



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

12 October 2023*

(Reference for a preliminary ruling – Social security for migrant workers – Regulation (EC) No 883/2004 – Article 55(1)(a) – Overlapping of benefits of a different kind – Application of national rules against overlapping – Calculation of the survivors’ pension – Division of the amounts of the benefit or benefits or other income, as taken into account, by the number of benefits – Concept of ‘amounts as they have been taken into account’)

In Case C-45/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking), Belgium), made by decision of 4 January 2022, received at the Court on 20 January 2022, in the proceedings

HK

v

Service fédéral des Pensions,

THE COURT (Seventh Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- HK, by himself,
- the Belgian Government, by S. Baeyens, C. Pochet and L. Van den Broeck, acting as Agents,
- the Finnish Government, by A. Laine, acting as Agent,
- the European Commission, by B.-R. Killmann and D. Martin, acting as Agents,

* Language of the case: French.

after hearing the Opinion of the Advocate General at the sitting on 27 April 2023,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 55(1)(a) 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 (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1).
- 2 The request has been made in proceedings between HK and the service fédéral des Pensions (Federal Pensions Service, Belgium) ('the SFP') concerning the calculation of the amount of the survivor's pension to which HK is entitled following the death of his spouse.

Legal context

European Union law

Regulation No 1408/71

- 3 Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) ('Regulation No 1408/71'), was repealed on 1 May 2010, the date on which Regulation No 883/2004 became applicable.
- 4 Article 46c of Regulation No 1408/71, entitled 'Special provisions applicable in the case of overlapping of one or more benefits referred to in Article 46a(1) with one or more benefits of a different kind or with other income, where two or more Member States are concerned', provided in paragraph 1:

'If the receipt of benefits of a different kind or other income entails the reduction, suspension or withdrawal of two or more benefits referred to in Article 46(1)(a)(i), the amounts which would not be paid in strict application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation of the Member States concerned shall be divided by the number of benefits subject to reduction, suspension or withdrawal.'
- 5 Article 46c had been inserted into Regulation No 1408/71 by Council Regulation (EEC) No 1248/92 of 30 April 1992 (OJ 1992 L 136, p. 7). The sixteenth and twenty-second recitals of that regulation stated:

'Whereas, to protect migrant workers and their survivors against an excessively stringent application of the national provisions concerning reduction, suspension or withdrawal, it is necessary to include a provision in Regulation (EEC) No 1408/71 laying down strict rules for the application of these provisions;

...

Whereas it is necessary to insert in Regulation (EEC) No 1408/71 provisions guaranteeing that the joint application of national provisions concerning reduction, suspension or withdrawal by two or more Member States in the case of overlapping of benefits of a different kind does not have any adverse effect on migrant workers or their dependents ...'

Regulation No 883/2004

6 Recitals 4, 29 and 31 of Regulation No 883/2004 state:

'(4) It is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination.

...

(29) To protect migrant workers and their survivors against an excessively stringent application of the national rules concerning reduction, suspension or withdrawal, it is necessary to include provisions strictly governing the application of such rules.

...

(31) According to the Court of Justice, it is for the national legislature to enact such rules, bearing in mind that it is for the [EU] legislature to fix the limits within which the national provisions concerning reduction, suspension or withdrawal are to be applied.'

7 In accordance with Article 52 of that regulation, entitled 'Award of benefits':

'1. The competent institution shall calculate the amount of the benefit that would be due:

(a) under the legislation it applies, only where the conditions for entitlement to benefits have been satisfied exclusively under national law (independent benefit);

(b) by calculating a theoretical amount and subsequently an actual amount (pro rata benefit), as follows:

...

2. Where appropriate, the competent institution shall apply, to the amount calculated in accordance with subparagraphs 1(a) and (b), all the rules relating to reduction, suspension or withdrawal, under the legislation it applies, within the limits provided for by Articles 53 to 55.

3. The person concerned shall be entitled to receive from the competent institution of each Member State the higher of the amounts calculated in accordance with subparagraphs 1(a) and (b).

...'

8 Article 53 of that regulation, entitled ‘Rules to prevent overlapping’, provides:

‘1. Any overlapping of invalidity, old age and survivors’ benefits calculated or provided on the basis of periods of insurance and/or residence completed by the same person shall be considered to be overlapping of benefits of the same kind.

2. Overlapping of benefits which cannot be considered to be of the same kind within the meaning of paragraph 1 shall be considered to be overlapping of benefits of a different kind.

3. The following provisions shall be applicable for the purposes of rules to prevent overlapping laid down by the legislation of a Member State in the case of overlapping of a benefit in respect of invalidity, old age or survivors with a benefit of the same kind or a benefit of a different kind or with other income:

- (a) the competent institution shall take into account the benefits or incomes acquired in another Member State only where the legislation it applies provides for benefits or income acquired abroad to be taken into account;
- (b) the competent institution shall take into account the amount of benefits to be paid by another Member State before deduction of tax, social security contributions and other individual levies or deductions, unless the legislation it applies provides for the application of rules to prevent overlapping after such deductions, under the conditions and the procedures laid down in [Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2009 L 284, p. 1)];
- (c) the competent institution shall not take into account the amount of benefits acquired under the legislation of another Member State on the basis of voluntary insurance or continued optional insurance;
- (d) if a single Member State applies rules to prevent overlapping because the person concerned receives benefits of the same or of a different kind under the legislation of other Member States or income acquired in other Member States, the benefit due may be reduced solely by the amount of such benefits or such income.’

9 Article 55 of that regulation, entitled ‘Overlapping of benefits of a different kind’, provides in paragraph 1:

‘If the receipt of benefits of a different kind or other income requires the application of the rules to prevent overlapping provided for by the legislation of the Member States concerned regarding:

- (a) two or more independent benefits, the competent institutions shall divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules;

however, the application of this subparagraph cannot deprive the person concerned of his/her status as a pensioner for the purposes of the other chapters of this Title under the conditions and the procedures laid down in [Regulation No 987/2009];

...’

Belgian law

- 10 The first and fourth paragraphs of Article 20 of arrêté royal n° 50 du 24 octobre 1967 relatif à la pension de retraite et de survie des travailleurs salariés (Royal Decree No 50 of 24 October 1967 on retirement and survivors' pensions for employed persons) (*Moniteur belge* of 27 October 1967, p. 11246), in the version applicable to the dispute in the main proceedings ('Royal Decree No 50'), provide:

'The survivor's pension may be overlapped with a retirement pension or with any other benefit taking the place of a retirement pension only up to the amount determined by the King.

...

The King shall determine the extent to which the survivor's pension may be reduced where the surviving spouse receives a survivor's pension or any other equivalent benefit granted under a retirement and survivor's pension scheme from a foreign country or under a scheme applicable to the staff of an institution governed by public international law.'

- 11 Article 52(1) of arrêté royal du 21 décembre 1967 portant règlement général du régime de pension de retraite et de survie des travailleurs salariés (Royal Decree of 21 December 1967 laying down general rules for the retirement and survivor's pension scheme for employed persons) (*Moniteur belge* of 16 January 1968, p. 441), in the version applicable to the dispute in the main proceedings ('the Royal Decree of 21 December 1967'), provides, in its first and third to fifth subparagraphs:

'Where the surviving spouse can claim both a survivor's pension under the pension scheme for employed workers and one or more retirement pensions, or any other benefit taking the place thereof under the pension scheme for employed workers or one or more other pension schemes, the survivor's pension may be aggregated with the said retirement pensions only up to a sum equal to 110% of the amount of the survivor's pension which would have been awarded to the surviving spouse for a complete contributions record.

...

Where the spouse referred to in [the first subparagraph] can also claim one or more survivor's pensions or other benefits taking their place within the meaning of Article 10a of [Royal Decree No 50], the survivor's pension may not be greater than the difference between, on the one hand, 110% of the amount of the survivor's pension for a complete contributions record and, on the other hand, the total of the amounts of the retirement pensions or benefits taking their place referred to in [the first subparagraph] and an amount equal to the survivor's pension of an employed person for a complete contributions record, multiplied by the fraction or sum of the fractions expressing the amount of the survivor's pensions in the other pension schemes excluding the scheme for self-employed workers. Those fractions are the ones which have been or would have been laid down for the application of the said Article 10a.

The application [of the third subparagraph] shall not result in a reduction of the survivor's pension to an amount lower than the difference between the amount of the survivor's pension available before the application of the preceding subparagraphs, and the total of the amounts of the retirement pensions and other benefits taking their place, referred to [in the first subparagraph].

For the purposes of applying the [first and third subparagraphs], the survivor's pension for a complete contributions record shall mean the survivor's pension payable to the surviving spouse before application of the preceding subparagraphs, multiplied by the converse of the fraction, limited where

appropriate under the abovementioned Article 10a, which was used to calculate the retirement pension on the basis of which the survivor's pension was calculated.'

12 Article 52a of the Royal Decree of 21 December 1967 provides:

'For the application of Article 20, [third and fourth paragraphs], of Royal Decree No 50 the amount of the surviving spouse's pension, granted pursuant to [Royal Decree No 50] or ... [to arrêté royal du 23 décembre 1996, portant exécution des articles 15, 16 et 17 de la loi du 26 juillet 1996 portant modernisation de la sécurité sociale et assurant la viabilité des régimes légaux des pensions (Royal Decree of 23 December 1996 implementing Articles 15, 16 and 17 of the Law of 26 July 1996 modernising social security and ensuring the viability of statutory pension schemes) (*Moniteur belge* of 17 January 1997, p. 904)], shall be reduced by the amount of the survivors' pension or benefit in lieu, granted under a scheme of a foreign country or under a scheme applicable to the staff of an institution governed by public international law, that cannot be withdrawn.'

13 The first subparagraph of Article 7(1) of Royal Decree of 23 December 1996 implementing Articles 15, 16 and 17 of the Law of 26 July 1996 modernising social security and ensuring the viability of statutory pension schemes provides:

'Where the spouse died before the commencement of his or her retirement pension, the survivor's pension shall be equal to 80[%] of the amount of the retirement pension calculated at the rate provided for in Article 5(1), [first subparagraph], (a) of this decree which would have been granted to the spouse pursuant to that decree.'

The dispute in the main proceedings and the question referred for a preliminary ruling

14 HK's spouse died on 29 November 2016.

15 Since HK had worked and paid contributions in various Member States, namely in Belgium, Spain and Finland, he received, on 1 December 2016, a Belgian retirement pension in the amount of EUR 11 962.55 per annum and a Spanish retirement pension in the amount of EUR 8 276.28 per annum. Since HK's spouse had also worked and paid contributions in the same Member States, HK also received a Spanish survivor's pension, in the amount of EUR 5 123.88 per annum, and a Finnish survivor's pension of EUR 1 281.24 per annum, granted by way of contributions paid by his deceased spouse to those social security schemes.

16 As regards the Belgian survivor's pension, on 22 December 2017 the SFP informed HK that he was not entitled to such a pension, on the ground that the total amount of his retirement pensions was too high.

17 On 26 December 2017, HK lodged a complaint against that refusal.

18 Subsequently, HK and the SFP exchanged numerous emails concerning the manner in which the various pension benefits received by HK were taken into account in order to determine whether and to what extent he was entitled to a Belgian survivor's pension.

19 By decision of 18 September 2019, the SFP changed its initial position by granting HK a survivor's pension under Belgian law in the amount of EUR 1 929.03 per annum, retroactively from 1 December 2016.

- 20 HK challenged that decision and brought an action before the referring court, the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking), Belgium), claiming that the annual Belgian survivor's pension should be EUR 6 339.01.
- 21 The referring court notes that the positions of HK and of the SFP differ essentially as regards the interpretation of Article 55(1)(a) of Regulation No 883/2004, containing the rule that the competent institution must, when applying rules to prevent overlapping of benefits of a different kind, divide the amounts of benefits or other income by the number of benefits subject to the rules against overlapping laid down by the national legislation, as taken into account.
- 22 That court adds that, in accordance with the Belgian legislation which authorises the overlapping of a survivor's pension and a retirement pension, while limiting that cumulative amount to a sum corresponding to 110% of the amount of the survivor's pension which would have been granted to the surviving spouse for a complete contributions record, the parties to the dispute agree that the total amount of the retirement pensions to be taken into consideration for the application of Article 52 of the Royal Decree of 21 December 1967, namely the annual amount of the Belgian retirement pension (EUR 11 962.55) and the Spanish retirement pension (EUR 8 276.28), is EUR 20 238.83 and that the ceiling in respect of overlapping is EUR 16 458.42.
- 23 It is only in relation to the calculation of the amount by which the ceiling in respect of overlapping has been exceeded that the parties' reasoning differs.
- 24 According to the SFP, it is necessary to determine the amount by which that ceiling has been exceeded by adding the annual amount of the survivor's pension and the total annual amount of the retirement pensions, in order then to deduct the ceiling in respect of overlapping, that amount being then divided by two. Thus, in HK's case, the amount by which the ceiling in respect of overlapping is exceeded is calculated as follows: EUR 7 638.46 (annual amount of the survivor's pension allocated) + EUR 20 238.83 (total annual amount of retirement pensions) – EUR 16 458.42 (ceiling in respect of overlapping) = EUR 11 418.87. The annual capped amount of the survivor's pension would therefore amount to: EUR 7 638.46 – EUR 11 418.87/2 (amount by which the ceiling has been exceeded divided by the number of survivors' pensions affected by the rules in respect of overlapping, namely, in this case, the Belgian and Finnish survivors' pensions) = EUR 1 929.03.
- 25 The SFP states that the Finnish authorities made the same calculation concerning the Finnish survivor's pension.
- 26 According to HK, it is necessary to divide not the proportion of income exceeding the ceiling in respect of overlapping, but the entire income taken into account for the application of the rules against overlapping, that is to say, the total annual amount of retirement pensions. The amount by which the ceiling in respect of overlapping has been exceeded would then be calculated as follows: EUR 7 638.46 (annual amount of the survivor's pension allocated) + EUR 20 238.83 (total annual amount of retirement pensions)/2 – EUR 16 458.42 (ceiling in respect of overlapping) = EUR 1 299.45. It follows that the annual capped amount of the survivor's pension to which he is entitled is calculated as follows: EUR 7 638.46 – EUR 1 299.45 = EUR 6 339.01.
- 27 HK adds that that interpretation of Article 55(1) of Regulation No 883/2004 is based on the information on the website of the Caisse nationale d'assurance vieillesse (National Old-Age Insurance Fund, France), which is the French institution responsible for calculating and paying basic pensions.

- 28 The referring court notes that the division rule in Article 55(1)(a) of Regulation No 883/2004 did not appear, as such, in the equivalent article of Regulation No 1408/71, namely, Article 46c(1), which provided that the amounts which would not be paid in the event of strict application of the provisions on reduction laid down in the legislation of the Member States concerned would be divided by the number of benefits subject to reduction.
- 29 In those circumstances the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking)) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must the rule laid down in Article 55(1)(a) of [Regulation No 883/2004] that the competent institutions are to divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules be interpreted as meaning that the income as such taken into account when applying the rule to prevent overlapping must be divided by the number of survivors’ pensions impacted by the rules against overlapping?
- (2) On the contrary, must the rule laid down in Article 55(1)(a) of [Regulation No 883/2004] that the competent institutions are to divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules be interpreted as meaning that it is not the income as such taken into account when applying the rule to prevent overlapping, but rather it is the portion of the income which exceeds a ceiling in respect of overlapping, as, for example, laid down by the national rule at issue, that must be divided by the number of survivors’ pensions impacted by the rules against overlapping?’

Consideration of the questions referred

- 30 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 55(1)(a) of Regulation No 883/2004 must be interpreted as meaning that, where the receipt of benefits of a different kind entails the application of national rules against overlapping with regard to independent benefits, it requires each Member State to provide that, in order to calculate the amount of the benefit to be paid, it is necessary to divide the total amount of income taken into account by those national rules by the number of benefits concerned or whether that provision of EU law requires them to provide that, for the purposes of that calculation, it is necessary to divide by that same number the proportion of income which exceeds the ceiling in respect of overlapping laid down by those national rules.
- 31 It should be noted at the outset that the provisions to prevent overlapping laid down by the legislation of a Member State may, unless otherwise provided in Regulation No 883/2004, be relied on against persons who receive a benefit from that Member State if they can claim other social security benefits, even when those benefits are acquired under the legislation of another Member State (see, to that effect, judgment of 15 March 2018, *Blanco Marqués*, C-431/16, EU:C:2018:189, paragraph 63 and the case-law cited).
- 32 Thus, in accordance with Article 52(2) of Regulation No 883/2004, the competent national institution is authorised, when awarding benefits, to apply all the provisions on reduction, suspension or withdrawal, under the legislation which it applies, within the limits provided for by Articles 53 to 55 of that regulation.

- 33 The Court has consistently held that social security benefits must be regarded as being of the same kind when their purpose and object, as well as the basis on which they are calculated and the conditions for granting them, are identical. By contrast, characteristics which are purely formal need not be considered relevant criteria for the classification of benefits (judgment of 15 March 2018, *Blanco Marqués*, C-431/16, EU:C:2018:189, paragraph 50 and the case-law cited).
- 34 As regards overlapping of benefits such as those in the main proceedings, namely benefits calculated or provided on the basis of the contribution records of two different persons, which must be regarded as being of a different kind, Article 55(1)(a) of Regulation No 883/2004 provides that, in the case of overlapping of two or more independent benefits, the competent institutions are to divide the amounts of the benefit or benefits as they have been taken into account by the number of benefits subject to the rules against overlapping laid down by the legislation of the Member States.
- 35 As regards the meaning to be given to the part of the sentence ‘as they have been taken into account’, it should be noted that, according to the settled case-law of the Court, it is necessary to consider, when interpreting a provision of EU law, not only its wording but also its context and the objectives of the legislation of which it forms part, while the origins of the provision may also provide information relevant to its interpretation (judgment of 8 May 2019, *Inspecteur van de Belastingdienst*, C-631/17, EU:C:2019:381, paragraph 29 and the case-law cited).
- 36 As regards, in the first place, the wording of Article 55(1)(a) of Regulation No 883/2004, it is apparent from that provision that, when applying the rules against overlapping laid down by national legislation, the competent institutions are to divide the amounts of the benefits as they have been taken into account by the number of benefits subject to those rules.
- 37 By attributing its usual meaning to the verbal expression ‘to take into account’ used in that sentence, that sentence must be understood as making subject to division the amounts taken into consideration by the competent national institutions or which those institutions took into account in the context of the application of the rules against overlapping benefits laid down by their legislation.
- 38 The wording of Article 55(1)(a) of Regulation No 883/2004 does not, however, contain any express indication requiring Member States to take into account a specific amount.
- 39 As the Advocate General observed in points 47 and 50 of his Opinion, Article 55(1)(a) of Regulation No 883/2004 is drafted in such a way as to leave it to the Member States to decide whether to divide the amounts, as they result from the application of their national rules against overlapping, by the number of benefits subject to those rules.
- 40 Consequently, it follows from that wording that the competent national institutions may, for the purpose of calculating the amount of the benefit to be paid, divide by the number of benefits concerned, either the total amount of income or the proportion of income exceeding a certain ceiling in respect of overlapping.
- 41 In the second place, that literal interpretation is confirmed by the context of Article 55(1)(a) of Regulation No 883/2004.

- 42 It is apparent from recital 29 of that regulation, relating to the provisions of that regulation relating to national rules establishing mechanisms for reduction, suspension or withdrawal, that the EU legislature intended to protect migrant workers and their survivors against an excessively stringent application of those rules by the Member States by inserting, in that regulation, provisions strictly governing the application of those national rules.
- 43 In that regard, recital 31 of that regulation states that, although it is for the national legislature to enact rules imposing a restriction on the overlapping of two or more pensions acquired in different Member States, it is for the EU legislature to fix the limits within which those national rules against overlapping apply.
- 44 It follows that the provisions of Regulation No 883/2004 relating to national rules against overlapping are intended to limit the particularly unfavourable effects on workers who have exercised their right to freedom of movement.
- 45 As the Advocate General also observed in point 52 of his Opinion, it does not appear, in circumstances such as those at issue in the main proceedings, that the taking into account, by a Member State, only of the amount exceeding the ceiling in respect of overlapping of the various pensions in question is particularly unfavourable for the workers concerned, even if the calculation carried out taking into account the total amount of the benefits concerned does indeed result in a higher amount.
- 46 First, as is apparent from paragraphs 38 to 40 of the present judgment, Article 55(1)(a) of Regulation No 883/2004 in no way obliges the Member States to grant the workers concerned the highest amounts. Second, it is apparent from the request for a preliminary ruling that, in the present case, HK receives a Belgian survivor's pension because of the application of that provision, whereas a worker who has not exercised his or her right to freedom of movement is not entitled to any benefit in such a situation.
- 47 In the third place, an interpretation of Article 55(1)(a) of Regulation No 883/2004 according to which it is for the national legislatures to determine the amounts of benefits to be taken into account in the application of their national rules against overlapping is also supported by the objectives of the legislation of which that provision forms part.
- 48 In that regard, recital 4 of Regulation No 883/2004 provides that it is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination.
- 49 Regulation No 883/2004 does not establish a common scheme of social security, but allows different national schemes to exist. Member States retain the power to organise their social security schemes and, in the absence of harmonisation at EU level, it is for each Member State to determine in its legislation, in particular, the conditions for entitlement to social benefits, including therefore the rules against overlapping of benefits of a different kind. In exercising those powers, Member States must nonetheless comply with EU law and, in particular, with the provisions of Regulation No 883/2004 relating to the rules against overlapping (see, to that effect, judgment of 15 September 2022, *Rechtsanwaltskammer Wien*, C-58/21, EU:C:2022:691, paragraph 61 and the case-law cited).

- 50 Article 55(1) of Regulation No 883/2004 does not define any particular method of calculating the amount of survivors' pensions, with the result that it is for the legal order of each Member State to determine those rules in the context of the application of that provision, which is, moreover, illustrated, in the present case, by the fact set out in paragraphs 25 and 27 of the present judgment, according to which the French and Finnish competent authorities apply different methods of calculation under their respective national rules against overlapping.
- 51 In the fourth and last place, it should be noted that the legislative history of Article 55(1)(a) of Regulation No 883/2004 also permits the inference that that provision must be interpreted in the sense indicated in paragraph 40 of the present judgment.
- 52 In that regard, it must be borne in mind that Regulation No 1408/71 did not initially contain a rule similar to that laid down in Article 55(1)(a) of Regulation No 883/2004, relating to the mitigation of effects in the case of overlapping of social benefits.
- 53 It was only after the insertion, by Regulation No 1248/92, of Article 46c into Regulation No 1408/71 that such a rule was laid down by the EU legislature. In that regard, the sixteenth and twenty-second recitals of Regulation No 1248/92 stated that it was important to protect migrant workers and their survivors against excessively stringent application of the national provisions concerning reduction, suspension or withdrawal, in so far as the joint application of national provisions in the case of overlapping of benefits of a different kind would be likely to cause adverse effects.
- 54 Thus, under Article 46c(1) of Regulation No 1408/71, where receipt of benefits of a different kind or other income entails the reduction, suspension or withdrawal of two or more benefits, the amounts which would not be paid in the event of strict application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation of the Member States concerned are to be divided by the number of benefits subject to reduction, suspension or withdrawal.
- 55 Even though Article 55(1) of Regulation No 883/2004 has been subject to an amendment of its wording, as a result of which it is the amounts of the benefits which are taken into account, and not the amounts not paid as a result of the application of the rules against overlapping, which are divided by the number of benefits subject to the rules against overlapping, the fact remains that both Article 55(1) and Article 46c(1) of Regulation No 1408/71 pursue the same objective, which is to protect migrant workers against the adverse effects of the cumulative application of those rules in the Member States.
- 56 Regulation No 883/2004 modernised and simplified the rules contained in Regulation No 1408/71, while retaining the same objective (see, to that effect, judgment of 30 September 2021, *Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv)*, C-285/20, EU:C:2021:785, paragraph 42).
- 57 Furthermore, as the Advocate General observed in point 61 of his Opinion, both Article 46c(1) of Regulation No 1408/71 and Article 55(1) of Regulation No 883/2004 refer to the provisions concerning reduction, suspension or withdrawal provided for by the respective legislation of the Member States and to the amounts adopted by that legislation, thereby making clear the discretion available to those Member States for the purpose of determining the detailed rules for the application of the rules against overlapping benefits.

- 58 In the light of all the foregoing considerations, the answer to the questions raised is that Article 55(1)(a) of Regulation No 883/2004 must be interpreted as meaning that, where the receipt of benefits of a different kind or of other income entails the application of national rules against overlapping with regard to independent benefits, it allows each Member State concerned to provide, in its legal system, for the purpose of calculating the amount of benefit to be paid, either that the total amount of income taken into account by those national rules must be divided by the number of benefits concerned or that it is appropriate to divide by that same number the proportion of income which exceeds the ceiling in respect of overlapping laid down by those national rules.

Costs

- 59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs 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 (Seventh Chamber) hereby rules:

Article 55(1)(a) 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

must be interpreted as meaning that, where the receipt of benefits of a different kind or of other income entails the application of national rules against overlapping with regard to independent benefits, it allows each Member State concerned to provide, in its legal system, for the purpose of calculating the amount of benefit to be paid, either that the total amount of income taken into account by those national rules must be divided by the number of benefits concerned or that it is appropriate to divide by that same number the proportion of income which exceeds the ceiling in respect of overlapping laid down by those national rules.

[Signatures]