

Social security coordination

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The free movement of persons would be of little use if workers lost their social security rights when crossing a border. Annex II of the Agreement on the Free Movement of Persons therefore extends to Switzerland the European rules on the coordination of social security systems. Since 1 April 2012 these rules have been those of Regulation (EC) No 883/2004 and its implementing Regulation (EC) No 987/2009, which replaced the earlier Regulation (EEC) No 1408/71.¹ The regulations leave the national systems in place and determine which national system applies to a person, ensure equal treatment and aggregate periods of insurance completed in different states.

The basic principle is the *lex loci laboris*. A person who works in one state is subject to the social security legislation of that state, even if he or she resides in another. A cross-border commuter resident in Lörrach and employed in Basel is therefore insured in the Swiss old-age and survivors' insurance (AHV), the disability insurance and the unemployment insurance. The employer deducts the Swiss contributions from the salary and pays the employer's share, just as for a resident employee.² Occupational pensions under the Federal Act on Occupational Retirement, Survivors' and Disability Pension Plans also follow the place of work, since affiliation depends on employment with a Swiss employer above the statutory threshold.

The principle becomes complicated when a person works in more than one state. Article 13 of the regulation provides that a person who pursues an activity as an employed person in two or more member states is subject to the legislation of the state of residence if he or she pursues a substantial part of the activity there. The implementing regulation defines a substantial part as 25 per cent or more of working time or remuneration.³ Before 2020 this rule rarely mattered for commuters to Basel, who worked almost exclusively at their employer's premises. The spread of home

working changed that, since a commuter who works two days a week from home in Alsace or Baden spends forty per cent of the working time in the state of residence and would, under the general rule, have to be insured there.

The consequence would be unwelcome for all parties. The Swiss employer would have to register with the French or German social security system, pay contributions at the much higher French or German rates and comply with foreign procedural rules. During the pandemic the states suspended the rule and agreed that home working should not change the applicable legislation.⁴ When the exceptional period ended on 30 June 2023, a permanent solution became necessary.

1 Notes

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 L 166, 30.4.2004, p. 1, and Regulation (EC) No 987/2009, applicable in relations with Switzerland under Annex II AFMP since 1 April 2012. To be verified. ↩
2. Art. 11 para. 3 lit. a of Regulation (EC) No 883/2004. On the obligations of Swiss employers towards cross-border commuters in the first pillar, see the publications of the Central Compensation Office and the Information Centre AHV/IV. To be verified. ↩
3. Art. 13 para. 1 lit. a of Regulation (EC) No 883/2004; Art. 14 para. 8 of Regulation (EC) No 987/2009 (substantial activity of 25 per cent). To be verified. ↩
4. On the temporary arrangements adopted by the Administrative Commission for the Coordination of Social Security Systems and by the Swiss authorities for home working during the COVID-19 pandemic (2020–2023), see the publications of the Federal Social Insurance Office (FSIO). To be verified. ↩

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