SKATTEMINISTERIET

J.nr. 13-5457106
Den 8 NOV. 2013

Skatteudvalget
OMTRYK 22/1-14 (ophævelse af fortrolighed)
SAU alm. del - Svar på Spørgsmål 25
Offentligt

Til Folketinget – Skatteudvalget

Hermed sendes svar på spørgsmål nr. 25 af 11. oktober 2013 (alm. del). Spørgsmålet er stillet efter ønske fra Kristian Thulesen Dahl (DF).

Holger K. Nielsen

Søren Schou

Spørgsmål

Ministeren bedes oversende den korrespondance, der har været mellem Danmark og EU-Kommissionen forud og op til regeringens beslutning om at ophæve optjeningskravet om, at EU/EØS-borgere skal have en vis beskæftigelses eller bopælsperiode i Danmark, før de kan modtage børnepenge (børne- og ungeydelse og børnetilskud) som følge af henstilling fra EU-Kommissionen?

Svar

Til udvalgets fortrolige orientering vedlægges Kommissionens henvendelse og regeringens svar herpå.

SOCIAL- OG INTEGRATIONSMINISTERIET

SKATTEMINISTERIET

J.nr. 13-0133677
Den 17. juni 2013

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Besvarelse af Kommissionens henvendelse i pilotprojektsag nr. 4873/13/EMPL vedr. anvendelsen af optjeningsprincippet for børne- og ungeydelse og børnetilskud

Kommissionen har medio april 2013 rettet skriftlig henvendelse til Danmark, idet det er Kommissionens faste opfattelse, at den danske anvendelse af optjeningsprincippet for børne- og ungeydelsen og børnetilskuddet, som blev indført ved lov nr. 1609 af 22. december 2010 om ændring af lov om en børnefamilieydelse, lov om børnetilskud og forskudsvis udbetaling af børnebidrag og lov om et indkomstregister, er i strid med sammenlægningsprincippet i artikel 6 i Europa-Parlamentets og Rådets forordning (EF) nr. 883/2004 af 29. april 2004 om koordinering af de sociale sikringsordninger.

Det kan oplyses, at den danske regering er enig i Kommissionens juridiske vurdering. Regeringen anerkender således, at Danmark er forpligtet til at iagttage sammenlægningsprincippet i artikel 6 i forordning nr. 883/2004 i forbindelse med anvendelsen af det ovennævnte optjeningsprincip.

På den baggrund kan den hidtidige anvendelse af ovennævnte optjenings-princip ikke opretholdes. Den danske regering vil derfor sørge for, at der snarest muligt iværksættes en ændret administration af optjeningsprincippet i forhold til personer, der er omfattet af EU-retten, således at der medregnes perioder, der er tilbagelagt efter en anden medlemsstats lovgivning, ved vurderingen af, om disse personer har optjent ret til børne- og ungeydelse og børnetilskud efter de danske regler.

Idet optjeningsprincippet således fremadrettet vil blive administreret på en anden måde, end det blev forudsat i forbindelse med vedtagelsen af lov nr. 1609 af 22. december 2010, vil den danske regering i efteråret 2013 fremsætte et lovforslag med henblik på, at den danske lovgivning bliver bragt fuldt ud i overensstemmelse med EU-retten.

I overensstemmelse med almindelige forvaltningsretlige grundsætninger vil de

danske myndigheder endvidere efter omstændighederne identificere de sager, hvor den hidtidige anvendelse af optjeningsprincippet har betydet, at personer ikke har fået de ydelser, som de har været berettiget til i henhold til EU-retten, med henblik på at disse sager genoptages. Ligeledes vil der efter omstændighederne offentligt blive informeret, f.eks. på de relevante hjemmesider, om muligheden for at søge genoptagelse af sådanne sager.

Der henvises til Kommissionens j.nr. EMPL/B/4 ST.

EUROPEAN COMMISSION
Employment, Social Affairs and Inclusion DG

Employment and Social Legislation, Social Dialogue
Free Movement of Workers Coordination of Social Security Schemes

Brussels,
EMPL/B/4 ST

EU-Pilot 4873/13

The Commission has received a complaint that as a consequence of the application of the new Act No.1609 of 22 December 2010, effective from 1 January 2012, a new accrual principle (optjeningsprincippet) has been introduced in the case of family benefits which limits the eligibility to a family allowance in the form of child benefit (børnefamilieydelse) for persons who have not lived or worked in Denmark for two of the last ten years leading up to the payment of the benefit.

The Danish law provides that entitlement to the børnefamilieydelse is subject to the condition that at least one of the persons who are responsible for supporting the child must have been resident or in employment in Denmark for at least 2 years in the 10 years before the payment of the benefit. If this requirement is not fulfilled, only a partial benefit is paid in accordance with the following provisions:

(i) after 6 months residence or employment in Denmark in the previous 10 years, 25% of family benefit is paid,

(ii) after 12 months residence or employment in the previous 10 years, 50% of the benefit is paid, and

(iii) after 18 months residence or employment in the previous 10 years, 75% of the benefit is paid.

The Region Sønderjylland – Schleswig organisation has written to the Danish government challenging the new law on the grounds that it is contrary to the principles of social security co-ordination contained in Regulation (EC) No 883/04, and in particular contrary the aggregation rules in Article 6 and the principle of equal treatment in Article 4 of that Regulation. The Danish government has responded saying that consideration was given to EU law in drafting the law and that the accrual principle was introduced in order to ensure that the recipient of the benefit has an actual link to Danish society, which it considered could be justified the public interest and proportionate.

The Commission is aware that the Danish National Social Appeals Board has heard appeals against decisions made under the new law on the basis that the law as applied is contrary to the requirements of Regulation (EC) No 883/04 and that it has rejected those appeals, reiterating the Danish Government's position that the law is not in conflict with EU law because it ensures an actual link between the applicant and Danish society.

The Commission is firmly of the opinion that the application of the new Act No.1609 of 22 December 2010 is contrary to the clear requirement of Article 6 of Regulation (EC) No 883/04 that, unless otherwise provided for by that Regulation, where acquisition of benefits is dependent on periods of insurance, employment or residence, any such periods completed under the legislation of another Member State must be taken into account as

though they were periods completed under the legislation of the Member State competent for paying the benefit. There is no alternative provision made in respect of family benefits under the Regulations, so the substantive rule in Article 6 applies. It is also settled case law that in the case of family benefits European Union law requires that periods of insurance and employment completed by a parent in another Member State than the competent state be taken into account in the aggregation of the periods necessary to acquire the right to benefits in the first Member States[1].

In light of the above, the Commission invites the Danish authorities to confirm that they will comply with their obligations under Regulation (EC) No 883/04 and ensure that for the purposes of determining entitlement to the børnefamilieydelse under Act No.1609 of 22 December 2010, as effective from 1 January 2012, that periods of insurance, employment or residence completed under the legislation of another Member State will be treated as though they were periods completed under the legislation applied by Denmark.

[1] See Case C-619/11 *de Chassart.*