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(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 1247/92**

of 30 April 1992

**amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 51 and 235 thereof,

Having regard to the proposal from the Commission, drawn up after consulting the Administrative Commission on Social Security for Migrant Workers <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas it is necessary to amend Regulation (EEC) No 1408/71 <sup>(4)</sup>, as updated by Regulation (EEC) No 2001/83 <sup>(5)</sup>, as last amended by Regulation (EEC) No 2195/91 <sup>(6)</sup>;

Whereas it is necessary to extend the definition of 'member of the family' in Regulation (EEC) No 1408/71 to conform with the case law of the Court of Justice concerning the interpretation of that expression;

Whereas it is also necessary to take account of the case law of the Court of Justice stating that certain benefits provided under national laws may fall simultaneously within the categories of both social security and social assistance because of the class of persons to whom such laws apply, their objectives and their manner of application;

Whereas the Court of Justice has stated that, in some of its features, legislation under which such benefits are granted is akin to social assistance in that need is an essential criterion in its implementation and the conditions of entitlement are not based upon the aggregation of periods of employment or contributions, whilst in other features it is close to social security to the extent that there is an absence of discretion in the manner in which such benefits as are provided thereunder are awarded and in that it confers a legally defined position upon beneficiaries;

Whereas Regulation (EEC) No 1408/71 excludes from its scope, by virtue of Article 4 (4) thereof, social assistance schemes;

Whereas the conditions referred to and their methods of application are such that a system of coordination which differs from that currently provided for in Regulation (EEC) No 1408/71 and which takes account of the special characteristics of the benefits concerned should be included in that Regulation in order to protect the interests of migrant workers in accordance with the provisions of Article 51 of the Treaty;

Whereas such benefits should be granted, in respect of persons falling within the scope of Regulation (EEC) No 1408/71, solely in accordance with the legislation of the country of residence of the person concerned or of the members of his or her family, with such aggregation of periods of residence completed in any other Member State as is necessary and without discrimination on grounds of nationality;

Whereas it is necessary nevertheless to ensure that the existing system of coordination in Regulation (EEC) No 1408/71 continues to apply to benefits which either do not fall within the special category of benefits referred to or are not expressly included in an Annex to that Regulation; whereas a new Annex is needed for this purpose,

<sup>(1)</sup> OJ No C 240, 21. 9. 1985, p. 6.

<sup>(2)</sup> OJ No C 343, 31. 12. 1985, p. 111.

<sup>(3)</sup> OJ No C 344, 31. 12. 1985, p. 2.

<sup>(4)</sup> OJ No L 149, 5. 7. 1971, p. 2.

<sup>(5)</sup> OJ No L 230, 22. 8. 1983, p. 6.

<sup>(6)</sup> OJ No L 206, 29. 7. 1991, p. 2.

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 1408/71 is hereby amended as follows:

1. In Article 1:

- (a) point (f) shall become point (f) (i), and the following shall be inserted as point (f) (ii):

'(ii) where, however, the benefits concerned are benefits for disabled persons granted under the legislation of a Member State to all nationals of that State who fulfil the prescribed conditions, the term 'member of the family' means at least the spouse of an employed or self-employed person and the children of such person who are either minors or dependent upon such person;';

- (b) the following words shall be added to the first subparagraph of point (j);

'or those special non-contributory benefits covered by Article 4 (2a).';

2. In Article 4, the following paragraphs shall be inserted:

'2a. This Regulation shall also apply to special non-contributory benefits which are provided under a legislation or schemes other than those referred to in paragraph 1 or excluded by virtue of paragraph 4, where such benefits are intended:

- (a) either to provide supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1 (a) to (h), or  
(b) solely as specific protection for the disabled.

2b. This Regulation shall not apply to the provisions in the legislation of a Member State concerning special non-contributory benefits, referred to in Annex II, Section III, the validity of which is confined to part of its territory.';

3. Article 5 shall be replaced by the following:

*'Article 5*

**Declarations by the Member States on the scope of this Regulation**

The Member States shall specify the legislation and schemes referred to in Article 4 (1) and (2), the special non-contributory benefits referred to in Article 4 (2a), the minimum benefits referred to in Article 50 and the benefits referred to in Articles 77 and 78 in declarations to be notified and published in accordance with Article 97.';

4. The following Article shall be inserted:

*'Article 10a*

**Special non-contributory benefits**

1. Notwithstanding the provisions of Article 10 and Title III, persons to whom this Regulation applies shall be granted the special non-contributory cash benefits referred to in Article 4 (2a) exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State, provided that such benefits are listed in Annex IIa. Such benefits shall be granted by and at the expense of the institution of the place of residence.

2. The institution of a Member State under whose legislation entitlement to benefits covered by paragraph 1 is subject to the completion of periods of employment, self-employment or residence shall regard, to the extent necessary, periods of employment, self-employment or residence completed in the territory of any other Member State as periods completed in the territory of the first Member State.

3. Where entitlement to a benefit covered by paragraph 1 but granted in the form of a supplement is subject, under the legislation of a Member State, to receipt of a benefit covered by Article 4 (1) (a) to (h), and no such benefit is due under that legislation, any corresponding benefit granted under the legislation of any other Member State shall be treated as a benefit granted under the legislation of the first Member State for the purposes of entitlement to the supplement.

4. Where the granting of a disability or invalidity benefit covered by paragraph 1 is subject, under the legislation of a Member State, to the condition that the disability or invalidity should be diagnosed for the first time in the territory of that Member State, this condition shall be deemed to be fulfilled where such diagnosis is made for the first time in the territory of another Member State.';

5. The following shall be added to Annex II:

**'III. Special non-contributory benefits within the meaning of Article 4 (2b) which do not fall within the scope of the Regulation**

A. BELGIUM

None.

B. DENMARK

None.

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| <p>C. GERMANY</p> <p>(a) Benefits granted under Länder legislation for the disabled, and in particular for the blind.</p> <p>(b) The social supplement under the Law of 28 June 1990 on the alignment of pensions.</p> <p>D. SPAIN</p> <p>None.</p> <p>E. FRANCE</p> <p>None.</p> <p>F. GREECE</p> <p>None.</p> | <p>G. IRELAND</p> <p>None.</p> <p>H. ITALY</p> <p>None.</p> <p>I. LUXEMBOURG</p> <p>None.</p> <p>J. NETHERLANDS</p> <p>None.</p> <p>K. PORTUGAL</p> <p>None.</p> <p>L. UNITED KINGDOM</p> <p>None.;</p> |
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6. The following Annex shall be inserted:

*'ANNEX II a*

(Article 10 a of the Regulation)

- A. BELGIUM
- (a) Allowances for disabled persons (Law of 27 February 1987).
- (b) Guaranteed income for elderly persons (Law of 1 April 1969).
- (c) Guaranteed family benefits (Law of 20 July 1971).
- B. DENMARK
- None.
- C. GERMANY
- None.
- D. SPAIN
- (a) Benefits under the Law on the social integration of disabled persons (Law No 13/82 of 7 April 1982).
- (b) Cash benefits to assist the elderly and invalids unable to work (Royal Decree No 2620/81 of 24 July 1981).
- E. FRANCE
- (a) Supplementary allowance from the National Solidarity Fund (Law of 30 June 1956).
- (b) Disabled adults' allowance (Law of 30 June 1975).
- F. GREECE
- (a) Special benefits for elderly persons (Law 1296/82).
- (b) Allowance for children of non-working mothers whose husbands have been called up for military service (Law 1483/84, Article 23 (1)).
- (c) Allowance for children of non-working mothers whose husbands are in prison (Law 1483/84, Article 23 (2)).

- (d) Allowance for persons suffering from congenital hemolytic anaemia (Decree-Law 321/69) (Common ministerial order G4a/F.222/oik.2204).
- (e) Allowance for the deaf and dumb (Exceptional Law 421/37) (Common ministerial order G4B/F.422/oik.2205).
- (f) Allowance for seriously disabled persons (Decree-Law 162/73) (Common ministerial order G4a/F.225/oik.161).
- (g) Allowance for spasmophiliacs (Decree-Law 162/72) (Common ministerial order G4a/F.224/oik.2207).
- (h) Allowance for persons suffering from a serious mental disability (Decree-Law 162/73) (Common ministerial order G4b/F.423/oik.2208).
- (i) Allowance for the blind (Law 958/79) (Common ministerial order G4b/F.421/oik.2209).

#### G. IRELAND

- (a) Unemployment assistance (Social Welfare (Consolidation) Act, 1981, Part III, Chapter 2).
- (b) Old age and blind pensions (non-contributory) (Social Welfare (Consolidation) Act, 1981, Part III, Chapter 3).
- (c) Widows' and orphans' pensions (non-contributory) (Social Welfare (Consolidation) Act, 1981, Part III, Chapter 4).
- (d) Lone parent's allowance (Social Welfare Act, 1990, Part III).
- (e) Carer's allowance (Social Welfare Act, 1990, Part IV).
- (f) Family income supplement (Social Welfare Act, 1984, Part III).
- (g) Disabled person's maintenance allowance (Health Act, 1970, Section 69).
- (h) Mobility allowance (Health Act, 1970, Section 61).
- (i) Infectious diseases maintenance allowance (Health Act, 1947, Sections 5 and 44 (5)).
- (j) Domiciliary care allowance (Health Act, 1970, Section 61).
- (k) Blind welfare allowance (Blind Persons Act, 1920, Chapter 49).
- (l) Disabled person's rehabilitation allowance (Health Act, 1970, Sections 68, 69 and 72).

#### H. ITALY

- (a) Social pensions for persons without means (Law No 153 of 30 April 1969).
- (b) Pensions and allowances for the civilian disabled or invalids (Laws No 118 of 30 March 1974, No 18 of 11 February 1980 and No 508 of 23 November 1988).
- (c) Pensions and allowances for the deaf and dumb (Laws No 381 of 26 May 1970 and No 508 of 23 November 1988).
- (d) Pensions and allowances for the civilian blind (Laws No 382 of 27 May 1970 and No 508 of 23 November 1988).
- (e) Benefits supplementing the minimum pension (Laws No 218 of 4 April 1952, No 638 of 11 November 1983 and No 407 of 29 December 1990).
- (f) Benefits supplementing disability allowances (Law No 222 of 12 June 1984).
- (g) Monthly allowances for continuous personal assistance for those receiving pensions for incapacity for work (Law No 222 of 12 June 1984).

## I. LUXEMBOURG

- (a) Compensatory cost of living allowance (Law of 13 June 1975).
- (b) Special severe disablement allowance (Law of 16 April 1979).
- (c) Maternity allowance (Law of 30 April 1980).

## J. NETHERLANDS

None.

## K. PORTUGAL

- (a) Non-contributory family allowances (Decree-Law No 160/80 of 27 May 1980).
- (b) Nursing mother's allowance (Decree-Law No 160/80 of 27 May 1980).
- (c) Supplementary allowance for disabled children and young people (Decree-Law No 160/80 of 27 May 1980).
- (d) Allowance for attendance at special schools (Decree-Law No 160/80 of 27 May 1980).
- (e) Non-contributory orphan's pension (Decree-Law No 160/80 of 27 May 1980).
- (f) Non-contributory invalidity pension (Decree-Law No 464/80 of 13 October 1980).
- (g) Non-contributory old-age pension (Decree-Law No 464/80 of 13 October 1980).
- (h) Supplementary severe invalidity pension (Decree-Law No 160/80 of 27 May 1980).
- (i) Non-contributory widow's pension (Regulatory Decree No 52/81 of 11 November 1981).

## L. UNITED KINGDOM

- (a) Mobility allowance (Social Security Act 1975 of 20 March 1975, Section 37A and Social Security (Northern Ireland) Act 1975 of 20 March 1975, Section 37A).
- (b) Invalid care allowance (Social Security Act 1975 of 20 March 1975, Section 37, and Social Security (Northern Ireland) Act 1975 of 20 March 1975, Section 37).
- (c) Family credit (Social Security Act 1986 of 25 July 1986, Sections 20 to 22, and Social Security (Northern Ireland) Order 1986 of 5 November 1986, Articles 21 to 23).
- (d) Attendance allowance (Social Security Act 1975 of 20 March 1975, Section 35 and Social Security (Northern Ireland) Act 1975 of 20 March 1975, Section 35).
- (e) Income support (Social Security Act 1986 of 25 July 1986, Sections 20 to 22 and Section 23 and Social Security (Northern Ireland) Order 1986 of 5 November 1986, Articles 21 to 28).
- (f) Disability living allowance (Disability Living Allowance and Disability Working Allowance Act 1991 of 27 June 1991, Section 1 and Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 of 24 July 1991, Article 3).
- (g) Disability working allowance (Disability Living Allowance and Disability Working Allowance Act 1991 of 27 June 1991, Section 6 and Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 of 24 July 1991, Article 8).<sup>2</sup>

*Article 2*

1. Application of Article 1 of this Regulation shall not by itself have for effect the withdrawal of benefits granted prior to the entry into force of this Regulation by the competent institutions of the Member States in pursuance of the provisions of Title III of Regulation (EEC) No 1408/71, to which the provisions of Article 10 of that Regulation apply.
2. Application of Article 1 of the Regulation shall not by itself have for effect the refusal of the application for a special non-contributory benefit, granted in addition to a pension, made by the claimant or beneficiary who fulfilled the conditions for the grant of that benefit before the entry into force of this Regulation even if he or she is resident in the territory of a Member State other than the competent State, provided that the application for benefit is made within five years of the entry into force of this Regulation.
3. This Regulation shall not give rise to any rights in respect of any period prior to the date of its entry into force.
4. Notwithstanding the provisions of paragraph 3, any special non-contributory benefit granted in addition to a pension which has been refused or suspended on grounds of the claimant's or beneficiary's residence in the territory of a Member State other than the competent State shall, upon application of the claimant or beneficiary, be granted or reinstated from the date of entry into force of this Regulation with effect from the date of change of residence.
5. Periods of residence, employment and self-employment completed in the territory of a Member prior to the date of entry into force of this Regulation shall be taken into account in determining entitlement for the purposes of and in accordance with the provisions of this Regulation.
6. Subject to paragraph 3, rights may arise by virtue of this Regulation notwithstanding that they relate to an event which materialized prior to the date of the entry into force of this Regulation.
7. Any benefit entitlement to which has been refused or suspended on grounds of the nationality of the claimant or beneficiary shall, upon the application of the same, be granted or reinstated from the date of entry into force of this Regulation, except in those cases where the earlier claim to that benefit was settled by the award of a lump-sum payment.
8. Rights of persons who have been granted pensions prior to the date of entry into force of this Regulation may, upon their application, be reviewed to take account of the provisions of this Regulation.
9. If an application as referred to in paragraphs 7 and 8 is submitted within two years from the date of entry into force of this Regulation, any rights to which they give rise under this Regulation shall take effect from the date of entry into force of this Regulation, notwithstanding any legislative provisions in any Member State concerning the forfeiture or limitation of rights which might otherwise apply to person concerned.
10. If an application as referred to in paragraphs 7 and 8 is submitted after the expiry of a period of two years following the date of entry into force of this Regulation, rights which have not lapsed or become time-barred shall take effect from the date upon which the application is submitted, without prejudice to those provisions of the legislation of each Member State which are more favourable.

*Article 3*

This Regulation shall enter into force on the first day of the month following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 30 April 1992.

*For the Council*

*The President*

José da SILVA PENEDA