



Transfer IN of pension rights

Le 31/10/2019

Note to the attention of Irène Souka
General Director of DG HR

Concerns: C-132/18 of the European Court of Justice confirming the judgement of first instance T-728/16

Dear Ms Souka,

Judgement C-132/18 of the European Court of Justice (confirming the judgement of first instance T-728/16) calls for follow up and full implementation by the European Commission.

The judgment concerns the **transfer of pension rights acquired in a national pension scheme to the European Union pension scheme ('transfer in')** and, in particular, the **deduction of the appreciation between the date of the application for a transfer and the actual date of the transfer.**

The judgment sets out that, when calculating the pensionable years, the Office for the Settlement of Individual Entitlements (PMO) is legally not allowed to systematically deduct an annual interest rate of 3,1% on a capital sum transferred to the EU scheme, for the period between the date of the transfer request and the date of the actual transfer. The PMO can only do so if the national pension scheme was unable to set out the 'capital appreciation' during the transfer procedure without any ambiguity. That is to say, if the national pension scheme informed the PMO about the exact value of the pension rights at the date of the staff member's initial request for a transfer in, this exact value shall be the amount on which the PMO has to base the calculation of pensionable years. There is no margin of appreciation granted for the EU Institutions to change such value calculated by the Member State pension system.

U4U would like to discuss further steps with you in order to fully implement this judgment and to come to valid and adequate solutions in the interest of staff and the institutions. It should be ensured that PMO credits as pensionable years the amount of capital which precisely corresponds to the pension rights acquired in the national system without any unlawful deduction.

Such steps should be two-fold in our opinion:

1. The current administrative practice of the national pension schemes differs a lot between the Member States. Some provide the PMO with all necessary information such as the interests acquired after the date of the transfer request, others do not set out this 'capital appreciation' and thus the colleague's pension rights are subject to a deduction of lump sum of 3.1 % per year of the amount transferred.

We would like to agree on solutions to this problem. They could consist in PMO asking back in each and every case where the national pension scheme fails to give the necessary information and in strong reminders of the Member States where a national pension scheme systematically refuses such information. In addition, a common approach in the way Member States reply to the request for a 'transfer in' of pension rights including the revision of templates could be a way forward so that neither staff nor the institutions face negative consequences.

2. The judgment should be applied as broadly as possible.

The judgement is very clear in saying that the Staff Regulations do not authorise the institution to make any deductions from the part of that capital which corresponds to the amount of pension rights itself (see paragraphs 22 and 32 of the judgement). The judgement points to possible cases of unjust enrichment, in so far as it is possible that the application of the standard interest rate of 3.1 % will lead the institution to make a deduction of an amount greater than the actual appreciation of pension rights acquired by the applicant and thereby to appropriate a part of those pension rights (see paragraphs 63 and 66 of the judgement).

U4U considers it therefore necessary that the Commission applies the judgement not only to cases open on 5 December 2017 (date of the court ruling in first instance) or after, but also to previous cases. It would render justice to all colleagues that underwent a reduction of their acquired pension rights. The Commission would give a clear statement that it respects the right of property that also applies to acquired pension rights.

I am ready to agree on such a way forward and discuss the details, and with the support of your administration, U4U will inform and support adequately the concerned colleagues. I would be grateful if your department could set me an appointment.

Yours sincerely,

Georges VLANDAS
U4U President