automatic right to be compensated for work experience before the age of 18. The Austrian legislature could legitimately opt to entirely redesign the system. It seems the referring court also believed that workers who had previously been discriminated against were being denied the possibility of compensation for both the past and the future (as they would be in a higher salary step now). However, the Austrian government argued that non-relevant work experience previously partly counted in determining the reference date, and that this old system therefore also went beyond what was intended, namely compensating relevant work experience. Essentially, like age, this also was therefore a criterion not based on (relevant) experience which enables workers to function better at ÖBB.

In that regard, it is established case law that rewarding experience that enables a worker to perform better, constitutes a legitimate objective of pay policy (*Cadman*, C-17/05 and *Hütter*, C-88/08). Also, whilst a provision that takes into account only certain previous periods of activity and disregards others will impact on pay, this is not based on age, either directly or indirectly. The safeguard clause is only directed against workers with non-relevant experience that is no longer being taken into account. Therefore, any alleged discrimination in relation to the safeguard clause is not based on age but rather on how previous experience has been rewarded. Moreover, the safeguard clause guarantees acquired rights and protects legitimate expectations.

Considering both Member States' obligation to eliminate discrimination and the freedom of national governments to redesign pay schemes in the way they think fit, the Austrian legislature did not exceed the limits of its powers. As the 2015 Federal Law on Railways also rewards relevant experience in other Member States, it also does not impede freedom of movement.

Ruling

Article 45 TFEU and Articles 2, 6 and 16 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation are to be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which, in order to end discrimination on grounds of age arising as a result of the application of national law that took into account, for the purpose of the categorisation of the employees of an undertaking within pay scales, only periods of activity completed after the age of 18, retroactively abolished that age limit in respect of all such workers and allowed only experience acquired with other undertakings operating in the same economic sector to be taken into account.

ECJ 15 March 2018, case C-431/16 (Blanco Marqués), Social insurance

Instituto Nacional de la Seguridad Social (INSS) & Tesorería General de la Seguridad Social (TGSS) – v – José Blanco Marqués, Spanish case

Questions to the ECJ[5]

1. Does the Spanish rule in Article 6(4) of Decree 1646/1972, as interpreted by the Tribunal Supremo (Supreme Court), pursuant to which the 20% supplement is suspended during the period in which the worker is in employment or receives a retirement pension, constitute a provision on reduction of benefit for the purposes of Article 12 of Regulation No 1408/71?
2. Must Article 46a(3)(a) of Regulation No 1408/71 be interpreted as meaning that the concept of 'legislation of the first Member State' in that article is to be interpreted strictly, or whether it also includes the interpretation of that concept by a higher national court?
3. Must the 20% supplement granted to a worker drawing a total permanent incapacity pension under Spanish law and the retirement pension acquired by that same worker in Switzerland be regarded as being of the same kind or of a different kind within the meaning of Regulation No 1408/71.
4. In the event that the two benefits in question must be regarded as being of the same kind, which specific provisions of Regulation No 1408/71 as regards overlapping of benefits of the same kind are to be applied?

Ruling

1. A national rule, such as that at issue in the main proceedings, pursuant to which the supplement to a total permanent incapacity pension is suspended during the period in which the beneficiary of that pension receives a retirement pension in another Member State or in Switzerland, constitutes a provision on reduction of benefit for the purposes of Article 12(2) of Council Regulation (EEC) No 1408/71 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 amen-

5. As rephrased by the ECJ

doi: 10.5553/EELC/187791072018003002014

ded and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EEC) No 592/2008 of the European Parliament and of the Council of 17 June 2008.

2. Article 46a(3)(a) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008, must be interpreted as meaning that the concept of 'legislation of the first Member State' in that article is to be interpreted as including the interpretation of a provision of national law made by a supreme national court.
3. A supplement to a total permanent incapacity pension granted to a worker under the law of a Member State, such as that at issue in the main proceedings, and a retirement pension acquired by that same worker in Switzerland must be regarded as being of the same kind within the meaning of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008.
4. Article 46b(2)(a) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008, must be interpreted as meaning that a national rule to prevent overlapping, such as that in Article 6 of *Decreto 1646/1972 para la aplicación de la ley 24/1972, de 21 de junio, en materia de prestaciones del Régimen General de la Seguridad Social* (Decree 1646/1972 on the Implementation of Law 24/1972 of 21 June 1972 concerning general social security system benefits), of 23 June 1972, is not applicable to a benefit calculated in accordance with Article 46(1)(a)(i) of that regulation when that benefit is not referred to in Annex IV, part D, to that regulation.

ECJ 21 March 2018, case C-551/16 (Klein Schiphorst), Social insurance

J. Klein Schiphorst – v – Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen, Dutch case

Questions to the ECJ[6]

Must Article 64(1)(c) of Regulation No 883/2004 be interpreted as precluding a national measure, such as that at issue in the main proceedings, which requires the competent institution to refuse, as a matter of principle, any request to extend the unemployment benefit export period beyond three months, provided the institution does not consider that refusing that request would lead to an unreasonable result?

Ruling

Article 64(1)(c) 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 not precluding a national measure, such as that at issue in the main proceedings, that requires the competent institution to refuse, as a matter of principle, any request to extend the unemployment benefit export period beyond three months, provided the institution does not consider that refusing that request would lead to an unreasonable result.

ECJ 19 April 2018, case C-645/16 (CMR), Miscellaneous

Conseils et mise en relations (CMR) SARL – v – Demeures terre et tradition SARL, French case

Questions to the ECJ[7]

Must Article 17 of Directive 86/653 be interpreted as meaning that the indemnity and compensation regimes laid down by that article, in paragraphs 2 and 3 respectively, in the event of termination of a commercial agency contract are applicable where termination occurs during the trial period provided for by the contract?

Ruling

Article 17 of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that the indemnity and compensation regimes laid down by that article, in paragraphs 2 and 3 respectively, in the event of termination of the commercial agency contract are applicable where termination occurs during the trial period provided for by the contract.

6. As rephrased by the ECJ

7. As rephrased by the ECJ

doi: 10.5553/EELC/187791072018003002014