

OLD-AGE PENSION OF THE WORKER IN THE CONTEXT OF PRESENT LEGAL PROVISIONS

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ABSTRACT: *The European legislation that regulates the coordination of social security systems provides for certain benefits, among which the old-age pension.*

One of the most difficult areas of this issue, given the present legal provisions, is represented by the old-age benefits that can be obtained by those persons that have carried out activities in two or more states. The provisions of the European regulations concerning the coordination of social security systems and the procedure for implementing these are extremely complex.

The coordination of calculation systems is difficult given that there are differences, quite often of a substantial nature, between the legislation of EU member-states. Laying down the conditions for obtaining old-age pension and its amount represents a challenge that involves responsibility from the competent state institutions, as well as from the benefiting citizen.

KEYWORDS: *pension; old-age; social security; coordination; worker.*

JEL Code: *K31, K37*

1. INTRODUCTION

European legislation on the coordination of social security systems is extremely important for persons working in the territory of several Member States of the European Union. The personal scope for the application of this legislation concerns nationals of one of the Member States, stateless persons and refugees resident in a Member State of the European Union who are or have been subject to the legislation of several Member States. At the same time, the members of their families and their descendants, regardless of their nationality, whether they are nationals of a Member State, stateless persons or refugees residing in one of the Member States, are also considered.¹

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¹Originally, Regulation (EEC) no. 1408/71 covered only the employed workers, but, starting with July 1, 1982, by Regulation (EEC) no. 1390/81, its scope was expanded to cover the self-employed. By Council Regulation (EC) no. 1606/98, the field of Regulation (EEC) no. 1408/71 was expanded in order to bring civil servants on an equal position with the rest of the population as regards the general legal pension rights granted in the

As far as the material scope is concerned, it considers the laws regarding the general and special branches of social security, of contributory and non-contributory type, as well as the regimes regarding the obligations of an employer or ship-owner. Benefits that can be accessed are: sickness benefits, disability, maternity and paternity allowances, similar benefits, old age, survivors' benefits, in case of accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits and family benefits.²

2. PRINCIPLES CONCERNING THE COORDINATION OF SOCIAL SECURITY SYSTEMS

The basis for granting social security benefits are based on a series of principles such as equal treatment, equality in the case of benefits, aggregation of periods, waiving of residence rules, compliance with the provisions of a single law.

Equal treatment takes into account the fact that people will enjoy the same social security rights and will have the same obligations in accordance with the legislation of any Member State as the citizens of the Member State concerned. The legislation of the Member State cannot include regulations that allow the direct or indirect discrimination of the citizens of another Member State (Report, 2010, p. 8).

Equal treatment also covers benefits, income, facts and events. Thus, according to Article 5 of the Regulation, if according to the law of the competent Member State, the collection of social security benefits and other incomes has certain legal effects, the provisions of the respective legislation also apply to the collection of equivalent benefits obtained according to the legislation of another Member State or to the income obtained in another Member State; if the legal effects are attributed to the occurrence of certain facts or events, that Member State will take into account such facts or events occurring in any Member State as if they had occurred in its territory (Report, 2010, p. 8).

Another principle is the *aggregation of periods*, which is particularly important in simplifying the rules for granting benefits. Thus, while in the implementation of a legislation of a Member State, the competent institution conditions the acquisition, retention, duration or recovery of the right to benefits, the benefit of a certain legislation or the access to the exemption from compulsory, optional continued or voluntary insurance, conditional upon the completion of periods of insurance, employment, self-employment or residence shall take into account periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were carried out under national law.³

A significant principle in achieving the coordination of social security systems is *waiving of residence rules*. This takes into account the fact that cash benefits payable

Member States. Regulation (EC) no. 307/1999 expanded the scope of the Regulation by including all insured persons, especially students and unpaid persons. Council Regulation (EC) no. 895/2003 extended the application of the Regulation by introducing third-country nationals, provided that they have legal residence in the territory of the Union.

²Art. 3, Regulation (EC) no. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

³Art. 6, Regulation (EC) no. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

under the legislation of one or more Member States or European provisions cannot be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his/her family reside in a Member State other than that in which the institution responsible for providing benefits is situated.⁴

An important aspect regulated by the legislation regarding the coordination of the social security systems is the *prevention of overlapping of benefits* in the sense that the right to several benefits of the same kind for one and the same period of compulsory insurance is neither conferred nor maintained.⁵ According to the implementing regulation, the prevention of overlapping of benefits is achieved when the benefits that are due under the legislation of two or more Member States and are mutually reduced, suspended or withdrawn / ceased, or when any amounts that would not be paid in the case of strict application of the rules on reduction, suspension or the withdrawal / cessation mentioned by the legislation of the Member States concerned, will be divided by the number of benefits that are subject to reduction, suspension or withdrawal / cessation. (Report, 2010, p.8)

3. OLD AGE PENSION

According to art. 1 of Regulation 883/2004 on the coordination of social security systems, the "pension" includes the allowances, the capital benefits that can substitute them and the payments made by way of reimbursement of the contributions, as well as, the increases resulting from the re-evaluation or the additional allowances if the legislation does not provide otherwise.

When a person applies for a pension in a Member State, all institutions in all other Member States where he or she has worked must begin the procedure for establishing the rights and calculating it, unless the person expressly requests the deferment of awarding the old-age pension under the legislation of one or more Member States.⁶ Institutions should advise the person on the consequences of the postponement in order to evaluate whether or not to exercise this right. (Report, 2010, p.26) If the person does not fulfil or no longer fulfils the conditions of retirement in the Member States in which he was located, the competent institutions will not take into account the periods realized under the laws whose conditions are not fulfilled or are no longer fulfilled, if taking into account the mentioned periods allows to determine a lower value of the benefit. A new calculation shall be performed automatically as and when the conditions imposed by the other legislations are satisfied or when a person requests the award of an old-age benefit deferred, unless the periods completed under the other legislations have already been taken into account. (Report, 2010, p. 26)

⁴Art. 7 Regulation (EC) no. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

⁵Art. 10 Regulation (EC) no. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

⁶Art. 50 Regulation (EC) no. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

4. SPECIAL PROVISIONS ON AGGREGATION OF PERIODS

If the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in a specific activity as an employed or self-employed person or in an occupation which is subject to a special scheme for employed or self-employed persons, the competent institution of that Member State shall take into account periods completed under the legislation of other Member States only if completed under a corresponding scheme or, failing that, in the same occupation, or where appropriate, in the same activity as an employed or self-employed person. (Report, 2010, p.25)

In the event that, taking into account the periods thus completed, the person concerned does not fulfil the conditions necessary to receive a pension under a special scheme, these periods are taken into account for the purposes of providing the benefits of the general scheme or, failing that, of the scheme applicable to manual or clerical workers, as the case may be, provided that the person concerned had been affiliated to one or other of those schemes. The periods of insurance completed under a special scheme of a Member State shall be taken into account for the purposes of providing the benefits of the general scheme or, failing that, of the scheme applicable to manual or clerical workers, as the case may be, of another Member State, provided that the person concerned had been affiliated to one or other of those schemes, even if those periods have already been taken into account in the latter Member State under a special scheme. (Report, 2010, p. 26)

If the legislation or specific scheme of a Member State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied if that person has been previously insured under the legislation or specific scheme of that Member State and is, at the time of the materialisation of the risk, insured under the legislation of another Member State for the same risk or, failing that, if a benefit is due under the legislation of another Member State for the same risk. (Report, 2010, p. 25)

5. AWARD OF BENEFITS

The competent institutions shall calculate the amount of the pension that is granted only when the conditions for the entitlement to benefits under the national law have been satisfied, with the title of independent benefit. Then a theoretical amount is calculated which is equal to the pension that the person concerned could claim if all the periods of insurance and residence completed under the legislations of the other Member States had been completed under national law. If, according to the legislation, the amount of the benefit does not depend on the duration of the periods completed, the respective amount is considered as a theoretical value. Subsequently, it is established the actual amount of the pension called the *pro rata*, by applying to the theoretical amount the ratio between the duration of the periods completed before the materialisation of the risk under the applicable legislation and the total duration of the periods completed before the materialisation of the risk, under the legislation of all the Member States concerned. If applicable, to the calculated amount, the competent institution shall apply all the rules of

reduction, suspension or withdrawal. The person concerned has the right to receive from the competent institution of each Member State involved, the highest of the calculated values. If, in a single Member State, the calculation carried out results in an independent benefit equal to or higher than the *pro rata* benefit, the competent institution shall waive the *pro rata* calculation, mentioning the schemes for granting the benefits in relation to which the periods have no relevance to the calculation.⁷

When calculating the theoretical and pro-rata values a series of rules apply:

- if the total duration of the insurance and residence periods completed prior to the risk materialisation is longer than the maximum period provided for by the legislation of one of these Member States involved, in order to benefit from a full benefit, the competent institution of the Member State concerned shall take into account this maximum period. This method of calculation does not result in imposing the cost of a pension higher than the full benefit provided by the applicable legislation. In the case of benefits whose amount does not depend on the duration of the insurance period, this provision becomes inapplicable.

- if the legislation of a Member State provides that pensions are to be calculated on the basis of income, contributions, contribution bases, increases, earnings or other amounts-average, proportional, fixed or credited-, or a combination of more than one of them, the competent institution shall:

a. establish the calculation basis for benefits, in accordance only with the insurance periods completed under the legislation it applies;

b. use, in order to determine the amount to be calculated in accordance with the periods of insurance and residence completed under the legislation of the other Member States, the same elements determined or recorded for the periods of insurance completed under the national law;

c. If the legislation of one Member State provides for the calculation of the pension based on other elements that are not related to time, the competent institution shall take into account, in respect of each period of insurance or residence completed under the legislation of any another Member State, the amount of the capital accrued, the capital that is considered as having been accrued or any other element used for calculation under the applicable law divided by the corresponding units of periods in the respective pension scheme.⁸ (Report, 2010, p. 24)

6. RULES TO PREVENT OVERLAPPING

The regulation on the coordination of social security systems provides for a series of rules regarding the prevention of the overlapping of benefits. Thus, distinction is made in the overlapping of benefits of the same type and the overlapping of different benefits.

The overlapping of benefits of the same type takes into account the benefits for invalidity, old age or for the survivor granted under the periods of insurance and residence made by the same person. The overlapping of benefits of different types takes into account benefits that cannot be considered of the same type. For the prevention of

⁷Art. 52 Regulation (EC) no. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

⁸Idem.

the overlapping of a benefit in respect of invalidity, old age, or survivors with a benefit of the same kind or a benefit of a different kind, or with other income, the regulation provides for a series of rules:

- the competent institution will take into consideration the benefits or incomes obtained in another Member State only if the national law so provides;
- the competent institution shall take into account the amount of the benefits to be paid by another Member State before deduction of tax, social security contributions and other individual levies or deductions, unless the legislation it applies provides for the application of rules to prevent overlapping after such deductions;
- the competent institution will not take into account the value of the benefits acquired under the legislation of another Member State granted on the basis of voluntary or continued optional insurance;
- if a single Member State applies rules to prevent overlapping because the person concerned receives benefits of the same or of a different kind under the legislation of other Member States or income acquired in other Member States, the benefit due may be reduced solely by the amount of such benefits or such income.⁹

Overlapping of benefits of the same kind

Where benefits of the same kind due under the legislation of two or more Member States overlap, the rules to prevent overlapping laid down by the legislation of a Member State shall not be applicable to a pro rata benefit. The rules to prevent overlapping shall apply to an independent benefit only if the benefit concerned is: a benefit the amount of which does not depend on the duration of periods of insurance or residence, or a benefit the amount of which is determined on the basis of a credited period deemed to have been completed between the date on which the risk materialised and a later date, overlapping with: a benefit of the same type, except where an agreement has been concluded between two or more Member States to avoid the same credited period being taken into account more than once, or a benefit the amount of which does not depend on the duration of periods of insurance or residence. (Report, 2010, p. 10-12)

Overlapping of benefits of a different kind

In the case of benefits of different types, if the receipt of benefits of a different kind or other income requires the application of the rules to prevent overlapping provided for by the legislation of the Member States concerned regarding two or more independent benefits, the competent institutions shall divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules. In the case of one or more pro rata benefits, the competent institutions shall take into account the benefit or benefits or other income and all the elements stipulated for applying the rules to prevent overlapping according to the ratio between the periods of insurance and/or residence. If we consider one or more independent benefits and one or more pro-rata benefits, the competent institutions shall apply the provisions thereon.

The competent institution shall not apply the division stipulated in respect of independent benefits, if the legislation it applies provides for account to be taken of benefits of a different kind and/or other income and all other elements for calculating

⁹Art. 52 Regulation (EC) no. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

part of their amount determined as a function of the ratio between periods of insurance and/or residence and if the legislation of one or more Member States provides that a right to a benefit cannot be acquired in the case where the person concerned is in receipt of a benefit of a different kind, payable under the legislation of another Member State, or of other income. (Report, 2010, p. 10-12)

7. ADDITIONAL PROVISIONS FOR THE CALCULATION OF BENEFITS. AWARD OF A SUPPLEMENT. RECALCULATION AND RE-EVALUATION OF BENEFITS

The institution of a Member State is not obliged to provide benefits for periods completed under the legislation it applies, which are taken into account when the risk materializes, if: the total duration of the mentioned periods¹⁰ is less than one year and taking into account only these periods, no entitlement to benefits is acquired under the respective legislation. If all the institutions of the Member States concerned are exempted from their obligations, the benefits are granted exclusively under the legislation of the last of the Member States whose conditions are fulfilled, as if all insurance and residence periods completed and taken into account would have been made under the law of the respective Member State. (Report, 2010, p. 33)

The recipient of a benefit may not be granted, in the Member State in which he resides and under whose legislation a benefit is payable to him/her, a benefit lower than the minimum benefit established by that legislation for period of insurance or residence equal to all the periods taken into account for the payment. The competent institution of the Member State concerned shall pay to the beneficiary throughout the period of his residence in its territory, a supplement equal to the difference between the total of the benefits due and the amount of the minimum benefit. If the method for determining benefits or the rules for calculating benefits are altered under the legislation of a Member State, or if the personal situation of the person concerned undergoes a relevant change which, under that legislation, would lead to an adjustment of the amount of the benefit, a recalculation shall be carried out. On the other hand, if, by reason of an increase in the cost of living or changes in the level of income or other grounds for adjustment, the benefits of the Member State concerned are altered by a percentage or fixed amount, such percentage or fixed amount shall be applied directly to the benefits determined, without the need for a recalculation.¹¹

8. PROCEDURE OF THE PENSION AWARD

The claim for benefits accompanied by the supporting documents required by that legislation must be submitted either to the institution of residence of the insured person or to the institution of the Member State whose legislation was last applicable. The applicant provides all the relevant information available and the supporting documents

¹⁰ „Periods” means all periods of contribution, employment, self-employment or residence that give the right to the respective benefit or increase it directly

¹¹ Art. 59 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems

regarding the insurance (institutions, insurance numbers), the employed activity (employers) or the self-employed activity (the nature and place of the activity) and the residence (addresses) that could have been carried out under other legislation, as well as the duration of these periods. Where the claimant requests deferment of the award of old-age benefits under the legislation of one or more Member States, he shall state that in his claim and specify under which legislation the deferment is requested. In order to enable the claimant to exercise that right, the institutions concerned shall, upon the request of the claimant, notify him of all the information available to them so that he can assess the consequences of concurrent or successive awards of benefits which he might claim. Should the claimant withdraw a claim for benefits provided for under the legislation of a particular Member State, that withdrawal shall not be considered as a concurrent withdrawal of claims for benefits under the legislation of other Member States. (Report, 2010, p. 30)

The institution to which the claim for benefits is submitted shall become the 'contact institution' and is responsible for the connection with the institutions from all the Member States to whose legislation the person concerned is subject. The contact institution shall send the claim and all the documents it holds to all the institutions involved so as they can start the assessment of the claim. Information is exchanged between different institutions and each institution concerned proceeds to a new calculation of benefits and shall notify the contact institution about the amount of benefits due. Each institution shall notify the claimant of its decision, specifying the ways and time limits for the appeal. Once the contact institution has been notified of all decisions taken by each institution, it shall send the claimant and the other institutions concerned a summary of those decisions. A model summary shall be drawn up by the Administrative Commission. The summary shall be sent to the claimant in the language of the institution or, at the request of the claimant, in any language of his choice recognised as an official language of the Community institutions. Where it appears to the claimant following receipt of the summary that his rights may have been adversely affected by the interaction of decisions taken by two or more institutions, the claimant shall have the right to a review of the decisions by the institutions concerned within the time limits laid down in the respective national legislation. The time limits shall commence on the date of receipt of the summary. The claimant shall be notified of the result of the review in writing.¹²

9. MEASURES TO ACCELERATE THE PENSION CALCULATION PROCESS

In order to facilitate and accelerate the investigation of claims and the payment of benefits, the institutions to whose legislation a person has been subject shall: exchange with or make available to institutions of other Member States the elements for identifying persons who change from one applicable national legislation to another, and together ensure that those identification elements are retained and correspond, or, failing that,

¹²Art. 46-52 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

provide those persons with the means to access their identification elements directly, sufficiently in advance of the minimum age for commencing pension rights or before an age to be determined by national legislation, exchange with or make available to the person concerned and to institutions of other Member States information (periods completed or other important elements) on the pension entitlements of persons who have changed from one applicable legislation to another or, failing that, inform those persons of, or provide them with, the means of familiarising themselves with their prospective benefit entitlement. The institution in the first Member State allocates to a person a Personal Identification Number (PIN) for the purposes of social security administration. (Report, 2010, p. 35-37)

For the purposes of applying the legislation, the Administrative Commission shall determine the information to be exchanged or made available and shall establish the appropriate procedures and mechanisms, taking account the characteristics, administrative and technical organisation, as well as the technological means at the disposal of national pension schemes. The Administrative Commission shall ensure the implementation of those rules by organising a follow-up to the measures taken and their application.¹³

10. CONCLUSIONS

The free movement of persons and especially of the labour force requires complex regulations in the field of labour market and implicitly in the field of social security. As the free movement of labour force at the EU level increases, the social risks faced by different categories of people, due to health or old age, require matching regulations.

The regulations regarding the coordination of social security systems aim to ensure that those who have performed activities in different states of the European Union benefit from conditions and rights equal to those of the citizens of the respective countries. The provision of activities in the different states, in the context of the existence of different national social security systems, requires uniform legal provisions and rules under which all workers can benefit from social security benefits when needed.

At present, the European regulations seem to be complicated, the modalities and the rules for implementing the European legislation are complex, yet they manage to reach for the citizens' needs and thus enable them to benefit from the corresponding social benefits.

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¹³Art. 52 The Regulation laying down the procedure for implementation

Regulation (EC) no. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems – <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:en:PDF>

Regulation (EC) no. 987/2009 of the European Parliament and of the Council of 16 September 2009 establishing the procedure for the implementation of Regulation (EC) no. 883/2004 on the coordination of social security systems.

