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State having secondary competence (Austria) must pay, as a family benefit, to a parent resident and employed in a Member State having primary competence in accordance with Article 68(1)(b)(i) of Regulation No 883/2004 (Germany) the difference between the '*Elterngeld*' (parental allowance) paid in the Member State having primary competence and the income-dependent '*Kinderbetreuungsgeld*' (childcare allowance) in the other Member State, in the case where both parents live with their common children in the Member State having primary competence and the second parent alone is employed as a cross-border worker in the Member State having secondary competence?

2. In the event that the first question is answered in the affirmative: Must the income-dependent '*Kinderbetreuungsgeld*' be calculated by reference to the income actually earned in the Member State of employment (Germany) or by reference to the income which could hypothetically be earned from a comparable gainful activity in the Member State having secondary competence (Austria)?

Case C-37/18, Social Insurance

Vueling Airlines SA – v – Jean-Luc Poignant, reference lodged by the Cour de cassation (France) on 19 January 2018

1. Is the interpretation by the Court of Justice of the European Union in its judgment of 27 April 2017, *A-Rosa Flussschiff*, C-620/15, of Article 14(2)(a) of Regulation (EEC) No 1408/71, as amended and updated by Regulation (EC) No 118/97,[2] as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, applicable to a dispute relating to the offence of concealed employment in which E 101 certificates were issued under Article 14(1)(a), pursuant to Article 11(1) of Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71, although the situation was covered by Article 14(2)(a)(i), for workers carrying on their activity in the territory of the Member State of which they are nationals and in which the air transport undertaking established in another Member State has a branch, and a mere reading of the E 101 certificate, which refers to an airport as the place where the worker is employed and an air transport undertaking as employer, suggested that that certificate had been obtained fraudulently?
2. In the affirmative, must the principle of the primacy of EU law be interpreted as precluding a national court, bound under its domestic law by the principle that the force of *res judicata* of a judgment of a criminal court is binding on a civil court, from drawing the appropriate conclusions from a decision of a criminal court which is not compatible with the rules of EU law by ordering, in civil proceedings, an employer to pay damages to a worker solely because of the criminal conviction of that employer for concealed employment?

Case C-95/18, Social Insurance, Pension

Sociale Verzekeringsbank – v – F. van den Berg and H.D. Giesen, reference lodged by the Hoge Raad der Nederlanden (Netherlands) on 9 February 2018

a. Must Articles 45 TFEU and 48 TFEU be interpreted as meaning that, in cases such as those at issue here, those provisions preclude a national rule such as Article 6a, introductory sentence and (b), of the AOW? That rule means that a resident of the Netherlands is not insured for purposes of the social security scheme of that State of residence if that resident works in another Member State and is subject to the social security legislation of the State of employment on the basis of Article 13 of Regulation No 1408/71. The present cases are characterised by the fact that, on the basis of the legislation of the State of employment, the persons concerned do not qualify for an old-age pension because of the limited scope of their work there.

b. For the purpose of the answer to Question 1(a), is it significant that, for a resident of a State of residence which, under Article 13 of Regulation No 1408/71, is not the competent State, there is no obligation to pay contributions under the social security schemes of that State of residence? For the periods during which that resident works in another Member State, he comes exclusively under the social security system of the State of employment by virtue of Article 13 of Regulation No 1408/71, and in such a case Netherlands national legislation does not provide for an obligation to pay contributions either.

For the purpose of the answer to Question 1, is it significant that the possibility existed for the parties concerned to take out voluntary insurance under the AOW, or that the possibility existed for them to request the Svb to conclude an agreement as referred to in Article 17 of Regulation No 1408/71?

Does Article 13 of Regulation No 1408/71 preclude someone such as Mr Giesen's wife, who, prior to 1 January 1989, on the basis solely of the national legislation in her country of residence, the Netherlands, was insured under the AOW, from building an entitlement to old-age benefits on the basis of that insurance, in relation to periods during which, pursuant to that provision of the regulation, she was subject, by reason of work carried out in another Member State, to the legislation of

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that State of employment? Or must entitlement to a benefit under the AOW be regarded as an entitlement to a benefit which, under national legislation, is not subject to conditions relating to paid employment or to insurance within the meaning of the *Bosmann* judgment, with the result that the line of reasoning followed in that judgment can be applied in her case?

Case C-96/18, Social Insurance

Sociale Verzekeringsbank – v – C.E. Franzen, reference lodged by the Hoge Raad der Nederlanden (Netherlands) on 9 February 2018

1. Must Articles 45 TFEU and 48 TFEU be interpreted as meaning that, in a case such as that at issue here, those provisions preclude a national rule such as Article 6a, introductory sentence and (b), of the AKW? 1 That rule means that a resident of the Netherlands is not insured for purposes of the social security scheme of that State of residence if that resident works in another Member State and is subject to the social security legislation of the State of employment on the basis of Article 13 of Regulation No 1408/71. The present case is characterised by the fact that, on the basis of the legislation of the State of employment, the interested party does not qualify for child benefit because of the limited scope of her work there?
2. For the purpose of the answer to Question 1, is it significant that the possibility existed for the interested party to request the Svb to conclude an agreement as referred to in Article 17 of Regulation No 1408/71?

Case C-103/18, Fixed-Term Work

Domingo Sánchez Ruiz – v – Comunidad de Madrid (Servicio Madrileno de Salud), reference lodged by the Juzgado de lo Contencioso-Administrativo No 8 de Madrid (Spain) on 13 February 2018

Can a situation such as that described in the present case (in which the public-sector employer fails to observe the statutory time limits and thus either permits successive temporary contracts or preserves the temporary nature of the appointment by changing the nature of the appointment from occasional to interim or replacement) be considered an abusive use of successive appointments and therefore be regarded as a situation described in Clause 5 of the Framework Agreement annexed to Directive 1999/70/EC?

Must the provisions in the Framework Agreement on fixed-term work in the Annex to Directive 1999/70/EC, in conjunction with the principle of effectiveness, be interpreted as precluding national procedural rules that require a fixed-term worker actively to challenge or appeal against all the successive appointments and terminations of employment as the only way in which to benefit from the protection of the EU Directive and claim the rights conferred on him by EU law?

In view of the fact that, in the public sector and in the provision of essential services, the necessity of providing cover for vacancies, sickness, holidays … is essentially 'permanent', and given that the concept of 'objective reason' justifying a fixed-term appointment has to be delimited:

Can it be held to be contrary to Directive 1999/70/EC (Clause 5(1)(a)) and, therefore, that there is no objective reason, when a fixed-term worker is employed under an uninterrupted succession of '*contratos de interinidad*' (temporary replacement contracts), working all or nearly all the days of the year, under a succession of consecutive appointments/engagements that continue on a completely stable basis for years, and the stated grounds for engaging the worker are always satisfied?

Must the need be considered permanent rather than temporary, and therefore not to be covered as an 'objective reason' within the meaning of Clause 5(1)(a), having regard either to the parameters described above, that is to say, the existence of countless appointments and engagements that extend over a period of years, or to the existence of a structural defect that is reflected in the percentage of temporary appointments in the sector in question, when those needs are as a general rule always met by temporary workers, so that this has become an essential and long-term element of the operation of the public service?

Or is it to be understood that, in essence, in order to determine the permitted limit for temporary appointments, regard must be had only to the letter of the legislation that covers the employment of such fixed-term workers, when it states that they may [Or. 26] be taken on on grounds of necessity, urgency or for the development of programmes of a temporary, cyclical or extraordinary nature: in short, that in order for an objective reason to be deemed to exist, such employment must meet these exceptional circumstances, and that this ceases to be the case, and use therefore constitutes misuse, when it is no longer isolated, occasional or ad hoc?

Is it compatible with the Framework Directive annexed to Directive 1999/70/EC to regard grounds of need, urgency or the development of programmes of a temporary, interim or extraordinary nature as an objective reason for appointing and successively reappointing IT specialists on temporary regulated terms where these public employees are performing the normal functions of permanent regulated employees on a permanent and regular basis, and the employing Administration neither establishes maximum limits to such appointments nor fulfils its legal obligations to use permanent staff to cov-

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