



E-5/22-14

REPORT FOR THE HEARING

in Case E-5/22

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Princely Court of Appeal (*Fürstliches Obergericht*), in the case between

Christian Maitz

and

**Liechtenstein Old-Age and Survivors' Insurance (AHV),
Liechtenstein Invalidity Insurance (IV), and
Liechtenstein Family Allowances Office (FAK)**

concerning the interpretation of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

I Introduction

1. By letter of 28 April 2022, registered at the Court on 3 May 2022, the Princely Court of Appeal requested an Advisory Opinion in the case pending before it between Christian Maitz and Liechtenstein Old-Age and Survivors' Insurance (*Liechtensteinische Alters- und Hinterlassenenversicherung*), Liechtenstein Invalidity Insurance (*Liechtensteinische Invalidenversicherung*) and Liechtenstein Family Allowances Office (*Liechtensteinische Familienausgleichskasse*) (“the Liechtenstein Institutions”).
2. The case before the referring court concerns an appeal brought by Mr Maitz against a decision of the Liechtenstein Institutions of 29 December 2021 regarding the applicability

of Regulation 883/2004 to Mr Maitz, an EEA national working in the European Economic Area (“EEA”) but residing in a third country.

II Legal background

EEA law

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 (OJ 2004 L 166, p. 1), as corrected by OJ 2004 L 200, p. 1, and OJ 2007 L 204, p. 30, (“Regulation 883/2004”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011 (OJ 2011 L 262, p. 33) and is referred to at point 1 of Annex VI (Social Security) to the Agreement on the European Economic Area (“EEA” or “the EEA Agreement”). Constitutional requirements were indicated by Iceland and Liechtenstein. The requirements were fulfilled by 31 May 2012 and the decision entered into force on 1 June 2012.

4. Article 1 of Regulation 883/2004, entitled “Definitions”, reads, in extract:

For the purposes of this Regulation:

...

(j) ‘residence’ means the place where a person habitually resides;

(k) ‘stay’ means temporary residence;

...

5. Article 2(1) of Regulation 883/2004, entitled “Persons covered”, reads:

1. This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.

6. Article 3 of Regulation 883/2004, entitled “Matters covered”, reads, in extract:

1. This Regulation shall apply to all legislation concerning the following branches of social security:

...

(d) old-age benefits;

7. Article 7 of Regulation 883/2004, entitled “Waiving of residence rules”, reads:

Unless otherwise provided for by this Regulation, cash benefits payable under the legislation of one or more Member States or under this Regulation shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his/her family reside in a Member State other than that in which the institution responsible for providing benefits is situated.

8. Article 11 of Regulation 883/2004, entitled “General rules”, reads, in extract:

1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.

2. For the purposes of this Title, persons receiving cash benefits because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing the said activity. This shall not apply to invalidity, old-age or survivors' pensions or to pensions in respect of accidents at work or occupational diseases or to sickness benefits in cash covering treatment for an unlimited period.

3. Subject to Articles 12 to 16:

(a) a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State;

(b) a civil servant shall be subject to the legislation of the Member State to which the administration employing him/her is subject;

(c) a person receiving unemployment benefits in accordance with Article 65 under the legislation of the Member State of residence shall be subject to the legislation of that Member State;

(d) a person called up or recalled for service in the armed forces or for civilian service in a Member State shall be subject to the legislation of that Member State;

(e) any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other Member States.

...

9. Article 71(1) of Regulation 883/2004, entitled “Composition and working methods of the Administrative Commission”, reads:

1. The Administrative Commission for the Coordination of Social Security Systems (hereinafter called the Administrative Commission) attached to the European Commission shall be made up of a government representative from each of the Member States, assisted, where necessary, by expert advisers. A representative of the European Commission shall attend the meetings of the Administrative Commission in an advisory capacity.

10. Article 72 of Regulation 883/2004, entitled “Tasks of the Administrative Commission”, reads, in extract:

The Administrative Commission shall:

(a) deal with all administrative questions and questions of interpretation arising from the provisions of this Regulation or those of the Implementing Regulation, or from any agreement concluded or arrangement made thereunder, without prejudice to the right of the authorities, institutions and persons concerned to have recourse to the procedures and tribunals provided for by the legislation of the Member States, by this Regulation or by the Treaty;

(b) facilitate the uniform application of Community law, especially by promoting exchange of experience and best administrative practices;

...

11. Annex XI to Regulation 883/2004 contains an entry concerning Liechtenstein. Point 1(a)(i) and (ii) of that entry reads:

1. Compulsory insurance under Liechtenstein sickness insurance scheme for benefits in kind (“Krankenpflegeversicherung”) and possible exemptions:

(a) The Liechtenstein legal provisions governing compulsory sickness insurance for benefits in kind shall apply to the following persons not resident in Liechtenstein:

(i) persons subject to Liechtenstein legal provisions under Title II of the Regulation;

(ii) persons for whom Liechtenstein shall bear the costs of benefits according to Article 24, 25 and 26 of the Regulation;

...

12. Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1) (“Regulation 987/2009”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011 (OJ 2011 L 262, p. 33) and is referred to at point 2 of Annex VI (Social Security) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. The requirements were fulfilled by 31 May 2012 and the decision entered into force on 1 June 2012.

13. Article 4(1) of Regulation 987/2009, entitled “Format and method of exchanging data”, reads:

1. The Administrative Commission shall lay down the structure, content, format and detailed arrangements for exchange of documents and structured electronic documents.

14. Article 5(1) of Regulation 987/2009, entitled “Legal value of documents and supporting evidence issued in another Member State”, reads, in extract:

1. Documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of the basic Regulation and of the implementing Regulation, and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued.

15. Article 19(2) of Regulation 987/2009, entitled “Provision of information to persons concerned and employers”, reads:

2. At the request of the person concerned or of the employer, the competent institution of the Member State whose legislation is applicable pursuant to Title II of the basic Regulation shall provide an attestation that such legislation is applicable and shall indicate, where appropriate, until what date and under what conditions.

International conventions

16. 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 (OJ 2002 L 114, p. 6) was signed in Luxembourg on 21 June 1999 and approved on behalf of the Community by Decision 2002/309/EC, Euratom of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ 2002 L 114, p. 1). It was amended – to the extent relevant here – on 31 March 2012 by Decision No 1/2012 of the Joint Committee established under 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 replacing Annex II to that Agreement on the coordination of social security schemes (OJ 2012 L 103, p. 51). Pursuant to Article 8 of that Agreement (entitled “Coordination of social security systems”), the Contracting Parties shall make provision, in accordance with Annex II, for the coordination of social security systems with the aim in particular of (point (b)) determining the legislation applicable. Pursuant to Article 1(1) of Annex II in conjunction with Section A, the contracting parties agree, with regard to the coordination of social security schemes, to apply Regulation 883/2004 and Regulation 987/2009 among themselves.

17. Between the Principality of Liechtenstein and the Swiss Confederation (as well as the Kingdom of Norway and the Republic of Iceland) the Convention of 4 January 1960 establishing the European Free Trade Association (EFTA) has been concluded (LGBI. 1992 No 17). The Convention was amended on 21 June 2001 (LGBI. 2003 No 189). A further amendment was made – to the extent relevant in this case – on 12 November 2015 by Decision No 5/2015 of the EFTA Council amending the EFTA Convention (LGBI. 2015 No 352). Pursuant to Article 21 of the Convention (entitled “Coordination of social security systems”), in order to provide freedom of movement of persons, the Member States shall make provision, in accordance with Appendix 2 of Annex K and with the Protocol to Annex K on the free movement of persons between Liechtenstein and Switzerland, for the coordination of social security systems with the aim in particular of (point (b)) determining the legislation applicable. Pursuant to Article 1(1) of Appendix 2 to Annex K, the Member States agree, with regard to the coordination of social security schemes, to apply among themselves Regulation 883/2004 and Regulation 988/2009 (referred to in Section A of the Appendix).

18. According to Protocol 2 to Appendix 2, Sections A and B of Appendix 2 are applicable to the relations between Liechtenstein and Switzerland under the following conditions:

1. Compulsory insurance under the sickness insurance scheme

1.1 Persons residing in one of the two States are subject to the legal provisions on compulsory sickness insurance of their State of residence, if:

(a) being gainfully employed, they are subject to the legal provisions relative to the other branches of social security in one of the two States; ...

1.2 The obligation to be insured under the daily allowance insurance is determined by the legislation applicable to the person by reason of his or her gainful employment. ...

III Facts and procedure

19. According to the referring court, Mr Maitz is an Austrian national. In July 2015 he transferred his residence from Austria to Switzerland.

20. On 13 November 2018, he was entered by the Vienna Bar Association, Austria, (Rechtsanwaltskammer Wien) in the register of lawyers. As a result he is entitled to practise as a lawyer in Austria.

21. On 3 December 2018, he was entered by the Liechtenstein Bar Association (Liechtensteinische Rechtsanwaltskammer) in the register of established European lawyers. For entry in the register it is necessary that the applicant produces a certificate issued by the competent authority in their home State evidencing that he is a member of this profession. Pursuant to Article 62(1) of the Lawyers Act, the established European lawyer is authorised to engage in the same professional activities as any lawyer entered in the register of lawyers, except where otherwise provided.

22. Pursuant to Section 49(2) of the Austrian Lawyers Code, Mr Maitz is obliged to pay contributions to the Austrian pensions institution that provides old-age and invalidity benefits for lawyers and trainee lawyers as well as survivors' benefits in the event of the lawyer's death – as are, in principle, all lawyers entered in the register of an Austrian bar association, unless they are, by virtue of their activities as a lawyer, already subject to compulsory affiliation to an old-age pension scheme of an EU Member State, another Contracting State of the EEA Agreement or the Swiss Confederation.

23. For 2018, Mr Maitz was exempted by the Vienna Bar Association from his obligation to pay contributions to the Austrian pensions institution.

24. For the period from 1 January 2019 onwards, Mr Maitz was required by the Vienna Bar Association to produce Portable Document (“PD”) Form A1 completed by the competent social security authority. It is claimed that this serves as an attestation of the national legislation which applies to the relevant person and as confirmation that Mr Maitz does not have to pay contributions in Austria. Production of PD Form A1 is said to entail an automatic exemption from contributions to the Austrian pensions institution.

25. Mr Maitz has worked since 1 January 2019 in Liechtenstein as an employed or self-employed lawyer. His income was obtained exclusively from this activity. He did not obtain any income in Austria and has no employed activity in Switzerland.

26. On the basis of his professional income in Liechtenstein, Mr Maitz is compulsorily insured with the First Respondent (AHV-Anstalt) against the risk of old-age and is obliged to pay contributions.

27. Mr Maitz requested that the Liechtenstein Institutions issue him with a PD Form A1 for the years 2019 and 2020 as evidence of old-age benefits provision.

28. By order of the Liechtenstein Institutions of 4 August 2020, it was determined that the income obtained by Mr Maitz from employed and self-employed activities in Liechtenstein is liable to mandatory contributions payable to the Liechtenstein Institutions. It was further determined that a PD Form A1, attesting to an exclusive liability and insurance obligation in Liechtenstein or in a single State within the meaning of social security coordination, could not be issued.

29. An appeal brought by Mr Maitz challenging that decision was rejected by the Liechtenstein Institutions by decision of 29 December 2021. Mr Maitz challenged that decision by an appeal to the Princely Court of Appeal.

30. In the appeal proceedings, the Liechtenstein Institutions offered to issue an official attestation concerning the old-age benefits provision existing in Liechtenstein in place of a PD Form A1.

31. Against this background, the Princely Court of Appeal decided to stay the proceedings and refer the following questions to the Court:

1. Is it necessary for the scope *ratione personae* of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 166, p. 1), incorporated in the EEA Agreement by Decision of the EEA Joint Committee of 1 July 2011 (LGBl. 2012 No 202), that the Member State national who is subject to the legislation of one or more Member States within the meaning of Article 2(1) of that Regulation is resident in one of the Member States?

If the answer to that question is in the negative:

Can an agreement concluded by the EU or an EEA Member State with a third country by which the scope of application of the Regulation mentioned was extended to the third country change the answer to this question?

2. Must an attestation within the meaning of Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1), incorporated into the EEA Agreement by Decision of the Joint Committee of 1 July 2011 (LGBI. 2012 No 202), be issued necessarily by means of a form (PD A1) laid down by the Administrative Commission for the Coordination of Social Security Systems in order to produce the legal effects specified in Article 5(1) of that Regulation?

IV Written observations

32. Pursuant to Article 20 of the Statute of the Court and Article 90(1) of the Rules of Procedure, written observations have been received from:

- Christian Maitz, represented by Dr Moritz Blasy, Attorney, and Mag. Christian Scheffknecht, Attorney;
- the Liechtenstein Government, represented by Dr Andrea Entner-Koch and Romina Schobel, acting as Agents;
- the EFTA Surveillance Authority (“ESA”), represented by Ewa Gromnicka, Melpomenie Joséphidès and Michael Sanchez Rydelski, acting as Agents; and
- the European Commission (“the Commission”), represented by Denis Martin and Bernd-Roland Killmann, acting as Agents.

V Proposed answers submitted

Christian Maitz

33. Mr Maitz proposes that the questions referred be answered as follows:

1. Article 2(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems is to be interpreted as meaning that a national of an EEA Member State does not have to be resident in an EEA Member State in order to fall within the scope ratione personae of that regulation. It is not therefore necessary for a national of an EEA Member State to be resident in an EEA Member State in order for Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems to be applied to him.

If the answer to that question is in the negative:

An agreement concluded by an EU or an EEA Member State with a third country can never restrict the scope of application of Regulation (EC) No 883/2004 or the freedom of movement of a national of an EU or an EEA Member State. Rather, such an agreement can only extend the scope of application of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems to other persons and States. In accordance with the ruling of the Court of Justice of the European Union of 15 January 2002 in Case C 55/00 Gottardo and Recommendation No P1 of the Administrative Commission for the Coordination of Social Security Systems of 12 June 2009 concerning the Gottardo judgment, the fundamental principle of equal treatment requires that the Member States grant the nationals of other Member States the same advantages in respect of social security as those which its own nationals enjoy under the Agreement on the free movement of persons concluded with Switzerland or the EFTA Convention. The conclusion of an additional umbrella agreement between the EU and EEA Member States and Switzerland concerning the coordination of social security schemes is therefore not necessary in order for nationals of an EEA Member State to be able to claim the social security advantages arising from those two agreements.

2. Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems is to be interpreted as meaning that the attestation mentioned in that provision must be issued necessarily by means of the form (Portable Document A1) laid down by the Administrative Commission for the Coordination of Social Security Systems in its Recommendation No A1 of 18 October 2017 concerning the issuance of the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 in order to produce the legal effects specified in Article 5(1) of Regulation (EC) No 987/2009. Under Article 4(1) of Regulation (EC) No 987/2009, the Administrative Commission is to lay down the structure, content, format and detailed arrangements for exchange of documents and structured electronic documents.

The Liechtenstein Government

34. The Liechtenstein Government proposes that the questions referred be answered as follows:

Question 1

It is necessary for the scope ratione personae of Regulation 883/2004, as incorporated into the EEA Agreement, that the EEA national who is subject to the legislation of one or more EEA States is resident in one of the EEA Member States.

An agreement concluded by the EU or an EEA Member State with a third country by which the scope of application of the Regulation 883/2004 was extended to the third country has no effect on the application and scope of Regulation 883/2004 and therefore does not change the answer to the first question.

Question 2

The attestation within the meaning of Article 19(2) of Regulation 987/2009 must not be issued by means of PD A1 as laid down by the Administrative Commission in order to obtain the legal effect referred to in Article 5(1) of that Regulation.

ESA

35. ESA proposes that the questions referred be answered as follows:

1. *In circumstances such as those set out in the request for an Advisory Opinion it is not necessary that an EEA national who is subject to the legislation of one or more EEA States is resident in one of the EEA States in order to fall within the scope ratione personae of Regulation 883/2004 within the meaning of Article 2(1) of that Regulation.*

As it is not a condition under Article 2(1) of the Basic Regulation for nationals of an EEA State to also be residents of an EEA State in order to be covered by the personal scope of the Basic Regulation, an agreement concluded by an EEA EFTA State with a third country, by which the scope of application of the Basic Regulation is extended to the third country, cannot impose place of residence as a conflict rule deviating both from Articles 2(1) and 11 of the Basic Regulation.

2. *Article 19(2) of Regulation 987/2009 must be interpreted as not requiring an attestation to be issued exclusively in the form of a Portable Document A1 in order to produce the legal effects set out in Article 5(1) of that Regulation.*

The Commission

36. The Commission proposes that the questions referred be answered as follows:

1. Article 2(1) of Regulation 883/2004 must be interpreted as meaning that it also covers persons who are nationals of an EEA State and who work in another EEA State, but who reside outside of any EEA State, provided that there is a sufficiently close link between the employment relationship, on the one hand, and the law of an EEA State and thus the relevant rules of EEA law, on the other.

2. Article 19(2) of Regulation 987/2009 must be interpreted as not requiring an attestation to be issued in the form of a Portable Document A1 in order to produce the legal effects under Article 5(1) of that Regulation. Receiving authorities enjoy under Article 5(2) of that Regulation, whatever the form of the attestation, the right to ask the issuing institution for further information and, eventually, the withdrawal of the document.

Páll Hreinsson
Judge-Rapporteur