



16.4.2021

NOTICE TO MEMBERS

Subject: Petition No 0805/2018 by D. D. (German) on voluntary payments into the Spanish pension fund

1. Summary of petition

The petitioner, who has lived in Spain for almost 20 years, is complaining of unequal treatment concerning voluntary payments into the pension system. She states that voluntary payments are not possible in Spain, unlike in Germany. Instead, the petitioner claims she has to register as self-employed and also pay into the Spanish health and unemployment insurance. Swiss citizens have the option of only paying into the pension fund. The petitioner therefore asserts that EU citizens are being given unequal treatment compared to non-EU citizens.

2. Admissibility

Declared admissible on 11 December 2018. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 6 May 2019

The Commission's observations

EU law in the field of social security, in particular Regulation (EC) No 883/2004 on the coordination of social security systems¹, provides for the coordination and not the harmonisation of Member States' national social security systems. This means that each Member State is free to determine the details of its own social security system, including which benefits are provided, the conditions for eligibility, how these benefits are calculated and what

¹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *OJL 166, 30.4.2004, p. 1–123*.

contributions should be paid.

Chapter 5 of Regulation (EC) No 883/2004 sets out the principles for calculation of pensions upon which the theoretical amount of a pension should be calculated on the basis of all periods of insurance including those completed under the respective legislation of other Member States.

EU rules on social security coordination do not regulate who is to be insured under national provisions or which benefits are granted – this is the Member States' responsibility. They only provide criteria to determine which system a mobile citizen is subject to.

At this stage, the Commission would like to point out that, in view of the limited information provided by the petitioner about her career, it is not possible to determine whether she worked in several Member States and whether the above Regulation applies in her case. Furthermore, there is no information provided by the petitioner on the exact circumstances of the alleged comparable situation for Swiss citizens.

Conclusion

Due to the limited information available, the Commission is not in a position to comment on the assertion made by the petitioner regarding unequal treatment of EU citizens compared to non-EU citizens.

4. Commission reply (REV I), received on 30 August 2019

The petitioner has lived in Spain since 1999 and cannot make any voluntary payments to the Spanish pension insurance. Swiss citizens, who also live in Spain firmly as residents, have the possibility, as in their home country, to contribute to the Spanish pension insurance on a voluntary basis. The petitioner has paid contributions in Germany continuously from 1 August 1974 to 31 December 1998. Furthermore, since 2 November 1999, she has paid contributions only into the Spanish pension insurance with many interruptions.

The petitioner feels disadvantaged as an EU citizen compared to non-EU citizens, because she has not been allowed to pay contributions to the Spanish pension system on a voluntary basis. Instead, she had to register as self-employed and in addition pay health insurance and unemployment insurance contributions, although the petitioner and Swiss citizens have the same rights of residence in Spain.

EU law in the field of social security, in particular Regulation (EC) No 883/2004 on the coordination of social security systems², provides for the coordination and not the harmonisation of Member States' national social security systems. This means that each Member State is free to determine the details of its own social security system, including which benefits are provided, the conditions for eligibility, how these benefits are calculated and what contributions should be paid.

² Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *OJL 166, 30.4.2004, p. 1–123*.

Chapter 5 of Regulation (EC) No 883/2004 sets out the principles for calculation of pensions upon which the theoretical amount of a pension should be calculated on the basis of all periods of insurance including those completed under the respective legislation of other Member States.

EU rules on social security coordination do not regulate who is to be insured under national provisions or which benefits are granted – this is the Member States' responsibility. They only provide criteria to determine which system a mobile citizen is subject to.

At this stage, the Commission would like to point out that Regulation (EC) No 883/2004 applies in the petitioner's case. As mentioned above, each Member State is free to determine the details of its own social security system, including rules concerning the voluntary affiliation to pension systems. It should be pointed out that Regulation (EC) No 883/2004 does not require a Member State to ensure a right of access to voluntary social insurance to a person who has never contributed to the social security system of that Member State in the past.

Conclusion

Despite the additional information provided by the petitioner, the Commission is not in a position to comment on the assertion regarding unequal treatment of EU citizens compared to non-EU citizens (Swiss citizens). Therefore, the Commission will ask the Spanish authorities for further clarifications on the conditions for voluntary affiliation to the Spanish pension system for EU-nationals and non-EU nationals.

5. Commission reply (REV II), received on 27 July 2020

Despite the additional information provided by the petitioner, the Commission is not in a position to comment on the assertion regarding unequal treatment of EU citizens compared to non-EU citizens (Swiss citizens). Therefore, the Commission will ask the Spanish authorities for further clarifications on the conditions for voluntary affiliation to the Spanish pension system for EU-nationals and non-EU nationals.

6. Further reply from the Commission (REV III), received on 16 April 2021

The Commission's observations

The petitioner has lived in Spain since 1999 and cannot make any voluntary payments to the Spanish pension insurance. Swiss citizens, who also live in Spain firmly as residents, have the possibility, as in their home country, to contribute to the Spanish pension insurance on a voluntary basis. The petitioner has paid contributions in Germany continuously from 1 August 1974 to 31 December 1998. Furthermore, since 2 November 1999, she has paid contributions only in the Spanish pension insurance with many interruptions.

The petitioner feels disadvantaged as an EU citizen towards non-EU citizens, because she has not been allowed to pay contributions to the Spanish pension system, on a voluntary basis. Instead, she had to register as self-employed and pay additionally health insurance and unemployment insurance contributions, although the petitioner and Swiss citizens have the same right of residence in Spain.

EU law in the field of social security, in particular Regulation (EC) No 883/2004 on the

coordination of social security systems³, provides for the coordination and not the harmonisation of Member States' national social security systems. This means that each Member State is free to determine the details of its own social security system, including which benefits are provided, the conditions for eligibility, how these benefits are calculated and what contributions should be paid.

Chapter 5 of Regulation (EC) No 883/2004 sets out the principles for the calculation of pensions upon which the theoretical amount of a pension should be calculated on the basis of all periods of insurance including those completed under the respective legislation of other Member States.

EU rules on social security coordination do not regulate who is entitled to be insured under national provisions or which benefits are granted. These EU rules only provide criteria to determine which social security system a mobile citizen is subject to.

At this stage, the Commission would like to point out that Regulation (EC) No 883/2004 applies in the case of the petitioner. However, it should be pointed out that Regulation (EC) No 883/2004 does not require a Member State to ensure a right of access to voluntary social insurance to a person who has never contributed to the social security of that Member State in the past. As mentioned above, each Member State is free to determine the details of its own social security system, including rules concerning the voluntary affiliation to pension systems.

The Commission contacted the Spanish authorities and asked for further explanations about the voluntary insurance scheme in Spain. The voluntary insurance is organised in the Order TAS/2865/2003 of 13 October 2003 regulating the 'special agreement' in the social security system and in some subsequent legislation establishing certain specific types of special agreements. Many different categories of persons are eligible for the generic form of special agreement as well as for other forms non-generic of special agreements. Nevertheless, all workers who find themselves in any of the circumstances set out in the agreements – whether they are Spanish nationals, EU nationals, nationals of the European Economic Area (EEA) countries, Swiss nationals or nationals of a third country – can enter into the special agreement, giving them an entitlement to the retirement pension (assuming that they also meet the age and contribution-history conditions laid down for this purpose in Spanish law), if they comply with the following requirements:

- a. They submit an application to enter into the agreement to the Social Security General Treasury on the official form.
- b. At the date of application, they can demonstrate a period of 1 080 days of contributions to the Spanish social security system in the 12 years immediately preceding their leaving the social security scheme in question.

The Spanish authorities assured the Commission that EU citizens do not suffer discriminatory treatment, either directly or indirectly, compared with Swiss nationals or nationals of third countries when it comes to special agreements giving rise to an entitlement to a retirement pension.

Still, this absence of discrimination does not exclude that the conditions of participation to the

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 (Text with relevance for the EEA and for Switzerland), *OJ L 166, 30.4.2004, p. 1–123*.

Spanish health care system might be different between Swiss nationals and other nationals.

In this regard, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, of 21 April 1999, does not contain – in the section on social security agreements which continue to apply - a special agreement on healthcare for persons in receipt of a pension under the Swiss legislation who live in Spain. In accordance with point 17 of the Final Protocol to the Spanish-Swiss Convention on Social Security of 13 October 1969, *'beneficiaries of the various categories of social security pension provided for under Swiss social security legislation who reside in Spain, and persons in their charge who live with them, shall – at their request and by paying the contributions set each year by the competent Spanish authority – be entitled, under the same conditions as the beneficiaries of Spanish pensions, to the healthcare benefits in kind provided for by Spanish legislation'*.

Conclusion

The Commission has not identified any discriminatory treatment of EU citizens compared with Swiss nationals or nationals of third countries when it comes to Spanish special voluntary agreements giving rise to an entitlement to a retirement pension or access to the Spanish health care insurance scheme.