

Abstract

Erhag, T. 2002. Fri rörlighet och finansiering av social trygghet – en rättslig studie av EG-rättens inverkan på medlemsstaternas uttag av avgifter för finansiering av social trygghet. Santérus förlag, 539 pp. Stockholm 2002. ISBN 91-89449-48-7. Swedish text with a summary in English.

Title: Freedom of movement and social security financing – A legal study of the impact of Community law on the Member States' levy of social security contributions

The social security systems of the EU Member States show substantial differences. Although Member States share basic objectives, their methods of reaching those objectives, as is shown in the use of financing methods, are quite different. Social security expenditures are met by a variety of financing instruments e.g. direct income taxes and social security contributions.

The legislation of each Member State determines the design of their social security systems. In order to safeguard the freedom of movement for workers the Council has adopted two regulations, 1408/71 and 574/72, with the objective to coordinate the Member States' social security systems when workers, self-employed and their families move within the EU. The coordination-regulations are also applicable to the levy of social security contributions.

In this thesis, financing of social security is analysed from an EC-law perspective. Special attention is given to the question to what extent the Community-rules, with the objective to safeguard free movement, has impacted the design of Member State legislation. As a starting point, the analysis focus generally on the common market with the free movement of persons as one of its pillars and specifically, on EC regulations 1408/71 and 574/72 as coordinators of the levy of social security contributions when persons conduct cross-border activities. Financial instruments in Sweden, Denmark, Germany and Great Britain that may be referred to as social security contributions, are analysed more closely. The principles in EC-law according to which contributions are levied are analysed as well as how these principles coincide with national and international tax law.

The study reveals a complex contribution and tax situation for persons performing cross-border professional activities. Social security contributions and direct income tax are levied according to different principles at the same time as the financing structures of Member States vary substantially, furthermore, development in the area of social security and its financing show that the EC coordination-legislation is not sufficient. Reg. 1408/71 is built on the assumption that there is a link between paying contributions and receiving benefits. Member States are looking for alternative financing methods and tax financing of social security is an increasing feature. In a situation where there is little room for change of relevant EC-law, adjustment of national law is made within the prevailing system. The conclusion is a paradox, concerted action on this issue must be taken at the Community level in order to safeguard national interests.

Key words: Social security contributions, financing structures, freedom of movement, coordination of social security, conflict rules, duties of compliance, legal competences.

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