Luxembourg, 14 December 2021

PRESS RELEASE 16/2021

Judgment in Case E-1/21 *ISTM International Shipping & Trucking Management GmbH* v *Liechtensteinische Alters- und Hinterlassenenversicherung, Liechtensteinische Invalidenversicherung, and Liechtensteinische Familienausgleichskasse*

DETERMINATION OF REGISTERED OFFICE OR PLACE OF BUSINESS IN THE CONTEXT OF SOCIAL SECURITY SYSTEMS' COORDINATION

In a judgment delivered today, the Court answered questions referred to it by the Princely Court of Appeal (*Fürstliches Obergericht*) concerning the interpretation of Regulation (EC) No 883/2004 on the coordination of social security systems ("Regulation 883/2004") and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ("Regulation 987/2009").

The case in the main proceedings concerns an appeal brought by ISTM International Shipping & Trucking Management GmbH ("ISTM") against a decision that determined that Liechtenstein social security law was neither applicable to ISTM, nor to its employees registered in 2016. The decision was based on the fact that ISTM did not carry out the essential decisions and functions of its business operations at its registered office in Liechtenstein.

By its first set of questions, the referring court asked whether the mere presence of the registered office of an undertaking suffices for the purposes of point (b)(i) of Article 13(1) of Regulation 883/2004, read in conjunction with Article 14(5a) of Regulation 987/2009. If not, it asked by which criteria the existence of a registered office or place of business within the meaning of those provisions must be determined. The Court answered this in the negative. It held that when determining where the essential decisions of an undertaking are adopted and where the functions of its central administration are carried out, a series of factors must be taken into consideration. These include, inter alia, the location of its registered office, the place of its central administration, the place where its directors meet and the place, usually identical, where the general policy of that company is determined.

By its second set of questions, the referring court enquired about the procedure by which a provisional determination under Article 16 of Regulation 987/2009 becomes definitive. It further asked whether a definitive determination may be challenged, and if so, what the legal consequences are. The Court found that in order for such a provisional determination to become definitive, the designated institution of the place of residence must have informed the designated institutions of each EEA State where an activity is pursued. It does not suffice for the purposes of that provision if the provisional determination reaches the designated institution of an EEA State in which an activity is pursued in whatever form, such as through the undertaking or person concerned. Furthermore, the Court held that that provision must be interpreted as meaning that the designated institution of an EEA State may still challenge a provisional determination that has become definitive as a result of the two-month period expiring without use having been made of it. Use of the procedure provided for in that provision may result in a definitive determination being set aside with retroactive effect.

The full text of the judgment may be found on the Court's website: www.eftacourt.int.