

# PENSION SCHEME RULES FOR THE EU OFFICIALS AND THE TRANSFER OF PENSIONS\*

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## INTRODUCTION

This article deals with the pension scheme rules for the EU officials and the rules of the pension transfer. Firstly I deal with the main types of the allowances and their financial matters, and then I analyze the rules of the pension transfer and retransfer.

## TYPES OF THE PENSIONS

### *Old-age pension*

An official who has completed at least ten year's service shall be entitled to a retirement pension. He shall, however, be entitled to such pension, irrespective of length of service, if he is over pensionable age, if it has not been possible to reinstate him during a period of non-active status or in the event of retirement in the interests of the service.

The maximum retirement pension shall be 70 % of the final basic salary carried by the last grade in which the official was classified for at least one year. 1,80 % of that final basic salary shall be payable to an official for each year of service reckoned in accordance with Article 3 of Annex VIII.

However, in the case of officials who have been assisting a person holding an office provided for in the Treaty on European Union or the Treaty on the Functioning of the European Union, the elected President of one of the institutions or organs of the Union or the elected Chairman of one of the political groups in the European Parliament, the entitlement to pensions corresponding to the years of pensionable service acquired while working in that capacity shall be calculated by reference to the final basic salary received during that time if the basic salary received exceeds that taken as reference for the purposes of the second paragraph of this Article.

The amount of the retirement pension must not be less than 4 % of the minimum subsistence figure per year of service.<sup>1</sup>

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\* This research was supported by the project nr. EFOP-3.6.2-16-2017-00007, titled *Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy*. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.

This article was made in the Research Centre of Public Law (University of Miskolc, Faculty of Law)  
<sup>1</sup> Article 77 of Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (HL P 045, 1962.6.14., 1385. o)

The pensionable age shall be 66 years.<sup>2</sup>

### *Invalidity allowance*

An official shall be entitled, in the manner provided for in Articles 13 to 16 of Annex VIII, to an invalidity allowance in the case of total permanent invalidity preventing him from performing the duties corresponding to a post in his function group.

Article 52 shall apply by analogy to recipients of an invalidity allowance. If the recipient of an invalidity allowance retires before the age of 66 without having reached the maximum pension entitlement, the general rules on retirement pensions shall be applied. The amount of the retirement pension shall be based on the salary for the grade and step occupied by the official when he became an invalid.

The invalidity allowance shall be equal to 70 % of the official's last basic salary. However, it may not be less than the minimum subsistence figure. The invalidity allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance.

Where the invalidity arises from an accident in the course of or in connection with the performance of an official's duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the invalidity allowance may not be less than 120 % of the minimum subsistence figure. In such cases, moreover, contributions to the pension scheme shall be paid in full from the budget of the institution or body referred to in Article 1b.<sup>3</sup>

The surviving spouse of an official or of a former official shall be entitled in the manner provided in chapter 4 of Annex VIII to a survivor's pension equal to 60 % of the retirement or disability pension which was paid to the deceased, or which, irrespective of length of service or of age, would have been payable to him if he had qualified for it at the time of his death.

The amount of the survivor's pension payable to the surviving spouse of an official who has died while in one of the administrative statuses specified in Article 35, shall be neither less than the minimum subsistence rate nor less than 35 % of the last basic salary received by the official.

This amount shall not be less than 42 % of the final basic salary received by the official where death is due to one of the circumstances set out in the fifth paragraph of Article 78.<sup>4</sup>

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<sup>2</sup> The pensionable age shall be assessed every five years starting on 1 January 2014 on the basis of a report by the Commission to the European Parliament and to the Council. The report shall examine, in particular, the evolution of pensionable age for staff in the civil services of the Member States and the evolution of life expectancy of officials of the institutions. Where appropriate, the Commission shall make a proposal amending the pensionable age in line with the conclusions of that report, paying particular attention to developments in the Member States.<sup>1</sup>

<sup>3</sup> Article 78.

<sup>4</sup> Article 79.

## *Orphans' pension*

Where an official or person entitled to a retirement pension or invalidity allowance dies leaving no spouse entitled to a survivor's pension, the children dependent on the deceased within the meaning of Article 2 of Annex VII at the time of his death shall be entitled to orphans' pension in accordance with Article 21 of Annex VIII.

The same pension entitlement shall apply to children who fulfil the above conditions in the event of the death or remarriage of the spouse in receipt of a survivor's pension.

Where an official or person entitled to a retirement pension or invalidity allowance dies but the conditions set out in the first paragraph are not satisfied, the dependent children within the meaning of Article 2 of Annex VII shall be entitled to orphan's pension in accordance with Article 21 of Annex VIII; the pension shall, however, be equal to half the pension calculated in accordance with that Article.

For persons treated as dependent children within the meaning of Article 2(4) of Annex VII, the orphan's pension may not exceed an amount equal to twice the dependent child allowance.

Where a child has been adopted, the death of the natural parent who has been replaced by the adoptive parent shall not give rise to payment of an orphan's pension.

Entitlement as provided for in the first, second and third paragraphs shall apply in the event of the death of a former official entitled to an allowance under Article 50 of the Staff Regulations, Article 5 of Council Regulation (EEC, Euratom, ECSC) No 259/68, Article 3 of Council Regulation (Euratom, ECSC, EEC) No 2530/72 or Article 3 of Council Regulation (ECSC, EEC Euratom) No 1543/73 and in the event of the death of a former official who left the service before reaching pensionable age and requested that his retirement pension be deferred until the first day of the calendar month following that in which he reached pensionable age. Persons in receipt of an orphan's pension may not receive more than one such pension from the Union. Where a surviving child has entitlement to more than one Union pension, he shall receive the pension providing the higher or highest amount.<sup>5</sup>

A person entitled to a retirement pension or to an invalidity allowance, or to a survivor's pension shall be entitled, under the conditions laid down in Annex VII, to the family allowances specified in Article 67; the household allowance shall be calculated by reference to the pension or the allowance of the recipient. These allowances shall be paid to recipients of a survivor's pension only in respect of the children dependent on the deceased official or former official at the time of death.

The amount of the dependent child allowance payable to the person entitled to a survivor's pension shall, however, be twice the amount of the allowance provided for in Article 67 (1) (b).<sup>6</sup>

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<sup>5</sup> Article 80.

<sup>6</sup> Article 81.

## CALCULATION RULES

1. The pensions provided for above shall be calculated by reference to salary scales in force on the first day of the month in which entitlement commences.

No correction coefficient shall be applicable to pensions.

Pensions expressed in euro shall be paid in one of the currencies referred to in Article 45 of Annex VIII to the Staff Regulations.

2. Where remuneration is updated in accordance with Article 65(1), the same update shall be applied to pensions.

3. The provisions of paragraphs 1 and 2 shall apply by analogy to recipients of an invalidity allowance.<sup>7</sup>

Benefits paid under this pension scheme shall be charged to the budget of the Union. Member States shall jointly guarantee payment of such benefits in accordance with the scale laid down for financing such expenditure.

Officials shall contribute one third of the cost of this pension scheme. The contribution shall be 9,8 %, of the official's basic salary, the weightings provided for in Article 64 not being taken into account. It shall be deducted monthly from the salary of officials. The contribution shall be adjusted in accordance with the rules laid down in Annex XII.

The procedure for calculation of the pensions of officials who have spent part of their service with the European Coal and Steel Community or who belong to the institutions or organs common to the Union , and the apportionment of the cost of such award between the European Coal and Steel Community pension fund and the budgets of the European Economic Community and the European Atomic Energy Community shall be settled by a Regulation made by agreement between the Councils and the Committee of Presidents of the European Coal and Steel Community, after consulting the Staff Regulations Committee.<sup>8</sup>

1. The scheme shall be kept in balance in accordance with the detailed rules set out in Annex XII.

2. Agencies which do not receive a subsidy from the general budget of the European Union shall pay into that budget the entire amount of the contributions needed to finance the scheme. From 1 January 2016 agencies which are partly financed from that budget shall pay the part of the employers' contributions which corresponds to the proportion between the agency's revenues without the subsidy from the general budget of the European Union and its total revenues.

3. The balance of the pension scheme shall be ensured by the pensionable age and the rate of contribution to the scheme. On the occasion of the five-yearly actuarial assessment in accordance with Annex XII, the rate of contribution to the pension scheme shall be updated in order to ensure the balance of the scheme.

4. Each year the Commission shall update the actuarial assessment referred to in paragraph 3, in accordance with Article 1(2) of Annex XII. Where it is shown that there is a gap of at least 0,25 points between the rate of contribution currently applied and the rate required to maintain actuarial balance, the rate shall be updated, in accordance with the arrangements laid down in Annex XII.

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<sup>7</sup> Article 82.

<sup>8</sup> Article 83.

5. For the purposes of paragraphs 3 and 4 of this Article, the reference figure set out in Article 83(2) shall be updated. The Commission shall publish the resulting updated rate of contribution within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.<sup>9</sup>

Detailed rules governing the foregoing pension scheme are contained in Annex VIII.<sup>10</sup>

### *Recovery of overpayments*

Any sum overpaid shall be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it.

The request for recovery must be made no later than five years from the date on which the sum was paid. Where the Appointing Authority is able to establish that the recipient deliberately misled the administration with a view to obtaining the sum concerned, the request for recovery shall not be invalidated even if this period has elapsed.<sup>11</sup>

## THEORETICAL BACKGROUND OF THE PENSION TRANSFER

A special consequence of work abroad is the so-called pension transfer. In general, if a person is employed abroad, depending on the place of employment or the European Social Security Coordination Ordinances regulate their social security status or bilateral social security and social policy conventions.

However, the situation is different if work is done in the institutions of the European Union.

Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, as amended by the Staff Regulations, which regulates the transfer of pensions from the EU pension scheme to the Hungarian pension system after the Community officials' career path.

The Act CXII. 2012 in force from 1 September 2012, on the transfer and retransfer of pension and other retirement pensions of officials and other servants of the European Union and certain amendments to related pension and other related laws created the statutory conditions for the practical implementation of the pension transfer in Hungary. Detailed implementing rules are contained in 219/2012. (VIII. 13) Government Decree.

Section 1 of the Act contains the basic concepts to be used in the procedure for transferring a pension, in particular the concept of pension insurance transfer and the pension insurance retransfer, as well as the subject of the procedure, the person under the Staff Regulation, who has legal relation with an EU institution or who - as a former official of the Union- is entitled to pension insurance transfer or retransfer.

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<sup>9</sup> Article 83 a.

<sup>10</sup> Article 84.

<sup>11</sup> Article 85.

The same section explains the basis for the transfer in question, ie the amount paid by the EU institution for the retirement pension on the basis of the Staff Regulations and the amount paid by the EU institution to an EU civil servant for the retirement pension.

This rule gives a different possibility from the main rule laid down in the EU Coordination Regulations (in which the employee insured at the place of work, and also here obtains a pension right for this period except for the posting) that a person who works for an European Union's institution may decide not to take into account his pension entitlement in the Member State of residence such as in Hungary, when determining the pension, but asks for the transfer of the capital value of the pension rights acquired in that Member State to the European Union, whose pension scheme will take account of the transferred entitlement.

Under this law, therefore, it is possible to step over the officials appointed in EU institutions to the Hungarian pension insurance system and the pension rights acquired in the Hungarian pension scheme may be transferred to the EU officials' pension scheme.

Pension insurance transfer and retransfer by the person concerned can only be requested on a single occasion. After the transfer, in the absence of a retransfer, the person is not eligible for old-age pension and private pension fund services in Hungary, and afterwards survivor and private pension fund services can't be established.

#### *Rules of pension insurance transfer*

The law also determines the cases in which no transfer can be requested. These are the following<sup>12</sup>:

- old-age pension, pre-retirement old-age, pre-retirement, service emoluments, ballet annuity or temporary mining annuities or private pension fund services have been granted to the EU official, or
- after the EU official, a survivor pension according to the Social Security Pensions Act was established or a private pension fund was provided.

In all other cases, there is possible a pension insurance transfer, whom is to be paid in HUF from expense of the Pension Insurance Fund or from the private pension fund.

The amount transferred shall be converted into euro by the competent Community institution, on the basis of the exchange rate to be used by the Commission on a monthly basis for the implementation of the budget at the exchange rate applicable on the month of registration of the transfer.

The amount of the pension insurance transfer from the social security pension scheme is determined by the decision<sup>13</sup> of the pension insurance administration.<sup>14</sup>

An official or other employee, who works at the European Union's institution, may decide in the pension scheme of the Member States, for example in

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<sup>12</sup> Act CXII. of 2012 on the Pension Transfer or Retransfer of Officials and Other Servants of the European Union 2§

<sup>13</sup> Act CXII. OF 2012 on the Pension Transfer or Retransfer of Officials and Other Servants of the European Union 4§ (1)

<sup>14</sup> Hungarian State Treasury - Pension Payment Directorate.

Hungary, to transfer all the service time and contributions from the Hungarian pension scheme to the Union's pension scheme.

When determining the amount of the pension insurance payment from the social security pension scheme, it must be stated the length of service that can be taken into consideration for the determination of future pension rights and the amount of earned valorised income, and then the calculated amounts must be combined on the basis of the calculated pension insurance contribution and social contributions tax.

The annual rate of valorisation multiplication shall be applied for the calculation.

As service time and earnings, cannot be taken into account the time or earnings income for which there was no obligation to pay pension contribution. The income based on contribution should be taken into consideration for the entire length of service period, but the contribution paid on the basis of income must be taken into account, however, for the period before 1 January 2013 only up to the contribution ceiling.

As a special rule, the law stipulates that the days of the period of service to be taken into account for which a pension contribution payment has been made but data on earnings are not available shall be based on the average daily rate of earned and justified earnings.

The average daily amount shall be determined by dividing the valorised amount of earned earnings by the number of days the EU official has earned these earnings and income. The annual earnings and incomes calculated in this way must be multiplied by a special contribution rate specified by the government decree

If the EU official has previously used the possibility of pension retransfer, the sum of the amount of the pension retransfer to the Pension Fund for the period concerned shall be taken into account, multiplied by the valorisation multiplication figure for the pension retransfer year. The amount of the pension insurance transfer is given by the sum of the above two figures.

- A final decision on a pension insurance transfer can be executed if:
  - no judicial review has been initiated and the time-limit for bringing an action has expired or has been finally judged by the court and
  - a transfer call of the EU institution to the pension insurance administration arrived on the basis of an acceptance statement by the EU officer or his surviving spouse.

The amount of the pension insurance transfer from the private pension fund is the balance of the personal account of the EU official's private pension fund at the date of the pension institution's payment at the time of the institution's request.<sup>15</sup>

If the pension insurance transfer is completed, in the absence of a pension retransfer it is not entitled during a period of pension transfer.

- the EU official for pension, pre-retirement, service allowance, ballet annuity, temporary mining annuity and private pension fund's service, and
- to the survivor pension and private pension fund's service.

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<sup>15</sup> Act CXII. OF 2012 on the Pension Transfer or Retransfer of Officials and Other Servants of the European Union 5§

### *Rules for pension retransfer*

The Staff Regulations give EU officials the right to transfer the actuarial equivalence of their pension rights acquired in the Community pension scheme to the pension scheme of the Member States if they do not qualify for a pension on the basis of the Staff Regulations.

An old-age pension is granted to an EU official who has worked for at least 10 years or has reached the age of 63 or whose retirement has taken place in the interest of the service.

In accordance with the steps taken in the pension reform, retirement returnees can only be transferred to the social security pension scheme, and therefore the beneficiary is entitled to a full public pension even if he is a member of a private pension fund.

In accordance with the provisions of the Act, during the retransfer, the amount, which behoove the pension insurance fund or the EU officer or it's survivor is determined by the pension insurance administration based on the length of service and the amount of income received.

A decision on pension retransfer may be implemented if the EU institution has transferred the amount of retirement reimbursement to the Pension Insurance Fund.

Based on the length of service provided in an institution of the European Union, the amount returned refers to the contribution period of the Hungarian social security system. The average wage for the Hungarian pension is determined by deducting the contribution paid by the institution of the Union after the official.

The rules for the length of service that can be taken into consideration during the retransfer are as follows:

During the retransfer, the period of service certified by the EU institution shall be considered as service time. If the EU official has also worked on the same day in the Hungarian pension scheme, that day may be take into consideration as only one day service period.<sup>16</sup>

If, in a given year, the monthly amount of the deducted contribution of the EU institution to the period of service certified by the EU institution does not reach the aggregate amount of the pension contribution and the calculated social contributions tax applicable on 1 January of that year, only proportional part of service time proven by the EU institution can be taken into account as service time.

- If the EU official has previously used the opportunity of the a pension transfer, the period of service for the period concerned must be defined as if the pension insurance transfer had not taken place.

During the pension retransfer, the rights of the EU official acquired in the pension scheme of an another Member State of the European Union, which are transferred to a pension scheme under the Staff Regulations, shall be taking into account equal to the period of service time recognized by the EU institution under the Staff Regulations at the time of transfer, for the period immediately prior to the

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<sup>16</sup> Act LXXXI of 1997 on Social Security Pension Benefits 43§.



date of transfer - with the exception of the period covered by a pension insurance transfer from the Hungarian pension scheme.<sup>17</sup>

The law provides for a separate regulation in the event that the amount of the retransfer is higher than the amount due for the Pension Insurance Fund. In this case, the remaining amount behoove the EU official or his survivor and shall be transferred to his or her personal account at a voluntary mutual pension fund, to an occupational pension provider institution as a supplement to a member or to his retirement savings account.

If the EU official or survivor does not comment on the amount of money he / she is entitled to, the VIII. district office of Budapest Government Office invokes to the replacement by imposing a 90-day deadline (ie calling the holder to create a membership by a voluntary mutual pension fund, or by an occupational pension institution or by a retirement savings account manager). If the EU official or the surviving spouse does not meet the deadline, the amount is covered by the Pension Insurance Fund.

In connection with the pension transfer the Act about the Social Security Pension Benefits<sup>18</sup> was supplemented with the following points:

- the amount of income taken into consideration under the Act on the Pension Transfer or Retransfer of Officials and Other Servants of the European Union for the purposes of pension retransfer, if the sum due to the Pension Insurance Fund had in fact been transferred to the Pension Insurance Fund;<sup>19</sup>  
the service time recognized under the Act on the Pension Transfer or Retransfer of Officials and Other Servants of the European Union for the purposes of pension retransfer, if the sum due to the Pension Insurance Fund had in fact been transferred to the Pension Insurance Fund<sup>20</sup>;

In connection with any Union official affected by pension retransfer under the Act on the Pension Transfer or Retransfer of Officials and Other Servants of the European Union, who was a member in a private pension fund before 1 October 2010, the number of days in this period shall be added to the numerator for the purposes of calculating the 'h' value. If, during such period, the Union official had also acquired service time in the Hungarian pension systems as well, the income included for the purposes of pension retransfer shall be divided by the total of the amount of income recognized for the same day and the amount of income comprising the pension contributions base, and the result shall be added to the numerator.

The essence of the supplement is that private pension fund members can also qualify for full retirement pension during the retransfer from the EU pension system, as reimbursement only takes place in the Pension Insurance Fund.

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<sup>17</sup> Act CXII. of 2012 on the Pension Transfer or Retransfer of Officials and Other Servants of the European Union 6§

<sup>18</sup> Act LXXXI of 1997 on Social Security Pension Benefits

<sup>19</sup> Act LXXXI of 1997 on Social Security Pension Benefits 22 § d)

<sup>20</sup> Enacted: by Section 22 of Act CXII of 2012. In force: as of 1. 09. 2012.

## LEGAL BACKGROUND

- Article 77 of Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (HL P 045, 1962.6.14., 1385. o
- Act CXII. OF 2012 on the Pension Transfer or Retransfer of Officials and Other Servants of the European Union
- Act LXXXI of 1997 on Social Security Pension Benefits

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In: Multiscience - XXXII. microCAD International Multidisciplinary Science Conference

(2018) p. DOI: 10.26649/musci.2018.048

DOI

Közlemény:30336097 Jóváhagyott Forrás Egyéb konferenciaközlemény (Konferenciaközlemény )