18/10/2011

Note on the rights of frontier workers with regard to free movement and social security

The purpose of this note is to assess the state of the law concerning free movement of workers and social security. In this respect, it should be noted that during the course of European integration, a frontier worker status has emerged and there is existing case law due, in particular, to the actions of the European Commission and the intervention of the Court of Justice of the EU.

Which laws apply? Firstly, it should be noted that the Treaty does not contain specific provisions for frontier workers. As is the case for other migrants, frontier workers enjoy the fundamental freedom of *movement for workers* under Article 45 TFEU. Article 48 TFEU, which applies equally to all migrants, also contributes to the protection of frontier workers with the introduction of a *coordination* mechanism for national social security systems so that migrants are not penalised in social security matters due to their mobility.

These two treaty provisions have been implemented respectively by two Regulations: Regulations (EEC) Nos 1612/68 and 1408/71 (respectively replaced by Regulations (EC) Nos 492/2011 and 883/2004). However, it should be noted that frontier workers are not dealt with specifically in Regulation (EC) No 492/2011. In this way, for protection concerning employment and social and tax benefits, frontier workers can rely, like all migrants, on Article 45 TFEU and Regulation (EC) No 492/2011 (I). However, for matters concerning *social security,* an *original definition*[1] has been laid down and an ad hoc rule has been conceived[2] under Regulation (EC) No 883/2004 (II). Finally, frontier workers can invoke the provisions of the treaty relating to citizenship in order to benefit from certain rights associated with free movement of persons (III).

I. FRONTIER WORKERS AND FREE MOVEMENT OF PERSONS

With regard to the right to work, frontier workers are subject, like all migrants, to the legislation of the *country of employment*. While residing and working in the EU, they enjoy the principle of non-discrimination and equal treatment for workers moving in the EU. Article 45 TFEU and Regulation (EC) No 492/2011 can be relied on directly in combating indirect discrimination[3] on

[1] A frontier worker is 'any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he returns as a rule daily or at least once a week'. This definition does not take into consideration the criterion of geographic proximity between the country of residence and the country of employment. Instead, the coordination rule focuses on the intensity of the links between the party concerned and two countries, based on a time criterion: a frontier worker is someone who returns to his/her country of residence on a frequent and regular basis.

[2] In particular, this is explained by the specific nature of social security: a frontier worker is likely to be caught between (at least) two national systems of social security legislation, that of the State of employment and that of the State of residence; national social security institutions are not always inclined to cooperate in good faith; national systems of legislation are attached to territorial notions, which leads to the survival of residence clauses which principally target frontier workers; differences in the content of national social security legislation lead to frequent loss of rights; the absence of coordination between tax law and the right to social protection may lead to double charges.

[3] As a reminder: conditions imposed by national law must be regarded as indirectly discriminatory where, although applicable irrespective of nationality, they affect essentially migrant workers or where the great majority of those affected are migrant workers, as well as conditions which are applicable without distinction but can more easily be satisfied by national workers than by migrant workers or where there is a risk that they may operate to the particular detriment of migrant workers.

the grounds of nationality. Under Article 7 of the abovementioned Regulation, such workers have the same social (1) and tax (2) advantages as nationals.

1. Social advantages: residence clauses prohibited

Article 7 of Regulation (EC) No 492/2011 entitles migrant workers to the same social advantages as national workers from the first day of their employment in the host Member State.[4] Under the policy against residence clauses, the concept of a 'social advantage' in accordance with Article 7(2) of Regulation (EC) no 492/2011 is of central importance.[5]

The Commission notes that Member States often argue that, since frontier workers do not live in the State of employment, they and their family members should not enjoy the same social advantages as other migrant workers. They believe that the existence of residence requirements can be justified by the fact that they aim to help with the integration of migrant workers and their families in the host Member State. However, a frontier worker and the members of his family, who by definition reside in another Member State, would not need this particular integration assistance. If the residence requirement could not be put forward against a frontier worker, the consequences would be severe. In fact, in this case, according to these States, it would be necessary to 'export' provisions such as direct social welfare.[6]

The Court has rejected these arguments since the *Meints*[7] judgment: '*That argument disregards the wording of Regulation No 1612/68, the fourth recital of whose preamble expressly states that the right of free movement must be enjoyed 'without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services' and Article 7 of which refers, without reservation, to a 'worker who is a national of a Member State*" (paragraph 50). There can therefore be no question of excluding frontier workers from enjoying social advantages on the grounds that they do not reside in the debtor country.[8] The case law is extensive and provides a variety of examples:

- *Compensation to an unemployed agricultural worker*: in the *Meints* case, the residence requirement was indirect: the additional compensation scheme payment for workers leaving farming was reserved for unemployed workers who were entitled to Dutch unemployment benefits. However, as we know, frontier workers are entitled to unemployment benefits in their

[4] Article 11 provided that the spouse and children of a migrant worker have the right to work in the host state independently of their nationality (judgment, Case C-131/85 Gül [1986] ECR 1573). Article 23 of Directive 2004/38/EC has not adopted this premise in full.

[5] The Court has held that social advantages cover all advantages, whether or not linked to a contract of employment, that are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory, and the extension of which to workers who are nationals of other Member States seems likely to facilitate their mobility within the EU. The concept of social advantage is very broad and covers financial benefits and non-financial advantages which are not traditionally perceived as social advantages.

[6] See: Opinion of Advocate-General Lenz in Case C-57/96 *Meints* [1997] ECR I-6691, paragraph 42.

[7] Specifically, this concerned payment of compensation to a salaried farm worker whose employment contract in the Netherlands ended after the land was set aside: Case C-57/96 *Meints* [1997] ECR I-6689.

[8] Given its purpose, and in view of the case law of the Court concerning the rights of workers, including frontier workers, to benefit from the right to equal treatment as soon as they arrive in the host Member State, the requirement to show the existence of a *'genuine integration link'* should not affect workers.

country of residence under Article 71 of Regulation (EEC) No 1408/71. They are therefore completely unable to satisfy the condition laid down by Dutch law concerning entitlement to this severance pay. The Court therefore held that this condition constituted indirect discrimination on the grounds of nationality.

- *Funding of studies in the Netherlands*: no residence requirement can be applied to the child of a frontier worker, who is therefore entitled to tuition under the same conditions as those applicable to children of nationals of the Member State of employment. The right to export social advantages to the State of residence was confirmed with reference to a Dutch grant intended to fund studies which cannot be refused to the child of a worker employed in the Netherlands on the basis that the family resides in another Member State.[9]

- *Childbirth and maternity allowances in Luxembourg:*[10] In the *Commission* v *Luxembourg* case, the right to childbirth and maternity allowances was subject to a requirement of having resided in Luxembourg for at least one year. The Court held that this requirement as to length of residence could be more easily met by a Luxembourgish national than by a national of another Member State. Therefore, it decided that this provision was contrary to the prohibition of any discrimination on the grounds of nationality.

- *Career break allowance in Belgium*: Belgium's refusal to grant such an allowance because the applicants did not reside in Belgium is a violation of the fundamental principle of free movement of workers.[11]

- *Supplementary pensions in France*: French law (collective agreement) prevented supplementary pension points from being awarded to frontier workers employed in France but residing in Belgium.[12] These systems are excluded from Community coordination but this did not prevent the Court from finding against France for non-compliance with the principle of equality between nationals and non-nationals in accordance with Article 45 TFEU: a Member State may not exclude frontier workers who have been placed in *early retirement* from qualifying for supplementary retirement pension points until they reach normal retirement age. Such a system of validation of retirement pension points is a *social advantage*; a *residence requirement* for allocation of retirement points is *indirectly discriminatory*.[13]

- *Savings pension bonus in Germany*: German legislation establishing a pension savings system reserving certain tax advantages for employees or retired persons residing in Germany was

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[9] Case C-337/97 *Meeusen*, ECR I-3289. It should be noted that the *Bidar* and *Forster* judgments invoking a residence requirement for study grants concern neither frontier workers nor migrants but only citizens. An infringement proceeding is currently open against Luxembourg.

[10] Case C-111/91 *Commission* v *Luxembourg* [1993] ECR I-817.

[11] C-469/02 *Commission* v *Belgium* [2004].

[12] C-35/97 *Commission* v *France* [1998] ECR I-5325 (acquisition of pension points subject to a residence condition).

[13] The French government has argued that granting 'free' points to frontier workers residing in Belgium would endanger the financial equilibrium of the system. It therefore asked the Court to limit the effects in time of the judgment: almost 20 years after the collective agreement was concluded, a judgment against the French authorities would lead to heavy costs, potentially up to FF 192 million. The Court rejected the request for a *time limit* for the *financial consequences*, given the fact that in the matter of indirect discrimination the case law held the use of residence criteria in deep distrust, as such clauses can easily be used to conceal discrimination on the grounds of nationality.

rejected.[14] The abovementioned legislation prevents frontier workers (and their spouses) from benefitting from the savings pension bonus when they are not fully liable to tax in Germany. The benefit is considered to be a *social advantage* as it is principally granted to employees who are affiliated to the statutory pension insurance scheme and granted independently of the beneficiary's income. The Court considers that granting the payment subject to a requirement of being fully liable to German tax constitutes discrimination as it is equivalent to imposing a residence requirement. In this way, frontier workers, when their income is exclusively taxable in their State of residence owing to a double taxation agreement, are not therefore treated as liable to unlimited taxation and cannot benefit from the bonus. This is therefore a matter of indirect discrimination on the grounds of nationality.[15]

2. Tax advantages

In the absence of harmonising measures at EU level, direct taxation remains essentially a national responsibility. However, the Member States may not introduce legislation discriminating directly or indirectly on the basis of nationality. There is a growing body of Court of Justice case law concerning the application of the Treaty freedoms to direct taxes, including Article 45 TFEU.

The ability of frontier workers to rely on the right of equal treatment can also apply to questions of income tax. For example, a frontier worker employed in one Member State but living with his family in another State cannot be required to pay more tax than a person living and working in the State of employment, where that worker's main family income comes from the State of employment.[16] In addition, rules which make it more beneficial to be taxed as a couple than as a single person must apply to frontier workers in the same way as for couples in a similar situation in the Member State of employment and may not be conditional upon both spouses being resident in the State of employment.[17]

II. FRONTIER WORKERS AND SOCIAL SECURITY

Frontier workers benefit like all migrants from the four guiding principles of coordination, namely: equal treatment, the principle of single applicable legislation, the aggregation of periods of insurance or employment and payment of benefits abroad (waiving of residence clauses). It should be noted that the principle of single applicable legislation is significant for frontier workers. In accordance with this principle, a frontier worker may not be subject to social security contributions in the country of residence. The applicable legislation is that of the country of

[14] Case C-269/07 *Commission* v *Germany* [2009].

[15] The same is true for preventing the use of capital accrued by beneficiaries thanks to the assistance of pension savings bonuses paid by the State for the acquisition or construction of a dwelling for accommodation purposes when this is not located in Germany. This restriction affects all frontier workers on this occasion, not only those whose income is exclusively taxable in the State of residence under a tax agreement. The Court recognises that neither German employees nor frontier workers may use this capital to acquire or build a dwelling outside Germany and that the legislation therefore is not aimed at non-residents directly. However, 'the fact remains that non-residents are more likely to be interested in purchasing a dwelling outside Germany than residents'. Consequently, the contested provision 'affords cross-border workers less favourable treatment than that enjoyed by workers resident in Germany'.

[16] Case C-279/93 *Schumacker* ECR [1995] I-225.

[17] Case C-87/99 *Zurstrassen* ECR [2000] I-03337.

employment (*lex loci laboris*). Consequently, the application of the *lex loci laboris* protects frontier workers from attempts by their country of residence to collect contributions from their income.

In this way, the Commission asked the Court to declare that France has failed to fulfil its obligations under EU law because it applies the general social contribution (CSG), intended to fund all the branches of the general social security scheme in France, to the employment income and substitute income of workers resident in France but not subject to French social security legislation. The Court followed the Commission[18] in saying that frontier workers or retired frontier workers could not be subject to deductions under the legislation of their country of residence when it was not the competent country.[19] Throughout Regulation (EC) No 883/2004, the specific situation of frontier workers is taken into account either expressly or as persons falling within the broader category of workers residing in a Member State other than the Member State of employment. Some examples concerning granting of benefits:

1. Sickness and maternity insurance

Cash benefits. Regulation (EC) No 883/2004 provides that a person residing in a Member State other than the competent Member State may receive cash benefits in the Member State of residence provided by the competent institution of the Member State of employment. The Court viewed German care allowances in the same way as sickness benefits in cash and held that they could not be refused to a worker employed in Germany on the grounds that the worker was resident in France.[20] In the *Hosse*[21] case, it was held that the Land Salzburg law associating entitlement to a care allowance with residence in Austria was incompatible with EU law, a decision which restored the rights of the seriously disabled daughter of a frontier worker who worked in Austria and lived with his family in Germany.

Benefits in kind – Right of option. Frontier workers have a right of option; they receive sickness benefits in kind in the country of residence or in the country of employment (at the expense of the country of employment). The option relates to the fact that a frontier worker has close links with

[18] Two judgments in Cases C-34/98 and C-169/98 *Commission* v *France* [2000] ECR I-995: 'even if the CSG is applicable in the same way to all residents in France, however, those who work in another Member State and who, in accordance with Article 13 of Regulation No 1408/71, contribute to the funding of the social security scheme of that State are being required in addition to finance, even if only partially, the social security scheme of the State of residence, whereas all other residents are exclusively required to contribute to the latter State's scheme. The rule laid down in Article 13 of Regulation No 1408/71 that the legislation of a single Member State is to apply in matters of social security is aimed specifically at eliminating unequal treatment which is the consequence of partial or total overlapping of the legislation'.

[19] Finland, as the Member State in which the holder of a pension or an annuity resides, is precluded from requiring him to pay contributions or similar payments prescribed by its legislation to cover old-age, invalidity and unemployment benefits, where the party concerned is entitled to benefits having a similar purpose, for which the institution of the Member State competent in respect of pensions (Sweden) assumes responsibility (C-389/99 *Rundgren* [2001]). Moreover, it has been held that by deducting contributions from statutory old-age, retirement, service-related and survivor's pensions in respect of Community nationals residing in another Member State, Belgium had failed to comply with EU law (Case C-275/83 *Commission* v *Belgium* [1985] ECR 1097; Case C-140/88 *Noïj* [1991] ECR I-387).

[20] Case C-160/96 *Molenaar* [1998] ECR I-843; also Case C-215/99 *Jauch* [2001] ECR I-1901.

[21] Case C-286/03 *Hosse* v *Land Salzburg* [2006].

two countries, that of employment and that of residence. *Family members* of frontier workers also have the right of option, except if the Member States are included in Annex III to Regulation (EC) No 883/2004.[22]

Continuity of care for pensioners. Regulation (EC) No 1408/71 provided that once *retired*, a frontier worker loses this right of option and is entitled to benefits in the country of residence like all pensioners. This solution may be unfavourable to persons who are used to obtaining healthcare in the country of employment or who are undergoing treatment in that country. Such a break in continuity of care is not practical and could even lead to harmful consequences for the health of the party concerned. Article 28 of Regulation (EC) No 883/2004 has removed these disadvantages. A frontier worker who retires is entitled in case of sickness to continue to receive benefits in kind in the Member State where he/she last pursued his/her activity as an employed or self-employed person, in so far as this is a *continuation of treatment* which began in that Member State. Moreover, a pensioner who, in the five years preceding the effective date of an old-age or invalidity pension has been employed or self-employed for at least two years as a frontier worker shall be entitled to benefits in kind in the Member State in which he was employed or self-employed as a frontier worker.

Finally, outside the scope of Regulation (EC) No 883/2004, all persons insured under a social insurance scheme and living in a frontier area are affected by the case law of the Court of Justice (*Kohll* and *Dekker* cases) which facilitates access to cross-border healthcare by applying the principles of free movement of services. The possibility of receiving funding for non-hospital care in a Member State other than the Member State of affiliation without prior authorisation, even when it concerned scheduled care, has simplified daily life for inhabitants of frontier areas.

2. Unemployment

Under Regulation (EC) No 1408/71, a frontier worker who is *wholly* unemployed is not entitled to unemployment benefit in the State where he was last employed, even if he paid contributions there; he is obliged to join the social security scheme of the Member State in which he resides and to receive in that State, during the period in which he lives there, the unemployment benefits provided for by its legislation. These benefits shall be provided by the institution of the *country of residence at its own expense*, even if he never paid contributions to the unemployment insurance scheme; this country therefore has exclusive competence and pays benefits as if it was the Member State of last employment.[23]

[22] Eleven countries (Denmark, Estonia, Ireland, Spain, Italy, Hungary, Lithuania, the Netherlands, Finland, Sweden and the UK) have chosen only to grant entitlement to benefits in kind to such family members in their territory for medical care required during a stay.

[23] This solution addresses the concern that a frontier worker should avoid the disadvantages ensuing from an attachment to the State of employment. The purpose of this provision is therefore evident: being unemployed, so the Community legislature considered, the frontier worker may be better and more easily assisted by the authorities of the country of residence where he has obviously maintained more stable family and social connections. Thus, attachment to the State of residence appears more appropriate and more in line with the interests of frontier workers.

In the *Miethe*[24] judgment, the Court of Justice corrected this apparently strict conflict-of-law rule. It acknowledged that a frontier worker might receive unemployment benefit in the State of employment if he retained particular links in that State and had the best chance of finding new employment there (an 'atypical' frontier worker).[25] The new rules provide that *frontier workers also have the right to register* (outside their country of residence) with the competent institution of the *Member State in which they were last employed*. However, the State of residence is solely responsible for payment of benefits.

Calculation of benefits on the basis of previous salary. Regulation (EC) No 1408/71 provided that only the salary received by the party concerned in the Member State under whose legislation the benefits are claimed (Article 68) is taken into account. However, a literal interpretation of this Article would have very adverse consequences for frontier workers. Such workers receive benefits exclusively in their country of residence. In most cases, the salary received in the country of residence dates back to an earlier period. In this way, a frontier worker would never have been able to receive benefits calculated on the basis of the salary actually earned during his last employment.

In addition, given that the level of remuneration is often higher in the State of employment, the fact that the unemployment benefits paid to frontier workers could never be calculated on the basis of remuneration paid in the State of employment would be likely to discourage frontier working, contrary to the principles laid down in Regulation (EC) No 1408/71 and the Treaty. This is why the Court made a teleological interpretation of Article 68, stating that it is necessary to take into account the last salary payment received in the State of employment (and not in the State in which the benefits were claimed), even if the State of residence is responsible for granting benefits.[26] The State of residence is no longer authorised to restrict the amount of unemployment benefit due to frontier workers by applying the ceilings laid down by the State of employment.[27] These solutions are included in Article 62 of Regulation (EC) No 883/2004.

Family members: the competent institution must also take into account, where the amount of benefits depends on the number of family members, the members of that family who reside in another Member State.[28]

Taking into account periods of unemployment for pensions. For pensions and annuities, the State of residence of the worker takes into account periods of full unemployment completed by that worker in respect of which benefits have been paid by the State.

Looking for a job in another Member State. The Court found against the *Netherlands*[29] for having refused to continue to pay unemployment benefits to a resident who wanted to go to

[24] Case C-1/85 *Miethe* [1986] ECR 1837. A new Dutch case, C-455/10 *Peeters*, has raised the question as to whether the *Miethe* case is still current under the arrangements governed by Regulation (EC) No 883/2004.
[25] The Court showed the same concern for protection of an unemployed person in the event of partial unemployment (Case C-444/98 *Laat* [2001]: it is only when a worker no longer has any link with the competent Member State and is wholly unemployed that he must apply to the institution of his place of residence for assistance in finding employment.
[26] Judgment in Case 67/79 *Fellinger* [1980] ECR 535.
[27] Case C-201/91 *Grisvard and Kreitz* [1992] ECR I-5009.
[28] Judgment in Case 66/92 *Acciardi* [1993] ECR I-4567.
[29] C-311/07 *Commission* v *Netherlands* [2003].

France to look for a job. The particular feature of this matter was that, before becoming unemployed, the party concerned was working in Germany with the status of a frontier worker. It was therefore a question of determining whether Article 69 of Regulation (EEC) No 1408/71 – which recognised the right of an unemployed person going to another Member State to look for work to keep his benefits for three months – was applicable to a frontier worker subject to the law of the State of residence for unemployment benefits.

Given that 'nor does the wording or spirit of Article 69 of Regulation No 1408/71 indicate that the Community legislature [*is*] intended to exclude frontier workers from the scope of that provision', the Court considers that if Article 69 were not extended to wholly unemployed frontier workers, 'not only would those frontier workers be deterred, or even prevented, from going to another Member State in order to find employment there as they would then be unable to carry on drawing unemployment benefit, but they would in addition find themselves penalised for having exercised the right of freedom of movement which the Treaty guarantees to them because, unlike workers who have been employed in the Member State in which they reside, they would not be able to rely on the rights established by Article 69'. Applying this text to wholly unemployed frontier workers signifies that they will receive payments for three months from the institution in the State where employment is sought, reimbursed by the institution in the State of residence. This State therefore provides benefits even though the worker has not paid contributions (paid to the State in which he was last employed).

Article 64 of Regulation (EC) No 883/2004 confirms that the mechanism provided for in Article 69 applies, except that the period of entitlement to benefits can be extended to six months at most (instead of three months). Benefits are paid directly by the State of last employment, a considerable simplification for unemployed persons.

3. Family benefits

Regulation (EC) No 883/2004 lays down that the State of employment is responsible, regardless of whether the family resides with the worker in another Member State. This rule can therefore be seen as an extension of the principle of removal of residence clauses and an instrument for combating indirect discrimination on the grounds of nationality. Frontier workers have taken full advantage of this. For example, the Court of Justice held, with regard to couples living in the Netherlands while the respective husbands worked in Germany, that 'Where an employed person is subject to the legislation of a Member State and lives with his or her family in another Member State, that person's spouse is entitled, under Article 73 of Regulation No 1408/71, to receive a family benefit such as child-raising allowance in the State of employment.'[30]

However, the fact remains that territoriality of certain family benefits remains a reality in the EU. Since they are not governed by coordination rules, the special birth or adoption allowances referred to in Annex II to Regulation (EC) No 1408/71 need not be paid outside the debtor State.[31] 13 Member States have made use of this derogation, including France.[32] In addition,

[30] Cases C-245/94 and C-312/94 *Hoever and Zachow* [1996] ECR I-4895.
[31] Concerning the birth allowance and Belgium adoption grant, see C-43/99 *Leclere* [2001].
[32] Birth or adoption grant (PAJE).

Annex VI contains export restrictions for certain family benefits even though they fall within the material scope of Regulation (EC) No 1408/71.

Regulation (EC) No 883/2004 attempts to clarify the applicable rules concerning the export of family benefits. Parental benefits fall fully within the scope of the coordination rules,[33] while advances on maintenance allowances and special birth and adoption allowances arise from the new text where they are included in Annex I (Article 1(z)). However, it should also be noted that, in any event, frontier workers may attempt to rely on the concept of social benefit to claim export of family benefits.[34] Despite this, opposition remains to the principle of export of social benefits, either for benefits not covered by Regulation (EC) No 883/2004 or because it expressly permits residence clauses.

Regulation (EC) No 492/2011 or 883/2004?

It is generally accepted that Regulation (EC) No 883/2004 constitutes a *lex specialis* when compared with Regulation (EC) No 492/2011 and has priority over any other solution which might arise from the application of the general provisions laid down in the latter Regulation.[35] Frontier workers, however, risk being faced with a specific problem when the social advantage that they are claiming also constitutes *a special non-contributory benefit* under Regulation (EC) No 883/2004. In particular, this Regulation includes the principle of export of social security benefits unless express provision is made for an exception: this is the case for certain special benefits subject to residence requirements in the State of employment. The question arises as to whether a refusal to grant benefits of this kind complies with the case law on Regulation (EC) No 492/2011, which contains no exception to the detriment of frontier workers.

It appears from the ruling in *Hendrix*[36] that the two Regulations follow the same reasoning. The provisions of Regulation (EC) No 883/2004 must be interpreted in the light of the objective of contributing to the establishment of free movement of migrant workers as fully as possible. Article 7(2) of Regulation (EC) No 492/2011 is the particular expression, in the specific area of the granting of social advantages, of the principle of equal treatment enshrined in Article 39(2) EC and must be interpreted in the same way. A residence requirement, even when permitted by Regulation (EC) No 883/2004, can only be put forward against a frontier worker if it is 'objectively justified and proportionate to the objective pursued'. It is therefore established that

[33] Initiated by case law: C-333/00 *Maaheimo* [2002].

[34] The French authorities refused to grant the parental education allowance to Community workers employed in France and residing in another Member State (in accordance with national law and Annex VI to Regulation (EC) No1408/71, this allowance being reserved for persons residing in France). The Commission deemed this condition to be contrary to Article 45(2) TFEU and Article 7 of Regulation (EEC) No 1612/68; after the Commission sent a letter of formal notice, France complied with EU law by modifying its administrative practice. *CNAF Circular No 2004-002 of 20 January 2004 states that the competent authorities* no longer apply the residence condition throughout the EU/EEA and Switzerland.

[35] A weakness in Regulation (EC) No 492/2011 rests on the fact that it is practically impossible to invoke when a work relationship has ended. Article 7(2) cannot, as a general rule and except in special circumstances (when migrant workers are guaranteed certain rights linked to the status of worker even when they are no longer in an employment relationship: C-57/96 *Meints* [1997]), be extended to workers who, *after ceasing to exercise their occupational activity* in the host Member State, have decided to return to their Member State of origin (Case C-33/99 *Fahmi* [2001] ECR I-2415).

[36] C-287/05 *Hendrix* [2007] ECR I-6909.

imposition of a residence requirement, even when validated by Regulation (EC) No 883/2004, remains subject to review by the Court of its compatibility with Article 45 TFEU.

III. Frontier workers and citizenship

The right to move freely and to stay in any Member State is, since the entry into force of the Maastricht Treaty, recognised for EU citizens, independently of any economic activity. The Court held for the first time in the *Grzelczyk*[37] judgment that *Union citizenship is destined to be the fundamental status of nationals of the Member States* enabling those who find themselves in the same situation to enjoy, *within the scope ratione materiae of the Treaty*, the same treatment in law irrespective of their nationality. This significant reform has also affected the interpretation of Regulation (EC) No 883/2004.

Examples from the case law: Articles 20, 45 and 48 TFEU required that, for the purpose of granting an old-age pension, the competent German institution take into account, as though they had been completed in Germany, periods devoted to child-rearing completed in France by a person who, at the time when the child was born, was a frontier worker employed in Germany and residing in France;[38] also: Article 20 TFEU (citizenship of the Union) precluded the refusal by a German institution to take responsibility for the payment of old age insurance contributions for a French national insured in Germany as a frontier worker and acting as a third party caring for her disabled son on the grounds that she resided in France.[39]

Bibliography

- 'Social security for frontier workers in Europe', conference, 23 and 23 November 2001, Aix-la-Chapelle. In particular: H. Verschueren, 'Frontier workers give EEC Regulation 1612/68 a new lease of life'; R. Cornelissen, '*Le système de coordination communautaire pour le travailleur frontalier qui tombe en chômage*'. - H. Verschueren, 'Free movement of persons in the European Union and social rights: an area of conflicting secondary law instruments?' ERA Forum (2011) 12:287–299; - J.-Ph. Lhernould, '*Le principe de non-discrimination à l'égard des frontaliers en matière de sécurité sociale: un principe aux multiples facettes*'; -D. Martin, '*Libre circulation des citoyens de l'Union*', JCL 2011.

[37] Case C-184/99 *Grzelczyk* [2001] ECR I-6193.
[38] Case C-135/99 *Elsen* [2000] ECR I-10409; C-400/02 *Merida* [2004], ECR I-8471.
[39] Case C-502/01 and 31/02 *Gaumain-Cerri et al* [2004] ECR I-6483.