Overview of recent cases before the Court of Justice of the European Union (September-December 2022)

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Abstract
Five judgments from the Court of Justice on social security are reported on in this case note. First, *Raad van bestuur van de Sociale verzekeringbank v X and Y* (C-713/20) concerns the legislation applicable under Regulation 883/2004 to temporary agency workers in relation to periods between contracts. Second, *DN v Finanzamt Österreich* (*Recouvrement de prestations familiales*) (C-199/21) deals with the right to receive family benefits for a parent not residing with his child but bearing the costs of maintenance. Third, *MCM v Centrala studiestödsnämnden* (C-638/20) is about the export of student financial assistance for family members of migrant workers under Article 45 TFEU. Fourth, the requirement to register a partnership for the purpose of accessing a survivor’s pension in a Member State, although that partnership was lawfully concluded and registered in another Member State, is under scrutiny in *Caisse nationale d’assurance pension* (C-731/21). Fifth and finally, *FK v Rechtsanwaltskammer Wien* (C-58/21) discusses the requirement to waive one’s right to practise as a lawyer in other Member States in order to be granted an early retirement pension in light of Articles 45 TFEU and Article 49 TFEU.

Keywords
Article 45 TFEU, family benefits, pension, temporary agency worker, lawyer, study grant, registered partnership

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This case note reports on five judgments relevant to the field of social security. Two of these cases concern interpretation of the social security coordination regulations (Regulation 883/2004 and its implementing Regulation 987/2009). In Raad van bestuur van de Sociale verzekeringbank v X and Y (C-713/20), the Court interpreted the conflict rules under Regulation 883/2004 concerning the legislation applicable to temporary agency workers in relation to periods between contracts. In DN v Finanzamt Österreich (Recouvrement de prestations familiales) (C-199/21), the Court delivered an important judgment concerning the granting of family benefits to parents who are not residing with their children. Two issues were discussed by the Court in this case. Firstly, it examined the question of which Member State is competent for granting family benefits in the event that the person is receiving a pension from two Member States, and the problem of potential overlapping of benefits. Secondly, it interpreted the duty to take into account an application from a parent who is not the parent entitled to family benefits when the parent entitled to those benefits has not applied for them.

The other three judgments reported in this case note concern interpretation of the TFEU, in particular the provision on free movement of workers (Article 45 TFEU). In MCM v Centrala studiestödsnämnden (C-638/20), the Court ruled that the condition of connection with Swedish society for the granting of student financial assistance to a family member of an EU migrant worker who wished to study abroad was not a restriction on the free movement of workers guaranteed by Article 45 TFEU. In Caisse nationale d’assurance pension (C-731/21), the Court considered that the requirement to register a partnership in a Member State in order to gain access to a survivor’s pension in that State, while that partnership was lawfully concluded and registered in another Member State, was an indirect discrimination on the grounds of nationality, contrary to Article 45 TFEU and Article 7 of Regulation 492/2011. Lastly, in FK v Rechtsanwaltskammer Wien (C-58/21), the Court held that the requirement to waive one’s right to practise as a lawyer in other Member States in order to be granted an early retirement pension is contrary to the free movement of workers (Article 45 TFEU) and the freedom of establishment (Article 49 TFEU).

**Determination of legislation applicable during intervening periods between temporary work assignments: Raad van bestuur van de Sociale verzekeringbank v X and Y**

The case of Raad van bestuur van de Sociale verzekeringbank concerns the classification of workers and employment relationships under Regulation 883/2004, with a particular emphasis on temporary agency workers. The case highlights what difficulties the classification of workers in the context of Regulation 883/2004 can pose for the modern labour market, which often involves flexible work arrangements such as temporary agency work. As a result, these cross-border workers may face constant changes in the social security legislation that applies to them, due to the nature of their employment.

The case involves two persons, X and Y, who resided in Germany and Poland, respectively, and were employed by a temporary employment agency in the Netherlands. Since X and Y were not considered to be working during the intervening periods between their temporary assignments, they were denied access to certain social security benefits in the Netherlands. The Centrale Raad
van Beroep (Social Security and Civil Service Court of Appeal) sought guidance regarding the interpretation of Article 11(3)(a) and (e) of Regulation 883/2004 and whether, during intervening periods, the individuals would be insured under the social security legislation of their State of employment (the Netherlands) or whether they would be subject to the social security legislation of their State of residence.

First, Article 11(3)(a) establishes the principle that a person pursuing an activity in a Member State as an employed or self-employed person is subject to that State’s social security legislation. If a person is receiving cash benefits because or as a consequence of his or her employed or self-employed activity, that person will be considered as still pursuing an activity in accordance with Article 11(2). In the present case, the Court noted that the individuals in question did not receive such benefits during the intervening periods (paragraphs 40–42). The Court, therefore, sought to determine whether they pursued an activity as an employed or self-employed person during those periods. However, it was quickly apparent to the Court that the individuals in question did not have an employment relationship with the temporary employment agency during the periods between assignments, as during these periods, the employment contract of X and Y had ceased and no work assignments were carried out (paragraphs 46–48). Furthermore, the Court added that, according to the referring court, the voluntary and domestic work performed by X during those periods could not be regarded as an activity as an employed person or an equivalent situation under Netherlands legislation (paragraph 47).

The referring Court, as well as the Commission, questioned the applicability of Franzen and Others,2 in which it was held that the legislation of the State of employment remains applicable as long as the person is in a continued employment relationship in that State. Following the same reasoning as above, the Court found this inapplicable to the case at hand, as during these intervening periods X and Y did not carry out work on behalf of the agencies (paragraph 49). Instead, the individuals in question fell within the scope of Article 11(3)(e) of Regulation 883/2004, which applies to persons in a situation not specifically governed by other provisions of the Regulation and states that such individuals are subject to the legislation of the State of residence (paragraphs 50–51). The Court concluded that the individuals in question are subject to the national legislation of the Member State in which they reside during the intervening periods between assignments, provided that their employment relationship ceases during these periods.

Although the definition of an ‘activity as an employed person’ under the Regulation is determined by reference to national law, the Court assessed the existence of employment relationships in this case, encouraged by the call for legal certainty from Advocate General Pitruzella.3 Yet this assessment of the existence of employment relationships by the Court is problematic for two reasons. First, the Court’s assessment is limited to the assessment already carried out by the national court in its request for a preliminary ruling. Second, the Court achieves the opposite of legal certainty, as the ruling may cause uncertainty for cross-border temporary agency workers. Indeed, the social security legislation applicable to them is subject to multiple changes and they may not be entitled to benefits under the legislation of their State of residence. The Advocate General, however, noted, that this outcome is

2. Case C-382/13 Franzen and Others, ECLI: EU: C:2015:261.
3. Opinion of Advocate General Pitruzzella in Case C-713/20 Raad van bestuur van de Sociale verzekeringsbank v X and Y, ECLI: EU: C:2022:197, paras.67–68: ‘[…] Indeed, by anchoring the competence of the State of employment to the existence of an employment relationship, it is immediately possible to determine with the requisite certainty the national law applicable at the time of the events. This maintains legal certainty, which is an essential value in a system that, as mentioned earlier, seeks to allow coordination and to avoid conflicts between national rules according to the typical schemes of private international law.’
‘entirely immaterial’ in terms of the conflict rules of Regulation 883/2004, as it is not the purpose of the Regulation to ensure the existence of rights to social security; rather, this is left to the Member States.4

Recovery of family benefits granted to a parent not residing with the child: Dn v Finanzamt Österreich (Recouvrement de prestations familiales)5

DN is an Austrian national and has resided exclusively in Austria since 2001. He married a Polish national with whom he had a child in 1991. In 2011, the couple divorced and the child moved to Poland with her mother. Since November 2011, DN has been receiving early retirement pensions from both Poland and Austria on the basis of insurance he completed in these two countries respectively. The dispute concerns the recovery of family allowances in the form of compensatory allowances and tax credits for DN’s child. The Austrian tax authorities had awarded these family benefits to DN for the period from January until August 2013 in relation to the maintenance costs for his daughter residing in Poland. These benefits were awarded to DN without any waiver declaration being required of his former wife. In fact, his former wife did not make an application in Austria for those family allowances. In addition, neither DN nor his former wife had received any family benefits in Poland during that period. They were not entitled to family benefits in Poland given the fact that DN’s income, thanks to his pension in Austria, was above the threshold for entitlement. The Austrian tax authorities asked for recovery of the family allowances on the grounds that Austria was not the competent State to award those benefits. According to them, Poland was competent given the fact that DN was a recipient of a Polish pension. Furthermore, they argued that Article 68(2) of Regulation 883/2004 on the obligation to pay a compensatory supplement did not apply in this case. In that context, the Bundesfinanzgericht (Federal Finance Court) decided to refer six preliminary ruling questions regarding the interpretation of Article 67 and 68 of Regulation 883/2004 as well as Article 60 of Regulation 987/2009.

The Court treated the first three questions regarding the interpretation of Article 67 and 68 together. The question was essentially whether a person who is receiving pensions from two Member States is entitled to family benefits in accordance with the legislation of those two Member States. The Court ruled that the two Member States awarding pensions to DN, that is, Poland and Austria, were competent on the basis of Article 67(2) of Regulation 883/2004 (paragraphs 29–32). When several entitlements are due under different national laws, the rules against overlapping benefits under Article 68 of Regulation 883/2004 apply. However, the Court recalled that the question of whether several entitlements are due in different Member States depends not only on whether they are due under the law of those Member States, but also on whether the person concerned fulfills the conditions, both in form and substance, for entitlement (paragraphs 34–35). Since neither DN nor his wife could meet the conditions for entitlement to family benefits in Poland, the Court ruled that the rules against overlapping of benefits under Article 68 of Regulation 883/2004 did not apply in this case (paragraph 37).

The fourth and fifth questions related to the interpretation of the third sentence of Article 60(1) of Regulation 987/2009. The third sentence of Article 60(1) of Regulation 987/2009 ensures that where a person entitled to claim family benefits has not exercised his or her right, the application by the ‘other parent’ is taken into account by the competent institutions of the Member States. The referring court asked whether national legislation which restricts entitlement to family benefits to

4. Ibid, paras. 69–71.
5. Case C-199/21 DN v Finanzamt Österreich (Recouvrement de prestations familiales), ECLI: EU: C:2022:789.
the parent who lives with the child is allowed under the third sentence of Article 60(1) of Regulation 987/2009. This restriction means that where the parent who lives with the child has not made an application for family benefits, the other parent who does not live with the child but who bears the costs of maintenance is not entitled to those benefits. The Court distinguished between making a claim for family benefits and being entitled to those family benefits (paragraph 42). The Court found that it is sufficient under Article 60(1) of Regulation 987/2009 that the competent institutions of the Member States take into account the ‘other parent’ when that parent makes an application for family benefits (paragraph 42). Whether that ‘other parent’ is in fact entitled to such a benefit will depend on national law, as EU law does not lay down the conditions for entitlement to benefits (paragraphs 40 and 42). The Court however noted that the application for family benefits made by DN, who is the ‘other parent’ in this case, was in fact taken into account by the Austrian authorities as DN was granted family benefits (paragraphs 44–45).

Since the Austrian authorities granted family benefits in respect of Article 60(1) of Regulation 987/2009, the Court turned to the recovery of those benefits in light of the same provision. Regarding the recovery of family benefits, the Court interpreted the third sentence of Article 60(1) of Regulation 987/2009 as seeking ‘to ensure that, in all circumstances, those benefits, in accordance with their purpose, contribute to the family’s budget and meet the expenses incurred by the person who in fact bears the costs of maintaining the child.’ (paragraph 54). A global approach needs to be followed in which the competent institution is required to examine the situation of the family as a whole (paragraph 52). The Court concluded that, in the case at hand, asking for recovery of family benefits from DN, who bears the costs of maintenance of the child, runs counter to the purpose of the third sentence of Article 60(1) of Regulation 987/2009 (paragraphs 56–57).

This judgment builds strongly on the *Trapkowski* judgment and should be understood in light of that judgment. The essential points are that there is a distinction to be made between the application for family benefits and the entitlement to these benefits. The Court is trying to strike a balance between national competences and EU competences, as EU law does not harmonise the national social security systems but only coordinates them. As a result, the Court held in *Trapkowski* and repeated here in *DN* that the persons entitled to family benefits are determined in accordance with national law. However, when the parent entitled to these benefits does not exercise that right, Member States should take into account the application of the ‘other parent’ in accordance with the third sentence of Article 60(1) of Regulation 987/2009. In *DN*, the Court adds that when Member States do take into account the ‘other parent’ as required by Article 60(1) of Regulation 987/2009 and in fact grant family benefits to that ‘other parent’ on the basis of national law, they cannot later ask for recovery of those benefits.

**Conditions of access to student financial assistance for family members of EU workers: MCM v Centrala studiestödsnämnden**

MCM is a Swedish national who was born and raised in Spain. In 2020, he asked the Swedish Board of Student Finance (CSN) for student financial assistance for his studies in Spain.

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6. C-378/14 *Trapkowski* ECLI: EU: C:2015:720.
7. Case C-638/20 *MCM v Centrala studiestödsnämnden* ECLI: EU: C:2022:916. The case was recently reported on by the author on the EU Law Live Blog. P. Melin, ‘Financial assistance for family members of migrant workers to study abroad (C-638/20)’, EU Law Live Blog, 15 December 2022.
The CSN rejected his application on the grounds that he did not fulfill the requirement of residence in Sweden nor did he fulfill the alternative requirement of a connection with Swedish society. This last requirement is in line with the case-law of the Court based on Article 21 TFEU, such as Prinz & Seeberger, on access to student financial assistance for EU citizens who wish to study abroad.

However, MCM also argued that he was the son of an EU migrant worker and could therefore derive rights on the basis of Article 45 TFEU and Article 7(2) of Regulation 492/2011. MCM argued that the requirement of a connection with Swedish society is an unjustified restriction to his father’s rights as a migrant worker. MCM’s father, also a Swedish national, had worked in Spain for 20 years before returning to Sweden in 2011. The CSN considered that MCM’s father could no longer rely on Article 45 TFEU and Article 7(2) of Regulation 492/2011, since he was no longer a migrant worker due to his return to Sweden in 2011. The referring court, Överklagandenämden för studiestöd (the National Board of Appeal for Student Aid, Sweden) decided to ask the Court of Justice whether Article 45 TFEU and Article 7(2) of Regulation 492/2011 preclude the requirement for a connection with the State’s society in order to grant student financial assistance to a family member of an EU migrant worker.

First of all, the Court held that Article 7(2) of Regulation 492/2011 on the principle of equal treatment for social advantages, including student financial assistance, did not apply in the case at hand. The Court found that Article 7(2) is intended to protect migrant workers and their family members against discrimination in the host Member State (paragraph 26). Therefore, the Court considered that Article 7(2) does not apply with respect to the authorities of the Member State of origin (paragraph 28).

Regarding Article 45 TFEU, the Court ruled that it can be relied upon by nationals in their State of nationality in relation to the measures liable to prevent or deter those nationals from leaving their country of origin (paragraphs 30–32). When assessing whether the Swedish requirement for a connection with Swedish society could be a measure deterring a worker like MCM’s father from leaving Sweden, the Court considered that the choice of leaving that country was dependent not only on the worker’s choice but also on hypothetical and uncertain factors (paragraph 34). Indeed, whether a worker would be deterred from leaving his country if his child could not benefit from student financial assistance presupposes that: (a) that worker has or will have a child; (b) his child decides to stay in the host State; (c) even when his parent returns to their Member State of origin; (d) that child is not integrated into the society of the State of origin; (e) that child decides to pursue post-secondary studies (paragraph 34). As a result, the Court concluded that those factors were too indirect and uncertain to consider that the measure at hand was liable to prevent or deter the worker from exercising his freedom of movement under Article 45 TFEU. As a result, there was no restriction.

MCM v Centralsstudiestödsnämnden is a peculiar case, not only factually but also regarding the EU law provisions that have been relied upon. Under the previous case-law of the Court, a national of a Member State who wants to ask for student financial assistance in order to study abroad would bring the case under Articles 20 and 21 TFEU (such as Morgan and Bucher, Prinz &

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8. Joined Cases C-523/11 and C-585/11, Prinz & Seeberger ECLI: EU: C:2013:524.
9. Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, OJ L 141/1-12.
10. Joined Cases C-11/06 and C-12/06 Morgan and Bucher, ECLI: EU: C:2007:626.
The case-law of the Court on Article 45 TFEU (in combination with Article 7(2) of Regulation 492/2011) is always about children of frontier/migrant workers asking for student financial assistance from the Member State where the parent works (such as Giersch, Verruga, Aubriet). As a result, MCM v Centrala studiestödsnämnden is the first time the Court has applied Article 45 TFEU in order to assess a refusal to grant student financial assistance by the Member State of origin of the parent of the student. Whereas previous case-law of the Court on Article 45 TFEU had always found that asking for a link with the State granting student financial assistance was a restriction that could be potentially justified, here the Court goes further in finding that there is no restriction to begin with.

National legislation making the grant of a survivor’s pension conditional upon the entry in the national register of a partnership that was lawfully concluded and registered in another Member State: Caisse nationale d’assurance pension

The case relates to a French national who applied for a survivor’s pension after her partner, also a French national and employee in Luxembourg, died following an accident at work. The application was rejected because the partnership/civil solidarity pact (PACS) registered in France had not been recorded in the Luxembourg Civil Records Registry during the lifetime of the two contracting parties. After several appeals against that decision, the case ended before the Cour de Cassation (Court of Cassation, Luxembourg). The Court of Cassation decided to send a preliminary ruling question to the Court of Justice regarding its doubts as to whether the requirement to register the partnership in Luxembourg in order to receive a survivor’s pension there, while such a partnership was already registered in another Member State, constituted indirect discrimination prohibited by EU law.

Article 45 TFEU and Article 7 of Regulation 492/2011 prohibit not only overt discrimination on grounds of nationality but also other forms of discrimination that lead to the same result (indirect discrimination). National legislation is deemed indirectly discriminatory if it is liable to affect workers from other Member States more than national workers, unless it is objectively justified and proportionate to the aim pursued. The Court found the Luxembourg legislation to be indirectly discriminatory, by noting that it lays down, with regard to a partnership that was entered into and registered in another Member State according to the relevant rules of that State, a condition to which a partnership entered into in Luxembourg is not subject, placing nationals of other Member States at a disadvantage (paragraphs 33–34).

To determine whether the unequal treatment was objectively justified and proportionate, the Court assessed whether the national legislation genuinely reflects a concern to attain its objective in a consistent and systemic manner. The Court recalled that it is legitimate for a Member State to ensure that a survivor’s pension, financed from public funds and paid to the surviving partner, is paid only to a person who can prove that he or she was indeed the deceased worker’s

11. Joined Cases C-523/11 and C-585/11, Prinz & Seeberger, ECLI: EU: C:2013:524.
12. Case C-20/12 Giersch and others ECLI: EU: C:2013:411.
13. Case C-238/15 Verruga and others ECLI: EU: C:2016:949.
14. Case C-410/18 Aubriet ECLI: EU: C:2019:582.
15. Case C-731/21 Caisse nationale d’assurance pension ECLI: EU: C:2022:969.
partner (paragraph 36). However, the Court observed that the requirement to register partnerships concluded in another Member State at the Luxembourg Civil Record Registry was not mandatory, but merely optional (paragraph 39). Therefore, the Court doubted that an optional registration was appropriate to pursue the objective of ensuring that the substantive conditions for entitlement were fulfilled (paragraph 39). Furthermore, the Court considered that the measure went beyond what was necessary (paragraph 40). Instead, the Court found that it would be sufficient to produce an official document issued by the competent authority of the Member State in which the partnership was registered. In case of doubt regarding the veracity of the official document, the Court highlighted that the authorities could make a request for information to the authorities where the partnership was concluded (paragraph 41). Additionally, registration of the partnership in the Member State that is required to pay the survivor’s benefits could also take place on the date of the application for those benefits if there is no deadline for registration in that Member State, according to the Court (paragraphs 41–42).

Based on these findings, the Court concluded that Article 45 TFEU and Article 7 of Regulation 492/2011 preclude the refusal to grant a survivor’s pension on the grounds of non-registration in Luxembourg, as this stipulation goes beyond what is necessary to attain the objective pursued and infringes the principle of proportionality.

This case illustrates another challenge that cross-border workers may face in relation to their social security rights, namely the administrative burden. With this judgment, the Court protects such workers by underlining the importance of equal treatment of workers in both a national and cross-border context, as well as strengthening the ‘free movement of registered partnerships’.

**Right to an early retirement pension conditional upon waiving the right to practise as a lawyer in other Member States: FK v Rechtsanwaltskammer Wien**\(^{16}\)

FK is a highly mobile self-employed person. He is a dual national (German-Polish) lawyer practising in Germany, Austria and Switzerland. Until 2007, FK’s residence and centre of interests was in Germany. In 2007, he moved his residence and centre of interests to Switzerland so that he was spending 70% of his working time there, 25% in Germany, and 5% in Austria. Throughout his career, he never spent more than 10% of his working time in Austria. FK claimed an early retirement pension from Austria starting from 1 November 2017. He indicated that he wished to waive his right to practise as a lawyer in Austria but would keep his right to practise in Germany and Switzerland. The Committee of the Vienna Bar Association rejected his application for an early retirement pension on the grounds that, according to Austrian law, award of such a pension requires the person concerned to waive the right to practise as a lawyer anywhere (emphasis added). FK brought an appeal against that decision in front of the Verwaltungsgericht Wien (Administrative Court, Vienna) which confirmed the decision of the Vienna Bar Association. However, FK brought an extraordinary appeal to the Verwaltungsgerichtshof (Supreme Court), which set aside the decision of the Administrative Court ruling that the court had failed to take EU law into account. The dispute then went back to the Administrative Court which had doubts about the compliance of Austrian law with EU law.

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16. C-58/21 FK v Rechtsanwaltskammer Wien ECLI: EU: C:2022:691.
Firstly, the referring court doubted whether Article 13(2) of Regulation 883/2004 is applicable to the situation of FK. Article 13(2) sets out rules determining the legislation applicable to a person who pursues activities as a self-employed person in two or more Member States. The doubt of the referring court is due to the fact that FK’s centre of interests and place of residence are not in a Member State of the EU but in Switzerland. The Court briefly addressed this point by showing that in accordance with Annex II to the EC-Switzerland Agreement, the term ‘Member States’ used in Regulations 1408/71 and 883/2004 extends to the Swiss Confederation (paragraphs 37–38).

On the interpretation of Article 13(2) of Regulation 883/2004, the Court recalled that Article 13 follows the principle of single applicable legislation, so that a person is subject to the legislation of only one Member State. Article 13(2)(a) states that a person is subject to the legislation of the Member State of residence, if that person pursues a substantial part of his activities in that Member State. If it is not the case, Article 13(2)(b) ensures that the person is subject to the legislation of the Member State where the centre of interest of his or her activities is situated. The Court noted that FK seemed to have always been resident in the State where he pursued a substantial part of his activities, that is in Germany until 2007, and Switzerland from 2007 onwards (paragraph 47). This means that FK is subject to either German or Swiss legislation depending on the period concerned. In any case, FK could not be considered as subject to the Austrian legislation, given the fact that he never spent more than 10% of his working time in Austria (paragraph 48). In making that assessment, the Court used Article 14(8) of Regulation 987/2009, which requires a quantitative account of a person’s working time and/or remuneration. Additionally, the Court referred to its recent case-law in Ryanair, where it held that less than 25% of working time is an indicator that a substantial part of a person’s activities is not pursued in that Member State (paragraph 46). However, by reference to Franzen or van der Berg, the Court recalled that the principle of single applicable legislation in the Regulation does not mean that a Member State cannot offer to grant social security rights on the basis of its own national law (paragraph 49). Overall, the Court found that in the situation at hand, Austria was not competent according to the conflict rules of the Regulation but according to national law (paragraph 52).

Nevertheless, although the conditions for the awarding of an early retirement pension in this case are based on national law, Member States need to have due regard to EU law, in particular to Articles 45 TFEU and 49 TFEU (paragraph 61). The Court explained that, in accordance with Gebhard and Onofrei, the profession of lawyer either falls under Article 49 TFEU if the lawyer is ordinarily remunerated by the client, or under Article 45 TFEU if remuneration takes the form of a salary (paragraph 60). These provisions prohibit any national measure which is liable to prevent or deter the exercise of the free movement rules. In the case at hand, the Court found that the requirement to waive the right to practise as a lawyer both in national territory and abroad constitutes a restriction to the freedoms guaranteed by Article 45 or 49 TFEU (paragraph 67). The Court held that the aim put forward by the Austrian government concerning the

17. Case C-33/21 INAIL and INPS (Ryanair) ECLI: EU: C:2022:402. This case was reported on in the previous issue of this journal: P. Melin & S. Sivonen, ‘Overview of recent cases before the Court of Justice of the European Union (March-September 2022)’, European Journal of Social Security 2022, pp. 9–10.
18. Case C-382/13 Franzen and Others ECLI: EU: C:2015:261.
19. Joined Cases C-95/18 and C-96/19 van der Berg and Others, ECLI: EU: C:2019:767.
20. Case C-55/94 Gebhard ECLI: EU: C:1995:411.
21. Case C-218/19 Onofrei ECLI: EU: C:2020:1034.
need to protect the profession of lawyer from competition from those who had already retired was legitimate and that the national law was appropriate to that aim (paragraphs 68–70). However, the Court found that the national law went beyond what is necessary since the aims could be achieved by limiting the waiver of the right to practise to the national territory only or to a limited geographical area in another Member State. Regarding the objective of protecting the financial stability of the early retirement scheme, the Court doubted the appropriate character of the measure regarding that aim. The Court stated that it was not clear how the financing system of the scheme would be at risk if its recipients continued to work in other Member States (paragraph 74). While the Court left it to the referring court to assess whether and to what extent the national legislation is proportionate, it still ended its judgment by indicating that it seems that other less restrictive measures could be used to pursue the objectives (paragraph 75).

This judgment adds to the case-law on the free movement of lawyers (Gebhard, Onofrei) by making sure that national measures related to social security do not deter or prevent the exercise of the free movement rules. For the purpose of social security law, this judgment confirms the case-law of the Court in Bosmann, Hudzinski and Wawrzyniak, Franzen, and van der Berg, where the Court has held that a non-competent State pursuant to the conflict rules of Regulation 883/2004 can still grant the social security benefits in question on the basis of its national law if this does not lead to overlapping of benefits in relation to the same periods of insurance.

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22. C-352/06 Bosmann ECLI: EU: C:2008:290.
23. Joined Cases C-611/10 and C-612/10 Hudzinski and Wawrzyniak ECLI: EU: C:2012:339.
24. Case C-382/13 Franzen and Others ECLI: EU: C:2015:261.
25. Joined Cases C-95/18 and C-96/19 van der Berg and Others ECLI: EU: C:2019:767.