanovic-nikolic.com

SPAIN

GARRIGUES

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Italy. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

36
2016

Status for social security purposes

DOMESTIC RULES

1. Social security regime

The directors of a company could be included according to Spanish Social Security legislation, depending the case, into different situations, based on (i) the performance of the direction and management functions of a company and (ii) the possession of the "effective control of the company" in shareholding parameters (such term will be explained subsequently):

Included in the General Social Security Regime. Those ordinary directors or non-executive directors without direction or management functions and "effective control of the company", but rendering services with a common labor relationship.

Included in the special Self-employed Social Security Regime. The regulation stipulates that such persons that (i) perform direction and management functions as directors and are paid for these services, and (ii) hold the "effective control of the company" should be included in the Self-employed Social Security Regime.

Included in the General Social Security Regime as workers "treated as" employees (i.e., without entitlement to unemployment and Wage Guarantee Fund) when the Directors perform direction and management functions and are paid for these services or for normal labor duties but do not hold the effective control of the company.

In order to determine the definition of "effective control of the company", it is established an irrefutable presumption when the person holds, at least, half of the share capital of the company.

Also, some refutable presumptions can determine the existence of "effective control of the company", such as:

- At least half of the share capital of the company is distributed among partners, with which the person concerned coexist, and who are found connected by marriage bond or by blood, marriage or adoption, to the second degree.
- The share capital participation of the person is equal to or greater than the third part of the capital.
- The share capital participation of the person is equal to or greater than the quarter part of the capital, provided that, in addition, direction and management functions are performed.

2. Possibility to combine the director's mandate with an employment contract

Translating the previously described Social Security situations into the employment area, the results are:

- Directors that exercise executive functions representing the company in all areas can not have employment contracts. They can not even have special senior executive agreements as General Managers.
- The position of General Manager is not compatible with that of a Director, the latter one prevails.
- It is possible to have employment agreements for Directors when the executive functions are restricted to limited areas.
- It is also possible to have employment agreements for Directors who do not have executive functions but perform an ordinary work.
- Directors for their functions as such can not have employment agreement, as this may restrict the freedom of removal by the general shareholder meeting.

Vicente Calle
Partner
+34 91 514 52 00
vicente.calle@garrigues.com

SWEDEN

Delphi

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Italy. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

38
2016

Status for social security purposes

DOMESTIC RULES

Under Swedish legislation any person who is gainfully employed in Sweden is also insured for the earnings-related benefits of the social security system. There is no citizenship requirement, nor a residential requirement for a person to be eligible for the work-based benefits. This applies regardless of whether the work is of temporary or permanent nature. With work in Sweden means any gainful activity conducted or physically carried out in in Sweden. This applies to all work carried out by both employees and contractors, including directors.

Anyone who pays compensation, including director's fee, for work conducted in Sweden shall also pay social security contributions in Sweden.

Accordingly, as a main rule any gainful activity conducted or physically carried out in in Sweden shall be covered by the Swedish social security system. However there are some exceptions from this main rule both widening and limiting the scope. For example it is considered reasonable that work which is not physically performed in Sweden but still have a strong connection to Sweden shall be covered by Swedish social security system. On the contrary, certain work performed in Sweden but which has a closer connection to another country shall be covered by that country's social security system.

In summary directors are, in terms of social security, regarded as employees or salaried workers in Sweden.

IN INTERNATIONAL SITUATIONS

In Sweden the rules governing which country's social security system a person belongs to apply in the following order:

- EU Regulation 883/2004 and implementing Regulation 987/2009 (basic Regulation) and EU Regulation 1408/71 (old regulation)
- Social conventions
- Swedish legislation.

Anyone who, according to what follows from the Regulation No 883/2004, is covered by the legislation in another state is not insured for such social security benefits provided for in Swedish Social Security Act (2010:110).

Magnus Berterud
Counsel
+46 8 677 54 87
magnus.berterud@delphi.se

Fredrik Nordlöf
Partner
+46 8 677 55 60
fredrik.nordlof@delphi.se

SWITZERLAND

walderwyss

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Italy. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

40
2016

Status for social security purposes

DOMESTIC RULES

Basically, managing a company with its registered domicile in Switzerland is, for social security purposes, always considered as an employed activity in the sense of EU Regulation 883/2004. This applies irrespective of whether the person is registered in the commercial register or not.

Therefore, a person residing outside Switzerland who is registered in the Swiss commercial register as a member of the board, as a director or in another leading function is deemed as an employed person in Switzerland. This applies even in the case the person does not in fact performs any activity in this function in Switzerland.

The qualification as employed activity applies even in the case the person does not earn any income for this function at all or in the case the compensation for such function is not paid directly to the person but rather to a holding company.

This regime applies irrespective of the type of the company and regardless of whether the company holds own premises or employs any staff in Switzerland.

Under Swiss law Article 14 sec 5b EU Regulation 987/2009 does not apply for activity in connection with a leading function in a company.

IN INTERNATIONAL SITUATIONS

Citizens of an EU-member-state and Swiss citizen who exercise a function as outlined above and who also pursue a gainful activity in another state will be subject to the social security legislation of one state only according to the EU Regulation 883/2004.

Pursuant to EU Regulation 883/2004 (article 13 sec 1), a person who normally pursues an activity as an employed person ("Employed Activity") in two or more member states shall be subject to the legislation of the member state of residence if he pursues a substantial part of his activity in this state. Contrary, a person who normally pursues an Employed Activity and an activity as a self-employed person ("Self-Employed Activity") in different member states shall be subject to the legislation of the member state in which the person pursues an Employed Activity.

The question whether a certain activity is considered as an employed activity or as a self-employed activity in the sense of EU Regulation 883/2004 is determined in accordance with national law.

Hence, the crucial factor is whether the activity performed in another EU-member-state is – according to the legislation of that member state – deemed to be an Employed Activity or a Self-Employed-Activity.

If such activity, for social security purposes, is considered as a Self-Employed activity in the other member-state, the person would be subject to Swiss social security.

If, from the respective member-state-legislation-perspective, the activity is considered as an Employed Activity in the respective member-state, the person shall be subject to the legislation of the member state of residence if he pursues at least 25 per cent of his Employed Activity in that member state.

Ueli Sommer
Partner
+41 58 658 5516
ueli.sommer@walderwyss.com

UNITED KINGDOM

Executive summary of qualification of a director's mandate

(in a local or foreign company)
in view of application of EU regulation 883/2004

SHEPHERD+WEDDERBURN

The EU Regulation 883/2004 determines which social security legislation is applicable to people working simultaneously in two or more states within the European Economic Area and Italy. According to the EU Regulation, a person can only be subject to the legislation of one state at a time for all his activities. In order to be able to determine the competent state, one has to be aware of the qualification of an activity exercised in a certain state.

42

2016

Status for social security purposes

DOMESTIC RULES

Social security regime
For UK National Insurance contribution purposes, a person is categorised either as an "employed earner" or a "self-employed earner".

An "employed earner" is any person who is gainfully employed in Great Britain either (a) under a contract of service; or (b) in an office from which he derives earnings.

A "self-employed earner" is any person who is gainfully employed in Great Britain otherwise than in employed earner's employment.

In this context "gainfully" means, broadly, with a view to obtaining remuneration or profit in return for services or efforts.

A directorship of a company is an "office" for these purposes. Therefore, on the assumption, that the relevant individual is remunerated for his services, a director will be treated as an employee for UK social security purposes.

IN INTERNATIONAL SITUATIONS

Citizens of an EU-member-state who act as a director in the UK and who also pursue a gainful activity in another state will be subject to the social security legislation of one state only (in accordance with EU Regulation 883/2004).

As Member States have the discretion to agree exceptions to the normal rules in the interests of individuals and where the strict application of the Regulation would result in an unjust outcome, it is possible to request that HMRC consider making exceptional agreements with other Member States to either keep a person within the UK scocail securtiy regime, if that would be in their interests, or alternatively, to agree to exempt a person from the UK social security regime and apply the legislation of another Member State

Katie Russell
Partner
+44 (0)131 473 5266
katie.russell@shepwedd.co.uk

Notes

Notes

Notes

Notes

COMPILED BY ALTIUS
AND TIBERGHIEN
LAWYERS 2016