

REALITIES IN THE PENSION INSURANCE IN THE EUROPEAN UNION COUNTRIES

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Ever since the moment Romania acceded to the European Union starting 01.01.2007 social security for migrant workers, either Romanian citizens or belonging to the European Economical Space has become an objective necessity.

Taking into consideration the conceptual specificity and different regulations of insurance systems for pensions as a full part of national security systems – social protection – there are legal corresponding instruments by which the coordination for provision granting are achieved between community states.

The regulations adopted by the European Commission are mandatory and directly applicable in all their elements to all community countries, and in case of conflicts with national law, community instruments prevail.

The present paper underlines the main issues for regulations and some practical aspects concerning the insurance in case of old age social risk.

I. The settlement method concerning the determination and establishment of the pensions in the European Union territory

Starting from 01.01.2007, considering Romania's adherence at the European Union, the community legislation has become an important issue for our country as well in its relations with the other states affiliated to the European Union.

The precursory years of negotiating the conditions, which need to be respected in order to adhere to European Union, have prepared the terms of implementing the community aquis

In order to decrease the difficulties that are present on an international level in regarding the social security, a legal frame has been created unanimously accepted at a European level, which approaches the coordination of the social security system inside the European Union territory.

This coordination regards the elimination of those elements of the national law, which in some cases overstep the borders of the step creating a legal vacuum encouraging the plurality of pension rights.

The coordination of social security regimes does not encourage the creation of an autonomous social security system specific to migrant workers as the national system can survive, but these become permeable in correlation with other social security systems.

As the community regulations are directly applicable and mandatory in all European countries in case of conflict with the national law, the clauses of the community normative instruments shall prevail.

The principles that are on the basis of the coordination of the migrant workers rights are the following:

- ***the equality of treatment*** between the citizens of member states in the sense of granting the same rights , as well as imposing the same obligations similar to the citizens of Romania and for the other states from the European Union, who travel within the European Union, with the view to deploy professional activities or to settle in these states;

- ***the determination of the applicable legislation*** so that a person is not subject to multiple social security laws. The general rule is to apply the laws of the state where the person is employed, resides, or has their residence;

- ***the totalization of insurance periods*** (length of service) with a view to establish and approve the rights, which means that the institutions empowered to establish the rights that the migrant worker is eligible for, takes into consideration the periods of time in which their insurance has

been covered by their state as well as the length of service covered for in the other member states.

The rule of proportional calculation (*pro rata temporis*) is to be applied when establishing the pension quantum, which means that every state in question shall grant a pension right calculated depending on the person's contribution period to the social insurance system in the state in question;

- ***the export of provisions*** represents the right of the migrant worker to benefit on the residence territory for the provisions acquired from the state on whose territory they have been insured.

The legal community instruments concerning social security are the following:

- ***the Council Regulation (EEC) no. 1408 June 1971*** on the application of social security schemes to employed persons, self employed persons and to members of their families moving within Community;

- ***Council Regulation (EEC) no. 574 from March 21 1972*** laying down the procedure for implementing regulation (EEC) no. 1408 June 1971

II. The establishment and payment procedures of pension rights in the territory of the European Union

The following institutions are involved are generically involved in the solving the applications for pension rights:

- ***the competent institution*** is the one empowered to receive the application and to assure the connections between the involved institutions in solving the demand. The competence of the institution is determined by the solicitor's residence and all involving institutions recognize the registered application;

- ***the institution in cause*** is the social insurance institution that the last place of residence depends on, in which the solicitor has been subscribed, acquiring length of service. For instance, if the last place in which the solicitor has been insured is situated in Bihor county, the County Pension House in Bihor is the competent institution to manage the pension file, for the length of service fulfilled in Romania.

In order to establish the pension rights, next step is to file the below mentioned documents.

The documents must be accompanied by instruments, which prove the accomplished insurance periods, identification information concerning the solicitor, respectively the European forms:

- E202 -*Application for old age pension*

- E203 -*Application for survivor's pension*

- E204 -*Application for disability pension*

- E205- *Certificate concerning the insurance history*

- E207 -*Certificate concerning the career of the insured person*

- E210 -*The notification of the pension resolution*

- E211 -*The summary of the pension resolutions*

- E001 – *Request Form/Information Communication, Request/Form Transmittal*

The interested person individually forwards the retirement documents to the competent institution who sends a copy of the forms depending on the required type of pension to each involved institution in the member states in which the worker has been insured.

Along with the European forms the Romanian institution shall send any available documents, which can be used by the competent institution from the other European states so as to establish the pension right.

Every institution in cause shall send their own form E205, which confirm the insurance period or its equivalent accomplished by the solicitor under the laws of the respective member state.

In order to establish the pension rights each involved institution shall precede to the totalization of the insurance period for the double calculation of the pension – the national one as well the community one – made according to pro rata temporis principle.

After the issue of each pension resolution along with forms E 210 filled in by competent institutions of each member states who have solved the solicitor's pension application, the competent institution shall issue its one resolution and shall fill in form E 211.

The form shall be sent to the pension solicitor along with a copy of all resolutions.

The competent institution shall send a copy of this form to the institutions in cause, and also a copy of its own resolution.

The monthly pension rights established and definite for each country that has recognized the accomplished length of service are paid through the bank system in the currency of the member states (EUR, POUNDS, RON)

So as to pay the pension, the institutions in cause, respectively the territorial pension houses use bank information either the ones in the connection forms sent by the competent institutions or the ones confirmed by the beneficiary in the transfer statement abroad, accompanied by the documents attesting the bank details, and also a copy of the owner's identification instrument showing the present residence.

III. The calculation of the pension rights

The specificity of the calculation procedure is in the fact that, within the pension right settlement they use comparatively and independently for each member state the fulfillment of the pension terms, respectively the granting of the most advantageous rights. When a community pension file is analyzed, the national pension, the theoretical pension and the community pension is determined:

1. Old age pension

The national pension is settled following the current Romanian laws, taking into account the length of service accomplished in Romania. In the public system the quantum of the pension at the registration date is determined by the multiplication of the yearly medium points accomplished by the insured person during the length of service with the value of a pension point at the date of registration.

The yearly medium point accomplished by the insured person is determined by multiplying the number of points resulted by summing up the yearly points accomplished by the insured to the number of years corresponding to the complete length of service.

The yearly point of the insured is determined by dividing to 12 the score resulted in the respective year, by adding the number of points in every month. The number of points resulted in every month is calculated by reporting the individual monthly gross wage along with extras or the insured monthly income which was the calculation foundation of the social insurance individual contribution to the medium monthly gross wage in the respective month.

The theoretical pension results from summing up of the number of points accomplished in Romania to the medium point of the period insured in the other state, dividing the result to the complete length of service.

2. The early old age pension:

The quantum of early old age pension is settled in the same way as for old age pension, the difference being that the assimilated periods are not taken into consideration at the length of service.

The insured persons who have accomplished at least 10 years over the complete length of service can ask for early old age pension with the reduction of the pension age by 5 years

3. The partial early old age pension:

The insured persons that have accomplished complete length of service as well as those with up to 10 years over the complete length of service can apply to a partial old age pension with the reduction of the retirement age with 5 years the most.

The quantum of the partial old age pension is settled from the quantum of the old age pension by diminishing it, depending on the length of service accomplished and number of month with which the retirement age has been reduced.

4. Invalidity/ Disability pension:

When establishing a disability pension, the persons insured who do not have a complete length of service at the date of registration, are granted bonus service, which results from the subtraction of the complete length of service and the accomplished service when the person is granted in disability group.

The persons who have at least half of the necessary service foreseen by current laws, the bonus service results as a difference between the complete lengths of service and the necessary one.

The resulted bonus service cannot be higher then the service the insured person could have accomplished at the age of disability.

The yearly point of the insured persons for the bonus service is:

- **0.75** point for group I of disability for those who are fully incapacitated.
- **0.60** point for group II of disability for those who are fully incapacitated, but do not need to be cared for.
- **0.40** point for group III of disability for those who are disabled but not fully incapacitated.

For those in group I of disability a companionship amount shall be granted, which is the equivalent of the minimum economy wage.

5. Survivor's pension:

Children and the surviving spouse have the right to survivor's pension, if the deceased is already retired or fulfills the terms of pension.

The survivor's pension is calculated as follows depending on:

- payable old age pension or the one at which the deceased would have had the right to in the terms of law;
- group I disability pension if the sustainer's death has occurred before the fulfillment of the terms for old age pension.

The quantum of the survivor's pension is settled in percent and depending on the number of successors:

- One successor - **50 %**;
- Two successors - **75%**;
- Three successors and more - **100%**

6. The revision of pension rights established in the terms of a law prior to the application of the regulations contained in the community normative instruments:

According to the terms of Regulation 1408/1971 and Regulation 574/1972, the person whose rights are established according to the current legislation before January 1st 2007, can require the revision of the pension rights so as to benefit from more advantageous rights.

If the request is submitted in 3 years time from January 1st 2007, the established rights are gained from this date forward.

Examples:

Old Age Pension:

The applicant XY, born on the 1st of January 1949, *residing in Germany*, city of Bonn, with the personal Romanian numerical code of insurance 2490101054016, and the German social identification number 23 010149 S 132, was *insured both in Romania and in Germany*, and as a result, applies for *the determination of the pension rights, beginning with the 1st of January 2007*.

The necessary elements, which are the basis of the determination of the pension right, are the following:

- the applicant has achieved the following length of service:
 - in Romania – 20 years
 - in Germany – 10 years
 - total of the length of services: 30 years
- The foreseen length of service: 26 years
- Years spent in Romania: 22 years
- Points achieved in Romania: 17
- Points for additional pension: 2
- Total points achieved in Romania: 19

By applying the stated theoretical part, the procedure of calculation is the following:

- the score achieved during the insurance period of the other EU country: $17 / 22 = 0,77$
- theoretical pension : $(19 + 10 \text{ years} \times 0,77) / 26 = 1,03$ points
- community pension : $1,03 \times 20 / 26 = 0,79$ points

Results: after doing the double calculation, the annual average score of the national pension was determined: **0,5** (established according to the presents calculation module, according to the stipulations of the national legislation) against the score of the community pension: **0,79** (determined as a result of the presented model). As a result, the most favorable pension is: ***the community old age pension.***

The other types of provisions granted in the Romanian social system are applicable correspondingly in the community countries, coordinated according to the principles shown.

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