

SUMMARY

ECJ 22 December 2022, case C-404/21 (INPS and Repubblica italiana) Miscellaneous, Pension

WP – v – Istituto nazionale della previdenza sociale, Repubblica italiana, Italian case

Summary

Although a Member State is not obliged to transfer pension amounts to the ECB pension scheme without an agreement between that Member State and the ECB, it must negotiate in good faith with a view to enter into such agreement.

Question

Must Article 4(3) TEU, Articles 45 and 48 TFEU, Article 11(2) of Annex VIII to the Staff Regulations and Article 8(a) of Annex IIIa to the ECB Conditions of Employment be interpreted as precluding legislation or an administrative practice of a Member State which does not allow an ECB staff member to transfer to the ECB pension scheme an amount corresponding to the pension rights he or she has acquired under the pension scheme of that Member State?

Must EU law be interpreted as authorising a court of a Member State seised by an ECB staff member to order the transfer to the ECB pension scheme of pension rights acquired by the person concerned under the pension scheme of that Member State, even in the absence of a provision of national law or an agreement, between the Member State concerned and the ECB, providing for such a transfer?

Ruling

Articles 45 and 48 TFEU, Article 11(2) of Annex VIII to the Staff Regulations and Article 8(a) of Annex IIIa to the Decision of the European Central Bank of 9 June 1998 on the adoption of the Conditions of Employment for Staff of the European Central Bank as amended on 31 March 1999, must be interpreted as not precluding, in the absence of an agreement between the European Central Bank (ECB) and the Member State concerned, legislation or an administrative practice of that Member State which does not allow an ECB staff member to transfer, to the ECB pension scheme, an amount corresponding to the pension rights he or she has acquired under the pension scheme of that Member State. However, Article 4(3) TEU requires, in accordance with the principle of sincere cooperation enshrined in that provision, that a Member State to which the conclusion of an agreement is proposed by the ECB, pursuant to Article 8(a) of Annex IIIa, on the transfer, to the ECB pension scheme, of pension rights acquired by its staff members under the pension scheme of that Member State, must participate actively and in good faith in negotiations with the ECB with a view to entering into an agreement with the latter following the opening of negotiations.

EU law must be interpreted as not authorising a court of a Member State seised by a European Central Bank (ECB) staff member to order the transfer to the ECB pension scheme of pension rights acquired by the person concerned under the pension scheme of that Member State, in the absence of a provision of national law or an agreement between the Member State concerned and the ECB providing for such a transfer. However, where, owing to the breach, by that Member State, of its obligation, arising from the principle of sincere cooperation enshrined in Article 4(3) TEU, to participate actively and in good faith in negotiations with the ECB with a view to concluding an agreement on the transfer of pension rights, that ECB staff member is unable to have the pension rights which he or she has acquired under the pension scheme of that Member State transferred to the ECB pension scheme, that provision requires that such a national court take all the measures provided by national procedural rules so as to ensure that that obligation is fulfilled by the competent national authority.

Creator: European Court of Justice (ECJ)

Verdict at: 2022-12-22

Case number: C-404/21