

Press Release

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## **Social rights of mobile workers may be hit by new rules**

**On 16<sup>th</sup> December negotiators from the European Parliament, the Council and the European Commission will meet in a trilogue to discuss the future of coordination of social security systems in the EU. According to the European Labour Mobility Institute (ELMI), if EU decision-makers agree on the proposed compromise, it will have the opposite effect to what was anticipated. In the discourse regarding “prior notification” and “business trips”, the introduction of a new parallel meaning of the term “registered office” has hardly been discussed. And yet, as it contradicts the commonly used legal definition of this term with vague and unclear criteria, it will create unprecedented confusion. Moreover, it will cause workers to be dragged from one social security system to another. In many cases retroactively.**

– According to the current regulations, the majority of highly mobile workers are covered by the legislation of the Member State where the registered office of their employer is located. This guarantees that mobile workers’ applicable legislation doesn’t change each time they move from one Member State to another. This is how the principle of legal clarity, continuity and stability of social security coverage is implemented. However, this situation may change in the future as a result of the current revision of coordination of social security systems – explains Stefan Schwarz, the President of ELMI.

### **The social security of mobile workers is at stake**

The new proposed rules stem from an attempt to deal with so called letterbox companies. These are legal entities usually registered by corporate groups in Member States with low social contributions, not with the intention to run a genuine business in a particular state, but rather to cut costs by hiring workers there and sending them to perform work for the parent company’s undertakings in a Member State with high social security contributions.

EU decision makers have come up with a controversial political concept to introduce a new parallel meaning of the term ‘registered office’ to be used solely for the purpose of determining the applicable social security legislation. It will replace the legal definition of the “registered office” through an open-ended catalogue of vague and discretionary criteria. As a result, a “registered office” within this meaning may change, even on a daily basis, and it is highly likely that under some circumstances no one would know for sure where this office is actually located.

The abovementioned open-ended catalogue of vague and discretionary criteria includes the employers’ number of contracts, value of invoices issued, and workers’ workload in the Member States where their employer provides services. This might, at first glance, sound like a sensible tool to fight letterbox companies. However, according to the proposal, when determining the applicable legislation, the workers’ personal situation will not be taken into account at all.

– This is directly contrary to the principle of the legal clarity, continuity and stability of social security coverage. What’s more, the proposed criteria, like ‘turnover’, are highly time-variable and can force changes in an applicable law to be backdated. Some other phrases, such as ‘habitual nature of the activity pursued’, are vague and discretionary, while other criteria like “working time performed by all workers in each Member State”, seem to be difficult to verify. Without doubt, it would lead to unprecedented confusion among workers,

employers, and social security institutions, as the parallel meaning of a 'registered office' would lead to counterintuitive conclusions. It is certain that mobile workers will not be beneficiaries, but rather victims of such legislative change – warns Marek Benio, the Vice President of ELMI.

### **A missed opportunity to eliminate letterbox companies**

According to the European Labour Mobility Institute's analysis, the proposed parallel meaning of a registered office will not only detrimentally affect highly mobile workers but would in fact fail in its aim to eliminate letterbox companies. This is due to the fact, that the existing proposal lacks a very important criterion. According to ELMI's legal experts, this proposed change can easily be circumvented.

– The characteristic feature of letterbox companies is that they have financial and personal links with their clients and have no intention to operate a genuine business in the Member State of their registration. Therefore, in order to identify and fight letterbox companies without harming genuine European businesses, competent institutions should verify personal and financial links between the employer and its clients. This is an effective and easy-to-use tool to stop the law being flouted within the scope of social security coordination. This criterion is a commonly used instrument in tax law in every Member State and can be easily verified. Its application would allow any confusion connected with other criteria to be avoided. We consistently call on the negotiators to have a closer look at this extremely important issue – concludes Stefan Schwarz.

### **Context**

In December 2016, the European Commission put forward a proposal to revise the current rules on the coordination of social security systems. Nearly six years later, the EU institutions are still negotiating, and are desperately seeking a compromise agreement. Negotiators are mainly focusing their attention on the issues of whether there is a need of prior notification before sending workers abroad and defining what constitutes a business trip. The significance of a new definition of the "registered office", which is a real threat to workers' certainty regarding social security, has been disappointingly missed, according to the European Labour Mobility Institute. In its draft proposal, the European Commission did not intend to amend the concept of the "registered office" (Article 14.5.a of Regulation 987/2009). Therefore, this part of the legislative proposal has not been subject to public consultation. The proposal for a new parallel meaning of the registered office was put forward by the European Parliament and the Council. As no impact assessment has been conducted, the consequences of this proposal are to a great extent unknown. This is why, the European Labour Mobility Institute conducted a thorough evaluation of this proposal's ability to provide single applicable legislation to highly mobile workers. The Institute has published its conclusions in a policy paper entitled: ["Social security coordination: how to stop abuse of law by letterbox companies"](#).

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### **About ELMI**

European Labour Mobility Institute is the biggest think-tank in Europe dealing with labour mobility and posting of workers. Since 2013 the organization brings together the employers, scholars, workers and public administration and creates the only European forum for exchange of knowledge on the posting of workers within the freedom to provide services. Association activities are funded by the membership fees and donations.