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ISSUE
08

Brussels Diplomat

An Update on Legal Developments for the Diplomatic Community in Brussels

October 2013

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New Social Security and Fiscal Measures for Diplomatic Missions in Belgium

On July 1, 2013, the Belgian government announced that, in the framework of budgetary reforms, new measures in social security and tax matters would become applicable to the members of the staff of diplomatic missions accredited to Belgium. Some of these measures have been laid down in two circular notes published by the Protocol Directorate of the Foreign Affairs Ministry, respectively dated August 1 and September 1.

1) Healthcare Insurance

In the circular note of August 1, 2013, the government announced that:

- As of September 1, 2013, new staff members holding an ID card issued by the Protocol Directorate (diplomatic card or special ID card) will no longer be entitled to subscribe to healthcare and incapacity insurance cover through one of the Belgian mutual health insurers (the so-called "mutuelles").
- Those being currently entitled to healthcare services through the Belgian healthcare insurance system will lose this right at the latest on December 31, 2013.
- By then, the sending states are advised to take the necessary steps in order to guarantee health insurance cover for the staff members affected by this new regime, either through the application of the social security provisions of the sending state, if these allow it, or through a private insurer (in Belgium or elsewhere).

This decision of the Belgian authorities is consistent with Article 33(4) of the Vienna Convention on Diplomatic Relations, which reads as follows:

The exemption [from social security provisions in force in the receiving State] shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

Based on this provision, the receiving state is allowed to exclude voluntary participation in its social security system. However, according to Articles 33(2)(b)-(3) and 37(2)-(3) of the Vienna Convention, the staff member must then be covered by social security provisions which may be in force elsewhere, failing which they would actually not enjoy the exemption from Belgian social security provisions, and would have to be enrolled in the Belgian system.

It is also worth recalling that, pursuant to Article 37(2)-(3) of the Vienna Convention, the above exemption is not applicable to members of the administrative and technical staff or of the

service staff of the mission who are nationals of or permanently resident in Belgium. As confirmed by Belgian case-law, these persons are therefore subject to the Belgian social security scheme.

2) Duty-Free Quotas

In the circular note of September 1, 2013, the government announced that, as from January 1, 2014, no tax exemption will be granted for the purchase of cigarettes, cigars, tobacco and manufactured tobacco substitutes. Only the purchase of spirits, wines and fuel for vehicles registered in Belgium remain covered by the system of duty-free quotas. These quotas, which in Belgian practice are determined for each calendar year and may be decreased by application of the reciprocity rule, are intended to cover both the official use of diplomatic missions and the private needs of diplomatic agents and members of the administrative and technical staff.

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