

Transferred pension rights 'gone down the drain' paid back after retirement

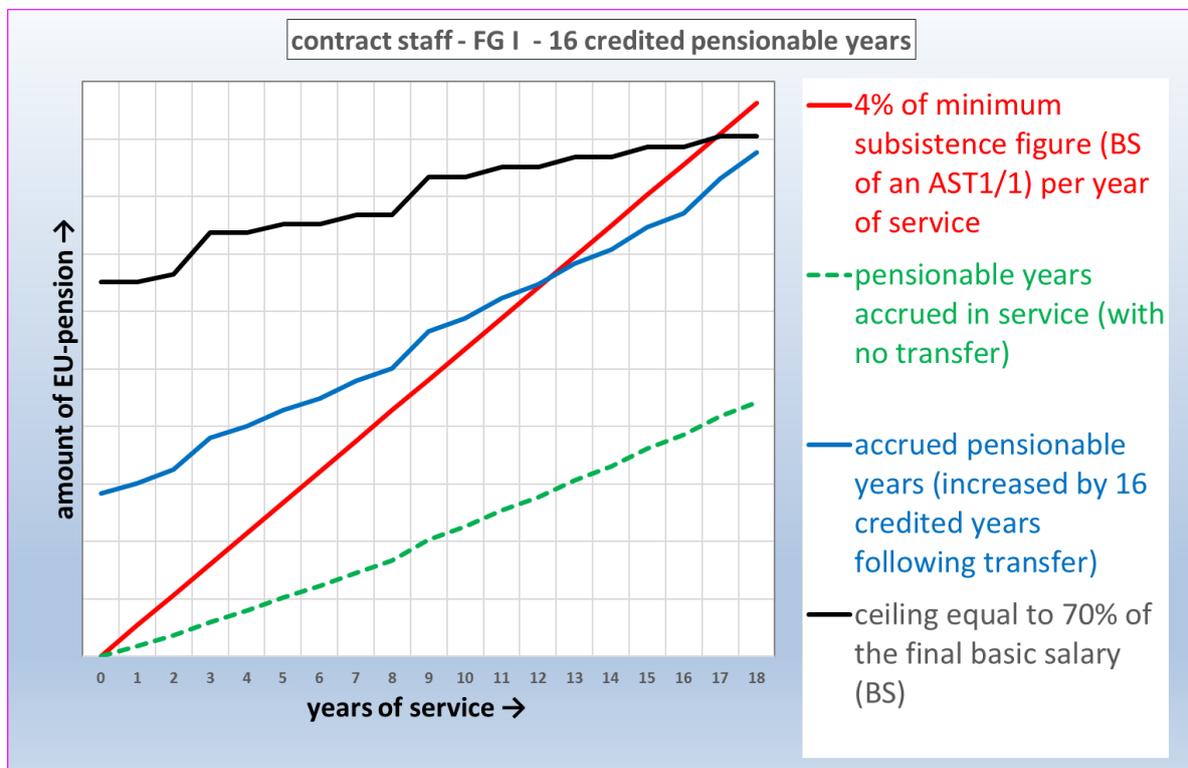
Within a period of 10 years and 6 months since entering the service of the EU, the staff member **may** request the transfer of pension rights which he / she has acquired under a national pension scheme. The transfer, once made, becomes irreversible.

1. This is why, **before signing an application to transfer** your national pension entitlements, think twice and seek advice from your union as to whether, given the effect of the **minimum subsistence figure rule**, this transfer is likely to produce more favourable results than keeping your national pension.

This is the time, especially for staff members in lower grades or those with a short career perspective in the EU system, to check what will be the impact of the minimum subsistence figure rule on your future pension under the EU scheme; this is the formula for this rule:

$$\text{Pension} = (\text{BS AST 1/1}) \times 4 \% \times (\text{years of service})$$

In the example shown in the graph, this rule is represented by the **straight red line**:



See further examples in [Pension rights : Transferring or not ?](#). SCs are also affected.

The minimum subsistence figure rule was not a novelty of the 2004 reform. What was new in the 2004 reform was the creation of a **contract staff** status with a much lower level of remuneration than that of officials / temporary staff. The creation in 2014 of the **SC** function group followed suit. As a result, the minimum subsistence figure rule has become increasingly relevant, by giving, in many cases, results better or equal or close to the 'normal' method of accruing pensionable years, even after you have added to them those resulting from a transfer.

Out of ideological prejudice or indifference, it took long years for administrations to realize the impact of the minimum subsistence figure rule on calculating an EU pension. With a big delay, the Commission's **calculator** was worked out in such a way as to clearly distinguish between the two alternative methods of calculation (see [Pension rights : Transferring or not ?](#), slide 2).

- accruing pensionable years, including those credited following a transfer, and
- the minimum subsistence figure rule based on years of service only.

You are advised to use this calculator and, if in doubt, to seek advice with your union.

2. If the transfer has already taken place, the following judgment of the EU Court proposes a remedy:

Once you retire, ask for repayment of the amounts transferred, on the basis of **unjust enrichment**, to the extent that, in view of the minimum subsistence figure mechanism, these amounts were transferred uselessly.

[Case T-702/16 P](#), José Barroso Truta and Others -v- Court of Justice

Four members of the contract staff of the Court of Justice transferred their national pension rights to the EU pension scheme. They trusted the administration, which had not given them any hint of a 'minimum subsistence figure', which applied in their case. From then on, their right to receive a national pension was definitively lost.

Only afterwards, in early 2012, by using the Commission's calculator, they discovered that, with or without a transfer, their foreseeable pension would be the same. They thus realized they the capital transferred had gone down the drain.

[EPSU CJ](#), the USF branch at the Court of Justice, took up their legal defence.

The officials responsible for this spoliation came out unscathed from the proceedings.

But the General Court, faced with an appeal, suggested a solution (paragraphs 105 to 106), which says in substance:

Once the damage you claim to have sustained has become '*real and certain*', *i.e.* once your pension has been calculated and you find out that the transferred capital did not have a positive impact on the amount of your pension, you can ask for the return of this capital, on grounds of **unjust enrichment** on the part of the Union.

One of the four applicants **retired**. He therefore claimed repayment of his transferred capital. His request was accepted and, seven years after the beginning of the dispute, this colleague was reimbursed the capital transferred with interest.

This case law sets a precedent for all those who find themselves in a similar situation. If this is your case, please check with your union.

3. Solidarity in action

This has been the result of the perseverance and the –legal and technical– skills of our union, which gives priority to defending the rights of the less well-off.

But all that would not have been made possible without our members' contributions, which guaranteed for us the means to engage in a long and difficult legal battle without stumbling over lack of money ...

It takes all that to build solidarity in action, the *raison d'être* of our union. **Members' subscriptions are not money 'thrown down the drain'**. Joining the union means investing in solidarity, which makes our strength.

Vassilis Sklias – Michel Weiser
EPSU CJ