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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3427/89
of 30 October 1989

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 and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71

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⁽¹⁾, drawn up after consultation with the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas, pursuant to Article 99 of Regulation (EEC) No 1408/71⁽⁴⁾, as last amended by Regulation (EEC) No 2332/89⁽⁵⁾, the entire matter of the payment of family benefits to members of the family who do not reside in the competent State must be re-examined in order to reach a uniform solution for all Member States;

Whereas, by its judgment of 15 January 1986 in Case 41/84 (Pinna), the Court of Justice declared null and void Article 73 (2) of Regulation (EEC) No 1408/71 on the ground that the criterion of residence of the members of the family of the migrant worker, which it employs in order to determine the legislation applicable to the family benefits payable to the worker, 'is not of such a nature as to secure the equal treatment laid down by Article 48 of the Treaty and therefore may not be employed within the context of the coordination of national legislation which is laid down in Article 51 of the Treaty with a view to

promoting the free movement of workers within the Community in accordance with Article 48';

Whereas, consequently, it is appropriate to disregard the criterion of residence of the members of the worker's family for the purposes of granting family benefits;

Whereas, on the other hand, the criterion of employment adopted in Articles 73 (1) and 74 (1) of Regulation (EEC) No 1408/71 ensure equal treatment as between all workers subject to the same legislation; whereas the choice of this factor of attachment is necessary for reasons of simplicity, fairness and for reasons allied to the coherence of the system of Regulation (EEC) No 1408/71, which, generally speaking, accords priority to the *lex loci laboris* (law of the place of work) for the purpose of determining the legislation applicable;

Whereas it is therefore appropriate to apply this solution also to workers subject to French legislation; whereas it is necessary to amend, along these lines, Regulations (EEC) No 1408/71 and (EEC) No 574/72⁽¹⁾, as last amended by Regulation (EEC) No 2332/89; whereas the absence of a uniform solution as referred to in Article 99 of Regulation (EEC) No 1408/71, at the time of the extension of the categories of persons covered by Regulations (EEC) No 1408/71 and (EEC) No 574/72 to include self-employed workers and members of their families, prevented the same extension being made in the case of Articles 73 to 76 of Regulation (EEC) No 1408/71; whereas it is now appropriate to extend the provisions to cover self-employed workers and to adapt accordingly the provisions of Regulation (EEC) No 574/72,

HAS ADOPTED THIS REGULATION:

Article 1

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

⁽¹⁾ OJ No L 74, 27. 3. 1972, p. 1.

⁽¹⁾ OJ No C 292, 16. 11. 1988, p. 7.

⁽²⁾ OJ No C 12, 16. 1. 1989, p. 365.

⁽³⁾ OJ No C 23, 30. 1. 1989, p. 49.

⁽⁴⁾ OJ No L 149, 5. 7. 1971, p. 2.

⁽⁵⁾ OJ No L 224, 2. 8. 1989, p. 1.

1. Chapter 7 of Title III is replaced by the following :

'CHAPTER 7

FAMILY BENEFITS

Article 72

Aggregation of periods of insurance, employment or self-employment

Where the legislation of a Member State makes acquisition of the right to benefits conditional upon completion of periods of insurance, employment or self-employment, the competent institution of that State shall take into account for this purpose, to the extent necessary, periods of insurance, employment or self-employment completed in any other Member State, as if they were periods completed under the legislation which it administers.

Article 73

Employed or self-employed persons the members of whose families reside in a Member State other than the competent State

An employed or self-employed person subject to the legislation of a Member State shall be entitled, in respect of the members of his family who are residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI.

Article 74

Unemployed persons the members of whose families reside in a Member State other than the competent State

An unemployed person who was formerly employed or self-employed and who draws unemployment benefits under the legislation of a Member State shall be entitled, in respect of the members of his family residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI.

Article 75

Provisions of benefits

1. Family benefits shall be provided, in the cases referred to in Article 73, by the competent institution of the State to the legislation of which the employed or self-employed person is subject and, in the cases referred to in Article 74, by the competent institution of the State under the legislation of which an unemployed person who was formerly employed or self-employed receives unemployment benefits. They shall be provided in accordance with the provisions administered by such institutions, whether or not the natural or legal person to whom such benefits are payable is residing or staying in the territory of the competent State or in that of another Member State.

2. However, if the family benefits are not used by the person to whom they should be provided for the maintenance of the members of the family, the

competent institution shall discharge its legal obligations by providing the said benefits to the natural or legal person actually maintaining the members of the family, at the request of, and through the agency of, the institution of their place of residence or of the designated institution or body appointed for this purpose by the competent authority of the country of their residence.

3. Two or more Member States may agree, in accordance with the provisions of Article 8, that the competent institution shall provide the family benefits due under the legislation of those States or of one of those States to the natural or legal person actually maintaining the members of the family, either directly or through the agency of the institution of their place of residence.

Article 76

Rules or priority in cases of overlapping entitlement to family benefits under the legislation of the competent State and under the legislation of the Member State of residence of the members of the family

1. Where, during the same period, for the same family member and by reason of carrying on an occupation, family benefits are provided for by the legislation of the Member State in whose territory the members of the family are residing, entitlement to the family benefits due in accordance with the legislation of another Member State, if appropriate under Articles 73 or 74, shall be suspended up to the amount provided for in the legislation of the first Member State.

2. If an application for benefits is not made in the Member States in whose territory the members of the family are residing, the competent institution of the other Member State may apply the provisions of paragraph 1 as if benefits were granted in the first Member State.';

2. Article 90 is deleted ;

3. Article 94 (9) is replaced by the following ;

9. The family allowances received by employed persons employed in France in respect of the members of their families residing in another Member State on the date of 15 November 1989 shall continue to be paid at the rates, within the limits and according to the procedures applicable on that date as long as their amount exceeds that of the benefits that would be due as from the date of 16 November 1989 and as long as the persons concerned are subject to French legislation. Account shall not be taken of interruptions lasting less than one month, nor of periods during which unemployment or sickness is drawn.

The procedure for implementing this paragraph and in particular the sharing of the cost of these allowances shall be determined by mutual agreement between the Member States concerned or by their competent authorities, after the Administrative Commission has delivered an opinion.';

4. Article 99 is deleted ;

5. Annex I is amended as follows :

(a) In Part I, point 'E. FRANCE' is replaced by the following :

'E. France

If a French institution is the competent institution for the grant of family benefits in accordance with Title III, Chapter 7 of the Regulation :

1. "employed person" within the meaning of Article 1 (a) (ii) of the Regulation shall be deemed to mean any person who is compulsorily insured under the social security scheme in accordance with Article L 311-2 of the Social Security Code and who fulfils the minimum conditions regarding work or remuneration provided for in Article L 313-1 of the Social Security Code in order to benefit from cash benefits under sickness insurance, maternity and invalidity cover or the person who benefits from these cash benefits ;

2. "self-employed person" within the meaning of Article 1 (a) (ii) of the Regulation shall be deemed to mean any person who performs a self-employed activity and who is required to take out insurance and to pay old-age benefit contributions to a self-employed persons' scheme.' ;

(b) In Part II point 'E. FRANCE' is replaced by the following :

'E. FRANCE

The term "member of the family" means any person mentioned in Article L 512-3 of the Social Security Code. ;

6. Annex II, Part II is amended as follows :

(a) point 'E. FRANCE' is replaced by the following :

'E. FRANCE

The allowance for young children provided until the age of three months.' ;

(b) point 'I. LUXEMBOURG' is replaced by the following :

'I. LUXEMBOURG

- (a) antenatal allowance ;
- (b) childbirth allowance.' ;

7. Annex VI, point E. FRANCE is amended as follows :

(a) point 4 is replaced by the following :

'4. A person who is subject to French legislation pursuant to Article 14 (1) or Article 14a (1) of the Regulation shall be entitled, in respect of the members of his family accompanying him in the territory of the Member State in which

he is pursuing an occupation, to the following family benefits :

- (a) the allowance for young children provided until the age of three months ;
- (b) the family benefits provided in accordance with Article 73 of the Regulation.' ;

(b) the following point is added :

'7. Notwithstanding Articles 73 and 74 of the Regulation, the housing allowances, the home child-care allowance and the parental child-rearing allowance shall be granted only to persons concerned and to members of their families standing residing in French territory.'

Article 2

Regulation (EEC) No 574/72 is hereby amended as follows :

1. Article 10a is replaced by the following :

'Article 10a

Rules applicable where an employed or self-employed person is subject successively to the legislation of several Member States during the same period or part of a period

Where an employed or self-employed person has been subject successively to the legislation of two Member States during the period separating two dates for the payment of family benefits as provided for by the legislation of one or both of the Member States concerned, the following rules shall apply :

(a) the family benefits which the person concerned may claim by virtue of being subject to the legislation of each one of these States shall correspond to the number of daily benefits due under the relevant legislation. Where such legislation does not provide for daily benefits, the family benefits shall be granted in proportion to the length of time during which the person concerned has been subject to the legislation of each one of the Member States in relation to the period fixed by the legislation concerned ;

(b) where the family benefits have been provided by an institution during a period when they should have been provided by another institution, there shall be an adjustment of accounts between the said institutions ;

(c) for the purposes of subparagraphs (a) and (b), where periods of employment or self-employment completed under the legislation of one Member State are expressed in units different from those which are used for the calculation of family benefits under the legislation of another Member State to which the person concerned has also been subject during the same period, the conversion shall be carried out in accordance with the provisions of Article 15 (3) of the implementing Regulation ;

- (d) notwithstanding the provisions of subparagraph (a), in respect of dealings between the Member States listed in Annex 8 to the implementing Regulation, the institution bearing the costs of the family benefits by reason of the first employment or self-employment during the period concerned shall bear such costs throughout the entire current period.';
2. The heading of Chapter 7 of Title IV is replaced by the following:
- 'FAMILY BENEFITS'**
3. In Article 86:
- (a) the title preceding Article 86 is replaced by the following:
- 'Implementation of Articles 73 and 75 (1) and (2) of the Regulation'**;
- (b) the title under Article 86 is deleted;
- (c) paragraph 4 is replaced by the following:
- '4. The competent authorities of two or more Member States may agree on special procedures for the payment of family benefits, in particular with a view to facilitating the implementation of Article 75 (1) and (2) of the Regulation. Such agreements shall be communicated to the Administrative Commission';
4. Article 87 and the preceding title are deleted;
5. Article 88 and the preceding title are replaced by the following:
- 'Implementation of Article 74 of the Regulation'**
- Article 88*
- The provisions of Article 86 of the implementing Regulation shall apply by analogy to unemployed persons who were formerly employed or self-employed and who are covered by Article 74 of the Regulation.';
6. Article 89 and the preceding title are deleted;
7. Article 98 and the preceding title are deleted;
8. Article 101 (1) is replaced by the following:
- '1. Pursuant to Articles 36, 63 and 70 of the Regulation, the Administrative Commission shall draw up a statement of claims in respect of each calendar year.';
9. Article 102 (2) is replaced by the following:
- '2. The reimbursements provided for in Articles 36, 63 and 70 of the Regulation shall be made for all the competent institutions of a Member State to the creditor institutions of another Member State through the agency of the bodies designated by the competent authorities of the Member States. The bodies through which reimbursements have been made shall advise the Administrative Commission of the amounts reimbursed within the time limits and according to the procedures laid down by the said Commission.';
10. Article 104 (2) is replaced by the following:
- '2. Provisions which are similar to those referred to in paragraph 1 and which, for the purposes of dealings between two or more Member States, will apply following the entry into force of the Regulation shall be entered in Annex 5 to the implementing Regulation. The same shall apply to provisions agreed under Article 97 (2) of the implementing Regulation.';
11. Article 120 is deleted;
12. In Annex 2, 'E. FRANCE':
- (a) paragraph 3 is deleted;
- (b) paragraph 4 becomes paragraph 3;
13. Annex 10 is amended as follows:
- (a) in 'A. BELGIUM', subparagraph 6 (d) is deleted;
- (b) in 'B. DENMARK', subparagraph 6 (a) is replaced by the following:
- '(a) reimbursements pursuant to Articles 36 and 63 of the Regulation: (no change)';
- (c) in 'C. GERMANY', paragraph 8 is replaced by the following:
- '8. For the purposes of applying Articles 36 and 63 of the Regulation and Article 102 (2) of the implementing Regulation (no change)';
- (d) in 'E. FRANCE':
- (i) paragraph 8 is deleted;
- (ii) paragraphs 9 and 10 become paragraphs 8 and 9 respectively;
- (iii) paragraph 8 (new) is replaced by the following:
- '8. For the purposes of applying jointly Articles 36 and 63 of the Regulation and Article 102 (2) of the implementing Regulation: (no change)'
- (e) in 'G. IRELAND', subparagraph 3 (b) is replaced by the following:
- '(b) For the purposes of applying Article 70 of the Regulation and Article 102 (2) of the implementing Regulation: (no change)';
- (f) in 'H. ITALY':
- (i) paragraph 5 is deleted;
- (ii) paragraphs 6, 7 and 8 become paragraphs 5, 6 and 7 respectively;
- (iii) subparagraph 6 (c) (new) is replaced by the following:
- 'c. Reimbursements under Article 70 of the Regulation (no change)';
- (g) in 'I. LUXEMBOURG', subparagraph 8 (d) is deleted;

(h) in 'J. NETHERLANDS', subparagraph 4(c) is deleted.

It shall apply with effect from 15 January 1986.

Article 3

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

However, Article 76 of Regulation (EEC) No 1408/71 as amended by Article 1 (1) of this Regulation shall not apply until 1 May 1990.

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

Done at Brussels, 30 October 1989.

For the Council

The President

J.-P. SOISSON
