

Decision on how the European Commission dealt with an infringement complaint against Sweden concerning the termination of payments of guaranteed pensions abroad – CHAP(2022)03008 (case 100/2023/EIS)

Decision

Case 100/2023/EIS - Opened on 07/02/2023 - Decision on 07/02/2023 - Institution concerned European Commission (No maladministration found) |

The complaint to the European Commission

1. The complainant is a Finnish pensioner residing in Finland. Having worked in Sweden from 1970 to 1982, he used to receive what is called a guaranteed pension from Sweden. In 2022, Sweden decided to terminate their payment to beneficiaries residing in Member States other than Sweden as of 1 January 2023 [1] .
2. In October 2022, the complainant made an infringement complaint to the European Commission, alleging that, by putting an end to their payment abroad, Sweden had wrongly interpreted the relevant EU rules on coordination of social security systems and claimed that it should thus continue to pay the relevant benefit to beneficiaries residing in other Member States. In this context, the complainant also mentioned the judgment of the Court of Justice of the EU (CJEU) in case C-189/16 [2] .
3. In a subsequent e-mail, the complainant further contended that any changes to Regulation 1408/71 [3] (which was in force when he worked in Sweden) must not retroactively weaken his rights. He further requested that the Commission oblige Sweden to continue to pay his guaranteed pension.

The Commission's response to the complainant

4. In its reply, the Commission explained that the applicable EU legislation on social security provides for coordination, but not harmonisation, of social security systems. This means that each Member State is free to determine not only the details of its own social security scheme but also the details of the benefits to be granted, the conditions for entitlement to such benefits as well as the basis for their calculation and the amount of social security contributions to be



collected. Regulation 883/2004 [4] (formerly Regulation 1408/71) lays down common rules and principles to be followed by all national authorities when applying national law. These rules ensure that the application of different national laws respects the fundamental principles of equal treatment and non-discrimination. This ensures that the application of different national provisions does not adversely affect those exercising their right to move freely within the EU.

5. Concerning the judgment invoked by the complainant, the Commission explained that, in that case, the CJEU held that the guaranteed pension is a minimum benefit falling under the scope of Article 50 of Regulation 1408/71 (Article 58 [5] of Regulation 883/2004). As to the complainant's claim that Sweden should continue to pay him the benefit, the Commission stressed that, as an exception to the general principle of exportability of benefits, Member States are obliged to pay these minimum benefits only to those residing in the Member State granting the benefit. Member States are not obliged to pay these benefits to other countries. Since the judgment in case C-189/16, beneficiaries residing outside Sweden have received the guaranteed pension on the basis of a temporary national legislation. The Commission advised the complainant to contact the Swedish Pensions Agency for more information in this respect.

6. Finally, the Commission stated that Regulation 883/2004 does not require Member States to provide the minimum benefits and that they do not exist in all Member States. Due to differences in national social security legislation, moving from one Member State to another may be more or less advantageous for citizens in terms of entitlement to social security benefits. The Commission encouraged the complainant to find out whether the termination of his Swedish guaranteed pension affects his rights to receive other benefits in Finland by contacting the Finnish Social Insurance Institution.

7. The complainant was not satisfied with the Commission's response and therefore turned to the Ombudsman arguing that the Commission wrongly closed his infringement complaint.

The European Ombudsman's findings

8. The Commission has provided a reasonable and accurate reply by correctly explaining that the relevant EU legislation merely provides for coordination (and not harmonisation) of EU social security systems and that, according to the applicable case-law, the Swedish guaranteed pension is a minimum benefit falling under the scope of current Article 58 of Regulation 883/2004. Against this background, the Commission also correctly pointed out (i) that Member States are not obliged to pay the minimum benefits to pensioners from other Member States, and (ii) that Regulation 883/2004 does not require Member States to provide such minimum benefits and that they do not even exist in all Member States. A provision similar to Article 58 of Regulation 883/2004 was also included in Article 50 of the now repealed Regulation 1408/71, so these rules do not retroactively weaken the complainant's rights.

9. The Commission further explained to the complainant that beneficiaries residing outside Sweden have, during the last few years, received the guaranteed pension on the basis of a temporary national legislative provision, and provided useful contact information to him both in



this respect and as regards his possibility to receive other benefits in Finland.

10. Based on the information provided by the complainant, the Ombudsman finds no maladministration in this case. [6]

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 07/02/2023

[1] This decision affected beneficiaries born in 1938 or later who used to receive a Swedish guaranteed pension (*garantipension*) or family pension (*garantipension till omställningspension*).

[2] [Judgment of the Court in case C-189/16](#), [\[Link\]](#)*Zaniewicz-Dybeck v Pensionsmyndigheten* .

[3] Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, available [here \[Link\]](#).

[4] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, available [here \[Link\]](#).

[5] " *Award of a supplement*

1. A recipient of benefits to whom this chapter applies may not, in the Member State of residence and under whose legislation a benefit is payable to him/her, be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with this chapter.

2. The competent institution of that Member State shall pay him/her throughout the period of his/her residence in its territory a supplement equal to the difference between the total of the benefits due under this chapter and the amount of the minimum benefit. "

[6] This complaint has been dealt with under delegated case handling, in accordance with [the Decision of the European Ombudsman adopting Implementing Provisions \[Link\]](#).