

social-legislation

The matters covered by regulation No. 883/2004: paternity benefits and pre-retirement benefits

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Regulation No. 883/2004 introduces a number of important changes concerning inter alia determination of the applicable social security legislation in international employment situations. A further interesting innovation is that paternity benefits and pre-retirement schemes are expressly included in the matters covered by the new regulation (art. 3).

general

It has to be said that the fundamental matters covered by Regulation No. 883/2004 are not that different from those covered by Regulation No. 1408/71. The new regulation still works with a limited list of various branches of social security. Nonetheless, the European Commission had proposed to institute an "open system" in order that the matters covered might yet also embrace new, developing forms of social security that were not capable of being reduced to the traditional risks. For reasons of legal certainty, this approach was eventually rejected.

The matters covered by Regulation No. 883/2004 are therefore defined in the same way as under Regulation No. 1408/71, the difference being that statutory schemes for paternity benefits and pre-retirement schemes are also consolidated within the new regulation.

paternity benefits

The recitals explain why it is that paternity benefits are included under the regulation:

"In some cases, maternity and equivalent paternity benefits may be enjoyed by the mother or the father and since, for the latter, these benefits are different from parental benefits and can be assimilated to maternity benefits strictu sensu in that they are provided during the first months of a new-born child's life, it is appropriate that maternity and equivalent paternity benefits be regulated jointly."

Paternity benefits therefore have to be interpreted narrowly. These are benefits that are paid out during the first month(s) of a child's life. Parental benefits, which are aimed more at raising a child over a longer period, cannot be deemed to be paternity benefits.

From a Belgian viewpoint, it can be taken that the benefits that are paid from the third to the tenth day of paternal leave also qualify as paternity benefits within the meaning of the regulation.

pre-retirement benefits

By including pre-retirement benefits in the regulation, Europe has wanted to "guarantee equality of treatment and the possibility of exporting pre-retirement benefits, together with the grant of family allowances and medical care to the individuals concerned".

In the past, the Court of Justice has on several occasions ruled that such benefits did not fall within the scope of Regulation No. 1408/71 (e.g. ECJ 11 July 1996, C-25/95).

A major consequence of this was that, where the recipient of benefits lived in another member state to the competent member state (e.g. in the case of frontier workers), this person had no right to receive the benefits there unless the national legislation of the competent state allowed for exportability. This problem is remedied under the new Regulation No. 883/2004.

Pre-retirement benefits are defined as follows in Regulation No. 883/2004 (art. 1(x)):

“all cash benefits, other than an unemployment benefit or an early old-age benefit, provided from a specified age to workers who have reduced, ceased or suspended their remunerative activities until the age at which they qualify for an old-age pension or an early retirement pension, the receipt of which is not conditional upon the person concerned being available to the employment services of the competent State; “early old-age benefit” means a benefit provided before the normal pension entitlement age is reached and which either continues to be provided once the said age is reached or is replaced by another old-age benefit.”

According to this definition, the benefit must therefore not be an unemployment benefit or an early old-age benefit within the meaning of the regulation, which is not subject to the condition that the entitled recipient has to be available to work in the competent member state and that is paid until the time of (early) old-age pension. It must therefore be the recipient's intention to work no longer.

As a result of all these conditions, only few benefits will qualify as pre-retirement and only a few individuals will qualify as entitled to payment. It is clear that the Belgian early retirement pension from age 60 onwards does not qualify as an early retirement benefit. It appears that only a number of Scandinavian countries, including Sweden and Denmark; have legislative regulations concerning early retirement benefit.

However, a second important remark has to be made. The sphere of operation of the new regulation continues to be restricted to statutory rules. Contractual provisions do not fall under the notion of “legislation” within the meaning of the regulation (art. 1(l)). It just so happens that pre-retirement benefits are governed by collective bargaining agreements in a good many member states. In practice, extending the material area of application of the regulation will have few consequences.

The question arises whether Belgium's bridge pensions (regulated by collective agreement) can be regarded as pre-retirement benefits.

As is commonly known, bridge pensions comprise an unemployment benefit and a supplementary payment borne by the employer. The unemployment benefit component is expressly excluded from the definition of pre-retirement benefit.

The grant of a supplementary payment borne by the employer is regulated by CBAs (which are declared to be generally binding). Hence, it is generally accepted that the Belgian rules on bridge pensions governed by CBAs cannot be regarded as a pre-retirement benefit since the notion of legislation excludes contractual provisions that accord payments of pre-retirement benefits.

It is furthermore noticeable that Regulation No. 883/2004 devotes only one article to pre-retirement benefits. There is also an article on the composition of time-spans. This rule is excluded *“as only a very limited number of Member States have statutory pre-retirement schemes”*.

The other fundamental principles of the regulation, such as the principle of equal treatment, the exportability of payments and prevention of overlapping benefits, continue to apply unabated.