



## JUDGMENT OF THE COURT

29 July 2022\*

*(Regulation (EC) No 883/2004 – Social security – Family benefits – Transitional benefits  
– Requirement of occupational activity)*

In Case E-2/22,

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 Norwegian National Insurance Court (*Trygderetten*), in the case between

**A**

and

**the Labour and Welfare Directorate (*Arbeids- og velferdsdirektoratet*),**

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,

THE COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Per Christiansen and Bernd Hammermann, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- the Norwegian Government, represented by the Labour and Welfare Directorate, represented by Ida Thue, acting as Agent;
- the EFTA Surveillance Authority (“ESA”), represented by Ewa Gromnicka, Erlend Møinichen Leonhardsen and Melpo-Menie Joséphidès, acting as Agents; and

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\* Language of the request: Norwegian. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- the European Commission (“the Commission”), represented by Denis Martin and Bernd-Roland Killmann, acting as Agents;

having regard to the Report for the Hearing,

having heard oral arguments of the Norwegian Government, represented by Ida Thue; ESA, represented by Erlend Møinichen Leonhardsen; and the Commission, represented by Bernd-Roland Killmann, at the remote oral hearing on 24 May 2022,

gives the following

## Judgment

### I Legal background

*EEA law*

- 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 (OJ 2004 L 166, p. 1), as corrected by OJ 2004 L 200, p. 1, and OJ 2007 L 204, p. 30, (“the Regulation”) 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 EEA Supplement 2011 No 54, p. 46), and is referred to in point 1 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.

- 2 Article 1 of the Regulation, headed “Definitions”, reads, in extract:

*For the purposes of this Regulation:*

...

*(z) ‘family benefit’ means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I.*

- 3 Article 3 of the Regulation, headed “Matters covered” reads, in extract:

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

...

*(b) maternity and equivalent paternity benefits;*

...

*(j) family benefits.*

...

3. *This Regulation shall also apply to the special non-contributory cash benefits covered by Article 70.*

...

5. *This Regulation shall not apply to:*

*(a) social and medical assistance or*

...

4 Article 6 of the Regulation, headed “Aggregation of periods”, reads:

*Unless otherwise provided for by this Regulation, the competent institution of a Member State whose legislation makes:*

- the acquisition, retention, duration or recovery of the right to benefits,*
- the coverage by legislation,*
- or*
- the access to or the exemption from compulsory, optional continued or voluntary insurance,*

*conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were periods completed under the legislation which it applies.*

5 Article 70(2) of the Regulation, headed “General provision”, reads:

*For the purposes of this Chapter, ‘special non-contributory cash benefits’ means those which:*

*(a) are intended to provide either:*

- (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;*

*or*

*(ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned,*

*and*

*(b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone,*

*and*

*(c) are listed in Annex X.*

*National law*

6 Section 15-1 of the Norwegian Act No 19 of 28 February 1997 on national insurance (*lov om folketrygd av 28. februar 1997 nr. 19 (folketrygdloven)*) (“the National Insurance Act”) provides that the purpose of benefits under Chapter 15 of that act is to secure income for members having sole care of children and to provide those members with temporary assistance for self-help, so that they may become self-supporting through their own work.

7 The first paragraph of Section 15-2 of the National Insurance Act, headed “Prior membership”, read, in the version applicable at the material time:

*It is a requirement for entitlement to benefits under this Chapter that the person concerned has been a member of the social security system in the last three years before she or he submits a claim for a benefit.*

8 Section 15-3 of the National Insurance Act provides that in order to receive benefits, the member and the child must, as a main rule, stay in Norway.

9 Section 15-4 of the National Insurance Act, headed “Single mother or father”, reads:

*Benefits under this Chapter may be granted to a member who is a single mother or father and has sole care of a child.*

*As ‘Mother’ or ‘father’ are also someone who has acquired parental responsibility due to death under Section 38 of the Children Act (barnelova).*

*Single mother or father means a member who is single, separated or divorced. A member who lives together with a person with whom he or she has a child or is divorced or separated from, or lives in a marital-like relationship in the same household without a common child are not deemed as a single mother or father. If the member is married, that person is deemed as a single mother or father when the cohabitation ceases and a petition is made to have the marriage dissolved through an application for separation and divorce submitted to the County Governor or by legal proceedings being brought before the courts. If a member has a new child with the same partner whilst receiving benefits for a 'single mother or father' for a common child, neither of the parents are deemed to be a single mother or father. The same applies if the mother or father has previously received benefits under this Chapter for a common child.*

*A mother or father has the sole care of a child when she or he consistently has clearly more of the day-to-day care than the other parent. Neither of the parents are deemed to have sole care of the child by living arrangements as referred to in the fourth paragraph of Section 1-5 or other close living arrangements. The Ministry may issue regulations on what is deemed to be other close living arrangements.*

*The member itself has the burden of proving that he or she is a single mother or father with sole care of a child.*

10 Section 15-5 of the National Insurance Act, headed "Transitional benefit", reads:

*A transitional benefit is granted to a member who, due to having care of a child, is temporarily unable to be self-supporting through his or her own work or can only access employment following a period of adjustment or education.*

*Benefits may be given to a single mother or father who has children under eight years old. For a member who is prevented from working due to having care of a child that requires special supervision, transitional benefit may be granted until the child becomes 18 years old. Exceptions may be made to the age limit in the first sentence in connection with extensions under the third sentence of the second paragraph, fourth paragraph and fifth paragraph of Section 15-8.*

*A member who without reasonable cause has terminated an employment relationship during the last six months preceding the time of application, does not receive transitional benefits.*

11 Section 15-6 of the National Insurance Act, headed "Occupational activity obligation", reads:

*When the youngest child has turned one year, it is a criterion for entitlement to transitional benefit that the member either:*

- a. is employed amounting to at least half of full-time,*
- b. have registered with the Labour and Welfare Administration as a genuine jobseeker,*
- c. complete education or training amounting to at least half of full-time which the Labour and Welfare Administration considers necessary and appropriate for the member to obtain or retain employment, or*
- d. establishes her or his own business, see the third paragraph of Section 4-6.*

*The Labour and Welfare Administration shall, as needed, convene for discussions to consider the follow-up of the member and whether measures should be implemented with a view to transition to employment.*

*A member who is a genuine jobseeker, see letter b) in the first paragraph, must report in every 14 days to the Labour and Welfare Administration. The Labour and Welfare Administration determines how such reporting shall take place.*

*The activity obligation does not apply if the member is prevented from working due to care of a child requiring special supervision as referred to in the third paragraph of Section 15-8.*

*If the member is not in occupational activity pursuant to the first paragraph, transitional benefit is nevertheless granted if the child does not have a satisfactory supervision arrangement, and this is not attributable to the member. The same applies if the single mother or father or the child has an illness that prevents occupational activity. The sickness must be documented by a medical certificate.*

*The Ministry may issue regulations on which education may be approved and the requirement of being a genuine jobseeker.*

- 12 Section 15-7 of the National Insurance Act provides that the annual transitional benefit amounts to 2.25 times the basic amount (*grunnbeløpet*) (NOK 106 399), which at the time of the request, corresponded to NOK 239 397.
- 13 Section 15-8 of the National Insurance Act, headed “Benefit period”, reads:

*A transitional benefit may be granted for a total of three years. A member who has previously received transitional benefits for an entire benefit period may be granted a new benefit period until the child is entitled to a place in kindergarten under Section 16 of the Kindergarten Act (*barnehageloven*). In connection with childbirth, benefits may in addition be granted up until two months before the birth.*

*The benefit period may be extended by up to two years when the single mother or father is taking necessary and appropriate education, see letter c) of the first paragraph of Section 15-6. If the single mother or father has sole care of more than two children or acquired sole care of a child or children under 18 years old, the benefit period may be extended by up to three years. The benefit period may be further extended to and including the month in which a commenced educational year ends. A benefit is usually not given after the occupational qualification has been obtained.*

*The benefit period may be extended until the child becomes 18 years old if the member is prevented from working because the child requires special supervision due to disability, sickness or major social problems. The child's physical or psychological condition must be documented by a doctor. Documentation must also be submitted showing that the member is prevented from working as a result of the child's condition.*

*In direct connection with an ongoing benefit period, the benefit period may be extended by up to two years if the member or the child has a temporary illness that prevents the member from working. The sickness must be documented with a medical certificate.*

*In direct connection with an ongoing benefit period, the benefit period may, in special cases, be extended by up to six months pending the start of school, child supervision, a specific offer of employment or after the member has registered as a genuine job-seeker with the Labour and Welfare Administration.*

*The Ministry may issue regulations on the calculation of the length of the benefit period, including division and shortening of the benefit period.*

- 14 Section 15-9 of the National Insurance Act, headed "Reduction against income", reads, in extract:

*The transitional benefit is reduced based on employment income which the member has or can be expected to receive.*

*The transitional benefit shall not be reduced if the employment income on an annual basis is less than half of the basic amount. The benefit is reduced by 45% of income over half of the basic amount.*

*Equal to employment income are unemployment benefits under Chapter 4, sickness benefits under Chapter 8, benefits in the event of sickness of a child or other close relative under Chapter 9, work assessment allowance under Chapter 11 and pregnancy and parental benefits under Chapter 14.*

...

- 15 Section 15-10 of the National Insurance Act, headed “Childcare benefits for single mothers or fathers in employment, etc.”, reads:

*A childcare benefit is granted to a member who must leave necessary supervision of a child to others due to employment or establishing their own business, see the third paragraph of Section 4-6. The benefit is independent of entitlement to and the period of the transitional benefit.*

*The benefit may be granted until the child has completed the fourth year of school. For a child who has completed the fourth year of school, a childcare benefit may be given when the child must have significantly more supervision than what is usual for a child of that age, or when the member must, due to his or her work, be absent from the home for periods longer than or at different times than what a usual workday entails. A childcare benefit may also be given for up to one year when the member has a temporary sickness that prevents the person concerned from working.*

*The benefit is 64% of documented expenses for child supervision up to the amounts fixed by the Parliament (Stortinget). Benefit is not given when the pensionable income is more than six times the basic amount.*

*The Ministry may issue regulations on childcare benefits.*

- 16 Section 15-11 of the National Insurance Act, headed “Supplemental benefits and support for school fees, etc.”, reads:

*A member who completes education or training under letter c) of the first paragraph of Section 15-6 may be granted supplemental benefits covering in whole or in part:*

*a. expenses for daily travel in connection with the clarification or completion of the education;*

*b. expenses for travels to the home in connection with the education;*

*c. necessary expenses for relocation from the home in connection with the education or in connection with work following completion of the education;*

*d. necessary expenses for child supervision in connection with the clarification or completion of the education;*

*e. necessary extra housing expenses in connection with the clarification or completion of the education;*

*f. benefit to cover documented expenses for teaching aids.*



*A relocation benefit under letter c) of the first paragraph may also be granted to a member who has to move from their home in order to commence employment at another location. The relocation benefit is only granted when the member has moved during a period when he or she is entitled to the transitional benefit or within six months after the transitional benefit lapses.*

*A childcare benefit under letter d) of the first paragraph can also be granted to a member who is registered with the Labour and Welfare Administration as a genuine job-seeker under letter b) of the first paragraph of Section 15-6.*

*Benefits for coverage of school fees, etc., may be granted on the basis of the rates for school fees from the Norwegian State Educational Loan Fund (Statens lånekasse for utdanning). Education at private educational institutions confers entitlement to benefits only in special cases.*

*Supplemental benefits and support for school fees, etc., are granted only for the time period in which the single mother or father is entitled to a transitional benefit.*

*The Ministry may issue regulations laying down more detailed rules governing the supplemental benefits, school fees and education at private educational institutions.*

- 17 Section 15-13 of the National Insurance Act, headed “The relationship to other social security benefits, etc.”, reads:

*The transitional benefit under this Chapter lapses in so far as the person concerned receives subsistence benefits under the social security system in the form of pension or a transitional benefit as surviving spouse, disability benefits or equivalent benefits from abroad. The same applies when the person concerned receives a collective agreement-based pension (avtalefestet pensjon – AFP) for which pension points are credited, see Section 3-19.*

- 18 The Norwegian Regulation No 1341 of 21 November 2015 on benefits for single mothers or fathers under Chapter 15 of the National Insurance Act (*forskrift av 21. november 2015 nr. 1341 om stønad til enslig mor eller far etter folketrygdloven kapittel 15*) (“the national regulation”) contains supplementary rules.

- 19 Section 1 of the national regulation, headed “Persons who have previously been members”, reads:

*The first paragraph of Section 15-2 of the National Insurance Act on prior membership does not apply to persons who have previously been long-term members and who become a member again following an interruption of less than 10 years.*

- 20 Section 2 of the national regulation, headed “Exception from the requirement of prior membership”, reads:

*Even though a person does not fulfil the requirement in Section 1, an exception can be made to the provisions on prior membership when warranted by particular reasons. Emphasis shall be placed on whether:*

*a. the benefit situation arose whilst she or he was a member of the social security system,*

*b. she or he has previously been a member, and*

*c. she or he had particular reasons for coming to Norway apart from pursuing employment or education.*

*If the single mother or father was not a member when the benefit situation arose, an exception can only be made if he or she previously was a long-term member.*

## **II Facts and procedure**

- 21 The plaintiff in the main proceedings, A, is a Swedish national. She moved to Norway in August 2017 when her spouse at the time – a Norwegian national – obtained a job in Norway. Immediately before moving to Norway, she had resided and been employed in Sweden for over five years. Prior to moving to Norway, she had been in Norway a number of times, but had never been resident in the country.
- 22 In spring 2019 A separated from her spouse. The County Governor issued a separation permit on 21 June 2019.
- 23 On 24 June 2019 A applied for transitional benefit. In the application, she stated that she was expecting a child, with an expected due date of 25 July 2019. It was further stated in the application that A had been accepted at an educational institution in Oslo from the autumn that year and would be studying for a bachelor's degree there in the period 2019 to 2022. The field in the application relating to employment for the last six months was left blank. According to the request, A was not employed at the time of the application and that she subsequently has had no employment income in Norway, nor has she been registered as an employed person in Norway.
- 24 By decision of 26 June 2019, the Norwegian Labour and Welfare Administration (“NAV”) rejected the application for a transitional benefit. The basis for the rejection was that Section 15-2 of the National Insurance Act required three years’ prior membership in the social security system, whilst A only had just under two years.

- 25 On 28 July 2019 A's child was born. According to the request, the child's father is a Swedish national, resident in Sweden and is not expected to have much contact with the child.
- 26 The rejection of A's application for transitional benefits was upheld by decision of 29 October 2019 of NAV Appeals, on the same grounds as applied by NAV.
- 27 In the appeal to the National Insurance Court, A argues that the rejection was contrary to EEA rules. She contends that the transitional benefit has to be considered a "maternity benefit" under point (b) of Article 3(1) of the Regulation and accordingly that the Regulation is applicable. She submits that, under Article 6 of the Regulation, she is entitled to have the time in Sweden included for the purposes of determining whether she fulfilled the membership requirement in Section 15-2 of the National Insurance Act.
- 28 NAV Appeals disagrees with A's submissions. It refers to established and consistent administrative practice going back to when the EEA Agreement was concluded, according to which transitional benefits are presumed to fall outside the material scope of the Regulation and its predecessor Regulation (EEC) No 1408/71. Since the Regulation does not apply in the case, Section 15-2 of the National Insurance Act has to be interpreted literally, to the effect that membership in the social security system refers to a period of membership in Norway.
- 29 Against this background, the National Insurance Court requested an advisory opinion from the Court. The request, dated 26 January 2022, was registered at the Court the following day. The National Insurance Court has referred the following questions to the Court:
1. *Does a benefit such as the transitional benefit (overgangsstønad) – see the first paragraph of Section 15-5 of the National Insurance Act, read in conjunction with the first sentence of the second paragraph – come within the material scope of Regulation (EC) No 883/2004 according to:*
    - a. *Article 3(1), in particular (j), or*
    - b. *Article 3(3), read in conjunction with Article 70?*
  2. *Is it of any significance for the assessment under question 1) that there is a requirement of occupational activity for continued entitlement to a benefit when the youngest child becomes one year old, see Section 15-6 of the National Insurance Act?*
- 30 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as it is necessary for the reasoning of the Court.

### III Answer of the Court

- 31 By the first question, the National Insurance Court asks, in essence, whether a benefit such as the transitional benefit constitutes a family benefit within the meaning of point (j) of Article 3(1) of the Regulation, or a non-contributory cash benefit within the meaning of Article 3(3), read in conjunction with Article 70. By its second question, the National Insurance Court asks whether it is relevant for the assessment under the first question that there is a requirement of occupational activity for continued entitlement to the benefit in question when the youngest child turns one year old. The Court finds it appropriate to answer the two questions together.
- 32 In terms of whether the transitional benefit constitutes a special non-contributory cash benefit under Article 3(3) of the Regulation read together with Article 70, the Court observes that it is clear from the wording of Article 70(2)(c) that the special non-contributory cash benefits are to be understood as solely those listed in Annex X to that regulation, as adapted by point 1(k) of Annex VI to the EEA Agreement. Since the transitional benefit does not appear in that annex, it does not constitute such a benefit (compare the judgment in *Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle*, C-769/18, EU:C:2020:203, paragraph 35).
- 33 With respect to the question of whether a benefit such as the transitional benefit constitutes a family benefit, it must first be determined whether it falls within the branches of social security listed in Article 3(1) of the Regulation. According to settled case law, the distinction between benefits within the scope of the Regulation and those outside its scope is based on the constituent elements of each benefit, in particular its purpose and the conditions for its grant. It does not depend on whether it is classified as a social security benefit by national legislation (see Case E-8/20 *Criminal Proceedings against N*, judgment of 5 May 2021, paragraph 50, and compare the judgment in *INPS*, C-350/20, EU:C:2021:659, paragraph 52 and case law cited).
- 34 A benefit may be classified as a social security benefit when it satisfies two conditions: First, the benefit in question is granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position. Second, the benefit must relate to one of the risks expressly listed in Article 3(1) of the Regulation (see *Criminal Proceedings against N*, cited above, paragraph 51).
- 35 The first condition is satisfied if a benefit is granted in the light of objective criteria, which, if they are met, confer entitlement to the benefit, the competent authority having no power to take account of other personal circumstances (compare the judgment in *Dreyer*, C-372/18, EU:C:2019:206, paragraph 33 and case law cited). Furthermore, it is settled case law, in relation to benefits which are granted, refused or the amount of which is calculated by taking into account the recipient's resources, that the grant of such benefits does not depend on an individual assessment of the applicant's personal needs, provided that an

objective, legally defined criterion gives entitlement to the benefit without the competent authority being able to take other personal circumstances into consideration (compare the judgment in *INPS*, cited above, paragraph 55 and case law cited).

- 36 It follows from the request, that a single parent who, due to having to care for a child under the age of eight years old, is temporarily unable to support himself or herself through work, or who can only access employment following a period of adjustment or education, is entitled to the transitional benefit, provided that the other conditions of prior membership and occupational activity are satisfied. Therefore, it follows from the request that the legislation in question confers a legally defined right without the competent authority being able to take other personal circumstances into consideration.
- 37 The fact that income from employment and benefits leads to a reduction of a benefit, or that a benefit may lapse or be denied to persons who are in receipt of certain other benefits, as in circumstances such as those at issue in the main proceedings, does not imply any individual and discretionary assessment on the part of the competent authorities. The discretionary nature of the assessment of the personal needs of a recipient of a benefit must, above all, relate to eligibility for that benefit (compare the judgment in *INPS*, cited above, paragraph 56).
- 38 The second condition is fulfilled if the benefit covers one of the risks expressly listed in Article 3(1) of the Regulation. In the present case, the question is whether a benefit such as the transitional benefit constitutes a family benefit under point (j) of Article 3(1). The concept of the benefit is to be interpreted and applied not according to the respective criteria of any national legislation, but in accordance with EEA law (compare the judgment in *Stewart*, C-503/09, EU:C:2011:500, paragraph 35).
- 39 According to settled case law, social security benefits must be regarded, irrespective of the characteristics specific to different national legal systems, as being of the same kind when their purpose and subject matter as well as the basis on which they are calculated and the conditions for granting them are identical. On the other hand, characteristics which are purely formal must not be considered relevant criteria for the classification of benefits. In order to distinguish between the various categories of social security benefits, the risk covered by each benefit must be taken into consideration (see Case E-8/20 *Criminal Proceedings against N*, cited above, paragraph 52 and case law cited).
- 40 The Court notes that ESA and the Commission, on the one hand, and the Norwegian Government, on the other, disagree on whether a benefit such as the transitional benefit relates to one of the risks listed in Article 3(1) of the Regulation. According to ESA and the Commission, the benefit at issue in the main proceedings should be regarded as a benefit intended to meet family expenses, and thus be considered as a family benefit within the meaning of point (j) of Article 3(1). The Norwegian Government contends that the transitional benefit covers a special risk, namely that of single parents not being able to

support themselves, which is not one of the risks listed in Article 3(1). The Norwegian Government further notes that the transitional benefit predates the EEA Agreement, and that its understanding has always been that that the transitional benefit falls outside the scope of the Regulation entirely.

- 41 With respect to the understanding of the transitional benefit held by the Norwegian Government, the Court observes that it in its interpretation of the EEA Agreement cannot be bound by mere expectations of the EEA States as to the exact content of the obligations they enter into (see Case E-5/06 *ESA v Liechtenstein* [2007] EFTA Ct. Rep. 296, paragraph 63). Accordingly, the fact that the Norwegian Government since the entry into force of the EEA Agreement, has considered the benefit outside the scope of the Regulation and its predecessor is of no significance for the classification.
- 42 With regard to whether a particular benefit constitutes a family benefit under point (j) of Article 3(1) of the Regulation, the Court notes that point (z) of Article 1 defines the term ‘family benefit’ as meaning all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I to the Regulation. The Court further notes that the phrase ‘to meet family expenses’ is to be interpreted as referring in particular to a public contribution to a family’s budget to alleviate the financial burdens involved in the maintenance of children (compare the judgment in *Caisse pour l’avenir des enfants*, C-802/18, EU:C:2020:269, paragraph 38 and case law cited).
- 43 Furthermore, the meeting of such family expenses is compatible with the aims mentioned in recital 1 of the Regulation, namely to contribute towards improving the standard of living and conditions of employment of persons who have exercised their right to freedom of movement (compare the judgment in *Offermanns*, C-85/99, EU:C:2001:166, paragraph 40).
- 44 According to the request, the transitional benefit is granted as a right to a single parent who is temporarily unable to support himself or herself through work, or who can only access employment following a period of adjustment or education, due to having to care for a child under the age of eight years old, provided that the other conditions of prior membership and occupational activity are satisfied. Thus, the transitional benefit is granted in respect of a child and apart from the age criterion, there is no other criteria linked to the child. The Court notes, as also argued by the Commission, that it is care for one or more children that is the essential feature of the transitional benefit (compare the judgment in *Hoever and Zachow*, C-245/94 and C-312/94, EU:C:1996:379, paragraph 24).
- 45 Moreover, a close link between family expenses and a benefit entails that such a benefit constitutes a family benefit within the meaning of the Regulation (compare the judgment in *Maaheimo*, C-333/00, EU:C:2002:641, paragraph 26). Furthermore, a benefit intended to enable one of the parents to devote himself or herself to the raising of a young child, and

designed, more specifically, to remunerate the service of bringing up a child, to meet the other costs of caring for and raising a child and, as the case may be, to mitigate the financial disadvantages entailed in giving up income from an occupational activity, must be treated as a family benefit (compare the judgment in *Kuusijärvi*, C-275/96, EU:C:1998:279, paragraph 60).

- 46 As noted by the Commission, the transitional benefit is granted in respect of one or more children who require care and maintenance. Therefore, such a benefit objectively alleviates the financial burden involved in the maintenance of one or more children by a single parent and mitigates the financial disadvantages entailed in giving up income from an occupational activity because of the need to devote himself or herself to the raising of a young child as a single parent. Accordingly, there is close link between family expenses and a benefit such as that at issue in the main proceedings, so that such a benefit must be regarded as a family benefit within the meaning of point (j) of Article 3(1) of the Regulation.
- 47 The fact that a benefit may also have other functions, for example to encourage employment and education necessary for entry into the job market by means of an occupational activity requirement, does not remove such a benefit from the scope of the Regulation, as long as it covers at least one or more of the risks listed in Article 3(1) of the Regulation (compare the judgment in *INPS*, cited above, paragraph 60, and case law cited).
- 48 Consequently, the answer to the first question is that a benefit such as the transitional benefit at issue in the main proceedings constitutes a family benefit within the meaning of point (j) of Article 3(1) of the Regulation, and is not a non-contributory cash benefit within the meaning of Article 3(3), read in conjunction with Article 70. The answer to the second question is that, in relation to a benefit such as the transitional benefit, it is not relevant in the context of the assessment under the first question that there is a requirement of occupational activity for continued entitlement to the benefit in question when the youngest child reaches the age of one year.

#### **IV Costs**

- 49 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the questions referred to it by the National Insurance Court hereby gives the following Advisory Opinion:

- 1. A benefit such as the transitional benefit at issue in the main proceedings constitutes a family benefit within the meaning of point (j) of Article 3(1) of Regulation (EC) No 883/2004 on the coordination of social security systems, and is not a non-contributory cash benefit within the meaning of Article 3(3) of that regulation, read in conjunction with Article 70.**
- 2. In relation to a benefit such as the transitional benefit, it is not relevant in the context of the assessment under the first question that there is a requirement of occupational activity for continued entitlement to the benefit in question when the youngest child reaches the age of one year.**

Páll Hreinsson

Per Christiansen

Bernd Hammermann

Delivered in open court in Luxembourg on 29 July 2022.

Ólafur Jóhannes Einarsson  
Registrar

Páll Hreinsson  
President