

RECOMMENDATION No S2

of 22 October 2013

concerning the entitlement to benefits in kind for insured persons and members of their family during a stay in a third country under a bilateral convention between the competent Member State and the third country

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2014/C 46/09)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ⁽¹⁾, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 ⁽²⁾,

Having regard to Article 72(c) of Regulation (EC) No 883/2004, under which it shall foster and develop cooperation between Member States and their institutions in social security matters,

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

Whereas:

- (1) The particular importance of the general principle of equal treatment for workers who do not reside in the Member State of their employment, including frontier workers, has been reiterated in the eighth recital and in Article 4 of Regulation (EC) No 883/2004.
- (2) Article 4 of Regulation (EC) No 883/2004 prohibits discrimination of persons to whom this Regulation applies.
- (3) The Court of Justice has also ruled that if the application of a provision of Union law is liable to be impeded by a measure adopted pursuant to the implementation of a bilateral convention, even where the convention falls outside the field of application of the Treaty, every Member State is under a duty to facilitate application of that provision ⁽³⁾.
- (4) Even if a convention concluded between a single Member State and one or more third countries does not come within the concept of 'legislation' within the meaning of Article 1(l) of Regulation (EC) No 883/2004, this cannot

affect the obligation of every Member State to comply with the principle of equal treatment laid down in Article 45 of the Treaty ⁽⁴⁾.

- (5) For this reason, it should be made clear that bilateral conventions on social security between a Member State and a third country must be interpreted to the effect that the bilateral conventions must be applied in such a way as to not deprive a person and the members of his/her family (Article 1(i) of Regulation (EC) No 883/2004) from the rights attached to the exercise of the freedom of movement within the European Union as laid down in the Treaty.
- (6) The freedom of movement cannot be fully effective if a person to whom the legislation of a Member State other than his/her State of residence applies were not granted the same treatment in law as persons residing in that Member State who find themselves in the same situation.
- (7) The provisions in Title III, Chapter 1, of Regulation (EC) No 883/2004 contain conflict rules which determine under which conditions an insured person and the members of his/her family are entitled to sickness benefits in kind on behalf of the competent institution, while residing or staying in another Member State.
- (8) The intention of Articles 17 and 24 to 26 of Regulation (EC) No 883/2004 is to ensure that the grant of sickness benefits in kind should not be conditional on the residence of the insured person in the competent Member State in order not to deter migrant workers from exercising their right to free movement ⁽⁵⁾.
- (9) This also applies to family members as defined in Article 1(i) of Regulation (EC) No 883/2004 who shall receive in the Member State of residence sickness benefits in kind provided, on behalf of the competent institution, by the institution of the place of residence on the basis of Articles 17 or 24 to 26 of Regulation (EC) No 883/2004.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1 (corrigendum OJ L 200, 7.6.2004, p. 1).

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

⁽³⁾ Case C-55/00 *Gottardo* [2002] ECR I-413, paragraph 31 and Case 235/87 *Matteucci* [1988] ECR 5589, paragraph 19.

⁽⁴⁾ Case C-55/00 *Gottardo* [2002] ECR I-413, paragraph 35 and Case C-23/92 *Grana-Novoa* [1993] ECR I-4505.

⁽⁵⁾ Case C-286/03 *Silvia Hosse* [2006] ECR I-01771, paragraph 54.

(10) The principle of equal treatment should also apply in principle in cases where the competent Member State has concluded a bilateral convention with a third country in which provisions on sickness benefits in kind which become medically necessary in a third country are included, and provided that the third country is prepared to cooperate in individual cases,

HEREBY RECOMMENDS:

1. A Member State which has concluded a bilateral convention on social security with a third country in which provisions on sickness benefits in kind are included shall apply these provisions to persons to whom the legislation of this Member State applies, as well as to members of their

family, who reside in another Member State and who are entitled to receive benefits in kind on the basis of Articles 17 or 24 to 26 of Regulation (EC) No 883/2004, in the situation where sickness benefits in kind become medically necessary during a period of stay in that third country.

2. This Recommendation shall be published in the *Official Journal of the European Union*. It shall apply from the first day of the second month after its publication.

The Chair of the Administrative Commission

Mariana ZIUKIENE
