



Social Protection Reform Project
中国-欧盟社会保障改革项目

Study visit on employment policies and social security systems with special reference to migrant workers

Madrid, 28th – 30th October 2015

CONCLUSIONS

Subjects of great interest have been dealt with in this study visit. They have been designed according to the requests of the Chinese authorities to the Project EU-China for the reform of the Social Protection. The project is very ambitious, but the promotion of the social protection in the economic development of the Chinese society, and the cooperation and the dialogue between the EU and China in this same field, are objectives that justify the efforts of the States that collaborate in this Project.

On the other hand, the answers to be offered, obtained from the common reflection and the shared knowledge, will always help to a better and higher mutual development, and hence the significance of the activities that we have developed during this week.

In the first place, the Secretary of State for the Social Security, Mr Tomás Burgos, opened the work sessions by thanking the Chinese delegation for the interest shown by its country for the reforms made in Spain and for the result of them, which fortunately have started to show their fruits since the year 2013.

For this Study Visit, we have prepared a programme with a trip around all our institutions, the National Institute for Social Security (INSS), the General Fund of Social Security (TGSS), the Marine Social Institute (ISM), with the participation of experts in legal regulation, Directorate General for the Regulation of Social Security (DGOSS), and of the Legal Service of the Social Security management, where we have had talks, round tables and practical cases. The migrant workers and the international mobility, the challenges of the social security during the crisis, the application for a pension in a centre for service to the citizen of the social security, the management of the procedure, the computerization of the social security, the reforms of the employment policies, the system for direct collection of contributions, the fight against fraud, and the peculiarities of the protection given to the sea workers are the subjects that have taken out time during these days of work.

The big sections on which we have worked during this Study Visit have been the following:

- **The ways in which the Social Security systems face the effects of the economic crisis and the challenges at medium and long term caused by the ageing of the population.**

The challenges faced by the Social Security System, the reforms made and the creation of indicators for the follow-up and the assessment of the results obtained by these reforms have been explained in this context.

The shaping of the Social Security System, the effects of the economic crisis as a current phenomenon and the structural changes due to the ageing of the population have been set out, analysing each one of the reforms made.

- The rise of the retirement age, approaching the real age to the legal age, has been set in 67 years and there are new rules to accede to early retirement.
- Promotion of active ageing.
- In order to make the system more sustainable from the financial point of view, a sustainability factor and a revaluing rate of pensions to guarantee their annual increase have been designed.
- As a necessary complement to the measures previously set out, legislative measures aimed at preventing or at least seriously hampering fraud have been developed.
- Innovative measures, like the introduction of an additional complement to the pensions (retirement, widowhood or permanent incapacity) of female workers who have had two or more children have also been developed, in this way reducing the gender gap.

These reforms have been made within the recommendations of the European Union and following the Method of Good Practices.

- **Document: “*The challenge of Social Security Scheme during the crisis.*” Sra. María Teresa Quílez.**

X The recovery of the employment after a period of crisis.

The employment policies, the reform of the labour market, the promotion of hiring for an undetermined period of time, the measures to favour the access of young workers to the labour market, and the reduction of the tax burden (reduction of the social contributions) as a measure to promote employment, have been addressed.

The interest was focused on:

- How to combine flexibility in employment with the promotion of hiring for an undetermined period of time.

- In a context of economic crisis, how can economic growth and creation of employment be achieved, getting around the problem of an economy with an important component of the building sector
- Collective bargaining and the role of the Government, as well as the ways to reach agreements in collective bargaining in times of crisis.

➤ **Document: “Overall view of the reforms in the employment policy”. Mr. Beltrán de la Torre.**

- **Mobility of the workers**

The different Directives and Regulations ruling the free movement of workers have been analysed. The free movement of the workers is a fundamental principle of the Treaty on the Functioning of the European Union, established in its article 45 and developed by derived legislation, as well as by case law of the Court of Justice of the EU:

The coordination of Social Security in the field of the EU provides rules to protect the rights of the persons who move within the EU, Island, Liechtenstein, Norway and Switzerland.

If a national of the EU works in another Member State of the EU, the members of his or her family also have the right to reside and work in this country, regardless of their nationality. Their children have the right to be educated in this Member State.

➤ **Document: “Overall view of the mobility within the EU”. Mr. Emilio Moreno.**

The Social Security in a context of mobility of the workers

The two possibilities of moving and the coverage by social security have been studied:

- A) Posted workers.- Workers at the service of Spanish enterprises or with their headquarters in Spain which send their workers to render their services in another State but maintaining a working link with the mentioned enterprise
- B) Emigrant workers who render their services in States whose enterprises are not dependent from Spanish enterprises or enterprises located in Spain.

➤ **Document: “Social Security in an environment of international mobility”. Mrs María Jersús Esteban.**

Different ways of acknowledging benefits to migrant workers.

It has been tried to explain which are the Coordination Instruments signed by Spain in matter of Social Security (RRCC, CCBB and CMISS), the objectives they seek and that they are nothing but establishing the rules that allow for the coordinated application

of two or more national social security systems in a simultaneous/successive way to the migrant workers in order to guarantee him or her the maintenance of the acquired and/or in process of being acquired rights. For this aim, the rules used are two:

- Principle of treatment of all migrant workers subject to the legislation of a Member State (RRCC) or of a party State (CCBB or CMISS) equal to that given to the nationals of the said State concerning the conditions of employment, remunerations, conditions of work and of social security.
- Principle of totalization of insurance periods to open the right and to determine the amount as much as needed to reach the complete benefit.
- Removal of the residence clause to enjoy and receive benefit - duty to export benefits.
- Unity in the legislation applicable in each case.
- Assimilation of facts, circumstances or events with legal efficiency to the effects of pensions occurred in the territory of the other State as if they had occurred in the own territory.
- Administrative collaboration.

Likewise, the procedure to exchange information between institutions and the rules for the settlement of pensions pro rata between institutions has been transferred.

The Chinese delegation showed its interest for the procedure to settle and pay pensions pro rata between several States, how they are calculated and who pays (the doubt was whether the payment was centralized in the instructing institution or whether each institution paid directly to the citizen the pro rata of pension).

The Chinese delegation was informed that the retirement pensions caused under the international rule through the totalization of the insurance periods between two or more EU-Member States or States Party to the Agreement are calculated by each involved State according to its internal legislation on the hypothesis that all insurance periods taken into consideration (totalized) are insurance periods completed under the own legislation. Once the pension is calculated in this way, the result is called Theoretical Pension. The amount to be paid to the citizen would be the Pro Rata Pension, the result of applying the pro rata corresponding to each State to the Theoretical Pension, which is equivalent to the percentage represented by the insurance periods totalized under its legislation over the total number of totalized insurance periods.

The payment of the pro rata pension is made to the citizen independently by each State or debtor institution.

- **Document: “Theoretical forms for benefits recognition to migrant workers”.**
Mr César Gómez.

Management and control of the collection of contributions to Social Security (RED System)

Automatic management of the issue to the employer of the contributions settlement receipt.

- New procedure to exchange information built in in Internet that allows enterprises and professionals, with no limit to the number of workers, to manage all the information needed to settle the contributions of their workers.
- It is necessary to have an application adapted to the Direct Settlement System to carry out the remittance of the different files and the receipt of the answers.

➤ **Document: “RED System”. Mrs Rosa María Fernández.**

Fight against fraud

The work essentially consisted on setting out the measures in which the Legal Service of the Social Security Administration, through the Directorate of the Legal Service and under the higher leadership of the Secretariat of State for Social Security, has taken active part in matters of fight against fraud and in which it intervenes because of its concrete field of action.

To be more specific, the new regulation of the offenses against Social Security contained in Organic Law 7/2012 of 27 December, modifying Organic Law 10/1995 of 23 November of the Penal Code, in matter of transparency and fight against fiscal fraud and fraud in Social Security has been analysed, besides the coordination actions carried out.

The work was focused on the processes of management and procedure, aims sought and general view of the approved measures, ending with the quotation of some judicial resolutions where the legislative reform has been applied, in order to assess the incidence of the reform.

➤ **Document: *The Fight against fraud from the point of view of the Legal Service of the Social Security Administration*”. Mrs Soraya Amaya.**

The main challenge for the TGSS is to carry out improvements that make its actions more efficient, and for this purpose, it is necessary to develop a strategy against fraud and irregular employment.

- Lines of action:
- Building in the fight against fraud within all the management procedures of the TGSS.
- Refining, standardizing and integrating all the available information sources.
- Developing Analysis Techniques to focus the actions.
- Intensifying the research capacities of the Social Security.

- The Social Security will avail of advanced analytical solutions to identify potential cases of fraud and to discover possible patterns of potentially fraudulent behaviour, starting from the analysis of the information existing in its Systems. These solution will allow it to carry out an integral management of the fraud and to intensify the management of the control processes.

The following themes were also dealt with:

- Percentage of the offenses of fraud in relation to the % of offenses against the Social Security, and percentage they represent in the penal field.
- Technological and methodological aspect. Analytic techniques to identify fictitious enterprises.
- Corroborating that the behaviour in general of the enterprises is right (legal).
- Case of the temporary discontinuous workers. How to oblige the enterprises to contribute for this worker even for very short periods of time, which are the ones when the worker was working for the enterprise.
- Irregular employment.

➤ **Document: “Fight against fraud in Social Security” . Mr José Luis Encinas.**

The protection of the migrant sea workers. Maritime Health Programme.

- Created in 1983, it includes the competences and functions of the ISM in relation to the health care of the sea workers on board or abroad.
- It is started from an integral conception of the health of the sea worker (WHO).
- Practical model, based on care and preventive mechanisms in an integral and planned way.
- Unified, automatized and centralized data bank with all the clinical information about the sea workers. It contains data relating to different types of care.

➤ **Document: Mr. Miguel Ángel Laporta.**

The specific Social Security system for the sea workers.

Generally, the protection given by the Marine Social Institute is carried out in three big blocks:

- Management, administration and acknowledgement of the benefits of the Social Security Special Scheme for the Sea Workers.
- The management of the health care of the sea people.

- The management of the different social programmes that try to improve the living and working conditions on board of the vessels.

Principle of inter-territoriality

Exception to the principle of territoriality (art 7 LGSS). 11.4. of 883/2004 and 987/2009 (1 May 2010) allows these workers to become subject to the legislation of their country of residence, although they perform their activity in vessels flying the flag of another Member State.

➤ **Document: “Protection of the migrant sea workers”. Mrs Gracia Castresana**

STUDIES IN PRACTICAL CASES

In the field of the Benefits:

Computerized management of the whole working life of the worker for the acknowledgement of his or benefits.

The National Institute for Social Security, in line with its tradition of work for the continuous improvement of the service to the citizen, has worked out an ambitious web called “Your Social Security”, which is as much as a new model of integral attention and information to the citizen.

The main characteristics of this web are:

- It is a more modern form of relation with the citizen, who, when acceding to the web with “user and password” will enter in a personal space.
- It facilitates the procedure of most benefits in an easy and intuitive technological environment.
- It is part of the global modernization project of the administration of the Government of Spain.
- The **COMPUTERIZATION OF THE RETIREMENT AND MATERNITY BENEFITS** has also been introduced.

Only by identifying him or herself, the citizen can obtain in an easy, simple and instantaneous way a complete information on his or her pension rights, as well as an approximate amount of his or her pension.

The issues dealt with were, among others, the following:

- Criteria to determine the opening of centres for attention and information to the citizen (population, transportation network, spotting, etc.).
- Organic composition of the Ministry of Employment and Social Security, exactly the category of the INSS as Managing Entity.
- The technologies used by the INSS for the acknowledgement of benefits and its broad portfolio of services, if they have been contracted with a third party or,

on the contrary, are developed and maintained by the INSS. The framing of the Computer Management

- Organization of the Secretariat of State for Social Security (SESS). Structure. Functions.
- **Document: “Management of specific procedures in international files and computerization. Your Social Security”. Mrs María Eugenia Martín.**

In the field of income

Computer management of the system for the direct settlement of incomes.

A practical demonstration of the system for the direct settlement in the premises of the General Fund of Social Security (TGSS) has been made.

The importance of this computer system is that Social Security directly invoices to each employer the contributions of his or her workers taking into account all specific circumstances. This way errors in the application of the rules in force can be avoided and the control of payments and/or debts is improved.

The following has been specifically dealt with:

- The way to manage the changes of the workers who continuously move from one enterprise to another.
- Contributions of self-employed workers.
- Services for autonomous workers within the computer system of the TGSS

- **Mrs Rosa Altaba and Mr César Carlos González**

In the field of health care to workers on board of vessels

Practical demonstration of health care in the sea

It is a novel and highly specialized system, unique in the world that allows a medical care to workers on board in conditions similar to those for people not on board.

- **Mr Ángel Laporta.**

FINALLY

We are aware of the fact that the more one goes into depth in these very complex issues the more new questions arise and the interest to know them in depth surely

increases. The Chinese delegation put forward a series of issues that we have tried to answer along these days of intense work.

Anyhow, we showed them the willingness of the Ministry of Employment and Social Security to go on collaborating together, to work on those good practices which are interesting for them and to mutually learn from them.

Spain is also interested in these collaboration work, which doubtless will improve the protection of the Social Security to the citizens of both countries.

Finally, we hope that the Agreement on Social Security between China and Spain will soon be a reality, as the work on it is already very advanced.

María Teresa Quílez