

## Reply received from Your Europe Advice

Please find below the reply to your enquiry. Please note that the advice given by Your Europe Advice is an independent advice and cannot be considered to be the opinion of the European Commission, of any other EU institution or its staff nor will this advice be binding upon the European Commission, any other EU or national institution.

Dear Mr,

Thank you for contacting Your Europe Advice. We are pleased to provide you with the answer to your questions.

### **Is a demand by the French pension authorities for consular authentication of a "certificat de vie" compatible with EC Regulation 883/2004?**

Article 80(2) specifies that "All statements, documents and certificates of any kind whatsoever required to be produced in application of this Regulation shall be exempt from authentication by diplomatic or consular authorities."

The question therefore arises whether the "certificat de vie" which is being requested can be said to be required to be produced in application of the EU rules on social security.

We understand that the "certificat de vie" is required to be provided to French pension institutions every year as a matter of French law as confirmed on this official French government website: <http://vosdroits.service-public.fr/F2543.xhtml>

As a result, we consider that the certificate cannot be said to be required under the Regulation, since the Regulation does not lay down any obligation on pension authorities to require such a certificate.

However that does not mean that such an administrative practice is necessarily in compliance with EU law.

Different rules apply according to whether a person lives in France or not and whether the pension claimed from a French pension provider.

It should be noted in this respect that pension claimants who live in France are able to self-certify their certificate in France as made clear by the official French government website cited above.

On the contrary, pension claimants who live outside France must make a declaration before the French consulate as is apparent from the form itself:

[https://www.formulaires.modernisation.gouv.fr/gf/cerfa\\_11851.do](https://www.formulaires.modernisation.gouv.fr/gf/cerfa_11851.do)

We do not consider that such a practice is justified by Regulation 883/2004 or Regulation 987/2009 which implements the first Regulation.

Article 4 of Regulation 883/2004 provides for a right to equal treatment: "persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof".

Therefore we consider that the fact that French authorities apply different rules to persons according to whether they live in France or not may consist in discriminatory treatment, since such a measure is likely to affect non-French citizens more than French nationals. Although the French authorities may seek to justify this difference of treatment on the basis of the need to avoid fraud, such a measure may only be justified if it is proportional and necessary to the aim pursued. Since there are other means to verify that a person is alive (for example by accepting documents issued by the UK pension authorities or by accepting a declaration made before a solicitor or commissioner for oaths as allowed under UK law).

In addition, Article 5(1) of Regulation 987/2009 specifies that:

“Documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of the basic Regulation [883/2004] and of the implementing Regulation [987/2009], and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued.”

Article 5(2) of that Regulation further explains that where the institution that receives the document has doubt about the validity of a document, it should raise the matter directly with the institution that issued the document. Article 5(3) then places an obligation on the institution that issued the document to verify its validity. Article 5(4) then provides that if there is a disagreement between the two institutions, the matter should be brought before the Administrative Commission on the coordination of social security no earlier than a month following receipt of the document in question. The Administrative Commission then has 6 months to resolve the issue.

Article 87 of this Regulation also allows the French authorities to request the British authorities to undertake an administrative check.

As a result, we consider that the demand made by the French pension authorities for consular authentication of a "certificat de vie" is not compatible with EC Regulation 883/2004. In accordance with Regulation 987/2009, the French authorities should accept any document emanating from the UK authorities (such as the Department for Work and Pensions or its International Pension Centre) and resolve any issues in compliance with Regulation 987/2009.

## **2. Is a demand by the French pension authorities that an authenticated "certificat de vie" be furnished to them within two weeks compatible with EC Regulation 883/2004?**

Article 76(4) of Regulation 883/2004 places a duty on pensioners to communicate with the national authorities “as soon as possible of any change in their personal or family situation which affects their right to benefits under this Regulation.”

Article 76(5) further specifies that: “Failure to respect the obligation of information referred to in the third subparagraph of paragraph 4 may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult in practice for claimants to exercise the

rights conferred on them by this Regulation.”

Article 87 of this Regulation also allows the French authorities to request the British authorities to undertake an administrative check.

We consider that giving your wife only two weeks to obtain an authenticated certificate makes it excessively difficult in practice to exercise her pension rights. Given that it is currently the summer holiday season, it is not realistic to expect that the French consular authorities in France would be able to respond to a request to issue an authenticated certificate within a few days of being contacted.

Moreover, Regulation 987/2009 also permits the French authorities to ask the British authorities directly to make administrative checks to ensure that pensioners are still alive. Therefore there are alternative means for the French authorities to make administrative checks to minimize fraud.

As a result, we consider that the demand made by the French pension authorities for your wife to obtain consular authentication of a "certificat de vie" within two weeks is not compatible with EC Regulation 883/2004.

### **3. Are the administrative procedures being contemplated by the French government that would require pensioners living in other EU countries to obtain quarterly certificates from the French consulate to confirm that they are still alive contrary to EU law?**

As we mentioned above, we consider that the demand made by the French pension authorities for consular authentication of a "certificat de vie" is not compatible with EC Regulation 883/2004. In accordance with Regulation 987/2009, the French authorities should accept any document emanating from the UK authorities (such as the Department for Work and Pensions or its International Pension Centre) and resolve any issues in compliance with Regulation 987/2009.

Furthermore, Article 76(4) of Regulation 883/2004 places a duty on pensioners to communicate with the national authorities any change in their personal situation which affects their right to a pension. Imposing a quarterly reporting requirement is likely to be in breach of Article 76(5) of the Regulation if no such requirement is imposed on persons receiving a pension who reside in France and because it is likely to make it excessively difficult for pensioners to exercise their rights under the Regulation.

Moreover, Regulation 987/2009 also permits the French authorities to ask the British authorities to make administrative checks to ensure that pensioners are still alive. Therefore there are alternative means for the French authorities to make administrative checks to minimize fraud. In addition, the EU is in the process of setting up an electronic information system which pension authorities should be able to use in the future.

As a result, we consider that the proposed administrative measures contemplated by the French government to require pensioners living in other EU countries to make quarterly declarations is unlikely to be compatible with EC Regulation 883/2004.

### **4. Your Next Steps**

Firstly, we would suggest you make sure to send a letter to the French pension institution to request an extension of time for providing the certificate. You should specifically remind them that it is the summer, that many French consular officials are on holiday until September and therefore that you are asking for a further extension of time of six weeks to obtain the certificate. You should send your letter by registered mail with recorded delivery.

Secondly, we suggest that you contact SOLVIT, the EU's online problem-solving network to see if they can assist you in resolving this issue:

[http://ec.europa.eu/solvit/site/index\\_en.htm](http://ec.europa.eu/solvit/site/index_en.htm)

You will find further information on how to contact SOLVIT at the end of this message.

Thirdly, we suggest that you send in a formal complaint to the European Commission (enclosing a copy of our advice).

Finally, we suggest that you contact the International Pension Centre and ask them to send you a letter confirming that your wife is still alive, so that you can send it to the French pension provider:

[http://www.direct.gov.uk/en/D11/Directories/UsefulContactsByCategory/Over50sContacts/DG\\_178684](http://www.direct.gov.uk/en/D11/Directories/UsefulContactsByCategory/Over50sContacts/DG_178684)

Once you have it, you should send it with a cover letter explaining that you are sending this instead of the French "certificate de vie" in accordance with Article 5 of Regulation 987/2009 which reads as follows in French:

Règlement (CE) n o 987/2009 du Parlement européen et du Conseil du 16 septembre 2009 fixant les modalités d'application du règlement (CE) no 883/2004 portant sur la coordination des systèmes de sécurité sociale, Article 5 :

« 1. Les documents établis par l'institution d'un État membre qui attestent de la situation d'une personne aux fins de l'application du règlement de base et du règlement d'application, ainsi que les pièces justificatives y afférentes, s'imposent aux institutions des autres États membres aussi longtemps qu'ils ne sont pas retirés ou déclarés invalides par l'État membre où ils ont été établis. »

We hope this answers your query.

We remain at your disposal, should you require further information.

It seems that your case may be further dealt with by SOLVIT which is a free-of-charge network that seeks to solve problems caused by the misapplication of EU rules by public authorities in another member state. Find more about [SOLVIT](#). If you want to pursue your case with SOLVIT please click on the following [link](#).

To submit another enquiry, please visit [Your Europe Advice](#), but do not reply to this e-mail.

Yours sincerely,

Your Europe Advice