

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

DECISION No H6

of 16 December 2010

concerning the application of certain principles regarding the aggregation of periods under Article 6 of Regulation (EC) No 883/2004 on the coordination of social security systems

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2011/C 45/04)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) 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 ⁽¹⁾, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ⁽²⁾,

Acting in accordance with the conditions laid down in the second subparagraph of Article 71(2) of Regulation (EC) No 883/2004,

Whereas:

- (1) Article 1(t) of Regulation (EC) No 883/2004 provides for the definition of 'period of insurance'. It follows from the wording of Article 1(t) of Regulation (EC) No 883/2004 that periods treated as such are equivalent to periods of insurance and they do not need to be equivalent to periods of contributions.
- (2) Article 6 of Regulation (EC) No 883/2004 provides for the principle of aggregation of periods. This principle should be applied in a uniform way which includes the aggregation of periods which, under national legislation, count only in terms of qualifying for or in terms of increasing the benefit.
- (3) Recital 10 of Regulation (EC) No 883/2004 provides that the principle of assimilation of certain facts or events should not interfere with the principle of aggregation of periods.
- (4) It is necessary to ensure that, when applying the principle of aggregation of periods as laid down in Article 6 of Regulation (EC) No 883/2004, periods of insurance

communicated as such by one Member State need to be accepted by the receiving Member State without questioning their quality.

- (5) At the same time, it is necessary to recognise the principle that Member States retain jurisdiction to determine their national conditions for granting social security benefits — provided that these conditions are applied in a non-discriminatory way — and to affirm that this principle remains untouched by the principle of aggregation. A receiving Member State needs, as a first step, to accept all communicated periods as such to overcome potential obstacles when opening a right and then, as a second step, to determine whether special national conditions are fulfilled.
- (6) The definition of 'periods of insurance' remained unchanged in Article 1(t) of Regulation (EC) No 883/2004 compared to Article 1(r) of Regulation (EEC) No 1408/71.
- (7) Since this decision aims at providing for legal certainty it should only apply to cases decided after the entry into force of this decision,

HAS DECIDED AS FOLLOWS:

1. All periods of insurance — be they contributory periods or periods treated as equivalent to insurance periods under national legislation — fulfil the notion of 'periods of insurance' for the purposes of applying Regulations (EC) No 883/2004 and (EC) No 987/2009.
2. All periods for the relevant contingency completed under the legislation of another Member State shall be taken into account solely by applying the principle of aggregation of periods as laid down in Articles 6 of Regulation (EC) No 883/2004 and 12 of Regulation (EC) No 987/2009. The principle of aggregation requires that periods communicated by other Member States shall be aggregated without questioning their quality.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

3. Member States retain however — having applied the principle of aggregation under point 2 — the jurisdiction to determine their other conditions for granting social security benefits taking into account Article 5 of Regulation (EC) No 883/2004 — provided that these conditions are applied in a non discriminatory way — and this principle shall not be affected by Article 6 of Regulation (EC) No 883/2004.

4. This decision only applies to cases decided after its entry into force.

5. The attached examples concerning the practical application of points 1, 2 and 3 of this decision are part of this decision.

6. This decision shall be published in the *Official Journal of the European Union*. It shall apply from the first day of the second month following its publication in the *Official Journal of the European Union*.

The Chair of the Administrative Commission
Keyina MPEYE

ANNEX

EXAMPLES CONCERNING THE PRACTICAL APPLICATION OF POINTS 1, 2 AND 3 OF THIS DECISION**Example on the application of Sections 1 and 2 of the decision:**

Under the legislation of Member State A, the insured person has 10 years of contributory periods and 2 years of equivalent periods which count under its legislation only for calculation.

As stated under Section 1 of the decision, there are 12 years of periods to be communicated to Member State B.

As stated under Section 2 (and recital 2) of the decision, Member State B needs to take into account these 12 years of periods as such for the purpose of aggregation.

Example on the application of Sections 2 and 3 of the decision:

Under the legislation of Member State A, the insured person has 30 years of contributions linked to the 'actual carrying on of an occupation'. The legislation of Member State A provides, as a national condition for their early retirement pension, that the person concerned must demonstrate at least 35 years of contributions linked to the 'actual carrying on of an occupation'.

Under the legislation of Member State B, the insured person has 2 years of study (communicated as 'equivalent periods for study') and 3 years of contributions linked to the 'actual carrying on of an occupation'.

As stated under Section 2 of the decision, Member State A needs to take into account these 5 years of periods as such for the purpose of aggregation (first step).

As stated under Section 3 of the decision, Member State A then verifies whether the other national conditions under its legislation are fulfilled (here the 'actual carrying on of an occupation') and whether these conditions are applied in a non-discriminatory way (second step).

Since there are only 3 years of contributions linked to the 'actual carrying on of an occupation' in Member State B, the requirement under the legislation of Member State A of having 35 years of 'actual carrying on of an occupation' is not fulfilled. Under the presumption that there is no (indirect) discrimination based on nationality, no early retirement pension needs to be granted under the legislation of Member State A.
