

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Fürstliches Obergericht dated 25 March 2021 in the case of ISTM International Shipping & Trucking Management GmbH v AHV-IV-FAK

(Case E-1/21)

A request has been made to the EFTA Court dated 25 March 2021 from Fürstliches Obergericht (Princely Court of Appeal), which was received at the Court Registry on 6 April 2021, for an Advisory Opinion in the case of ISTM International Shipping & Trucking Management GmbH v AHV-IV-FAK on the following questions:

I. Registered office of an undertaking

- 1. Does the registered office (statutarischer Sitz or satzungsmässiger Sitz) of an undertaking suffice to be regarded as the registered office (Sitz) within the meaning of Article 13(1)(b)(i) 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 in conjunction with Article 14(5a) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems and thus as a connecting factor for subjecting the employees of the undertaking to the legislation of the Member State in which the registered office (statutarischer Sitz or satzungsmässiger Sitz) is situated?**

- 2. If Question 1 is answered in the negative:**

According to which criteria must the registered office (statutarischer Sitz or satzungsmässiger Sitz) or place of business where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out, as provided for in Article 14(5a) of Regulation (EC) No 987/2009, be determined? For these purposes, must reference be had to the interpretation reached by the Administrative Commission for the Coordination of Social Security Systems, as set out in Part II, Section 7 (page [35] et seq.) of the

Practical guide on the applicable legislation in the European Union (EU), in the European Economic Area (EEA) and in Switzerland of December 2013?

II. Questions on the interpretation of Article 16(3) of Regulation (EC) No 987/2009:

- 1. From what time is the institution of the Member State in which the person pursues an activity regarded as having been informed of the provisional determination by the institution of the place of residence? Does it suffice when, in whatever form, the provisional determination reaches the institution of the place in which the person pursues an activity (for example via the undertaking or the employee)?**

- 2. Is the “definitive nature” of the determination of the applicable legislation that arises as a result of the two-month period expiring without use being made of it not susceptible to further challenge by the designated institution of the Member State and, in particular, even where the person concerned does not pursue any activity in this Member State?**

- 3. If Question II(2) is answered to the effect that the determination, notwithstanding the fact that it has become definitive, may be challenged: What are the legal consequences? Can this result in a retroactive setting aside of the determination?**