



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

18 September 2019*

(Reference for a preliminary ruling — Social security — Migrant workers — Regulation (EC) No 987/2009 — Article 60 — Family benefits — Right to payment of the difference between the parental allowance paid in the Member State having primary competence and the childcare allowance provided by the Member State having secondary competence)

In Case C-32/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 20 December 2017, received at the Court on 18 January 2018, in the proceedings

Tiroler Gebietskrankenkasse

v

Michael Moser,

THE COURT (Eighth Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, J. Malenovský and C.G. Fernlund, Judges,

Advocate General: G. Hogan,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 30 January 2019,

after considering the observations submitted on behalf of:

- Mr Moser, by E. Suitner and P. Wallnöfer, Rechtsanwälte,
- the Austrian Government, by G. Hesse, acting as Agent,
- the Czech Government, by M. Smolek, J. Pavliš and J. Vláčil, acting as Agents,
- the European Commission, by M. Kellerbauer, D. Martin and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 March 2019,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the second sentence of Article 60(1) of 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 (OJ 2009 L 284, p. 1).
- 2 The request has been made in proceedings between the Tiroler Gebietskrankenkasse (Tyrol Regional Health Insurance Fund, Austria) and Mr Michael Moser concerning his application to receive payment of the difference between the German parental allowance and the Austrian childcare allowance.

Legal context

European Union law

Regulation (EC) No 883/2004

- 3 According to recital 10 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 (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), ‘the principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent Member State. Periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods’.
- 4 Article 5 of that regulation, entitled ‘Equal treatment of benefits, income, facts or events’, provides:

‘Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;

(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.’
- 5 Article 67 of Regulation No 883/2004 provides:

‘A person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they were residing in the former Member State. ...’

6 Article 68 of that regulation lays down priority rules in the event of overlapping, as follows:

‘1. Where, during the same period and for the same family members, benefits are provided for under the legislation of more than one Member State the following priority rules shall apply:

- (a) in the case of benefits payable by more than one Member State on different bases, the order of priority shall be as follows: firstly, rights available on the basis of an activity as an employed or self-employed person, secondly, rights available on the basis of receipt of a pension and finally, rights obtained on the basis of residence;
- (b) in the case of benefits payable by more than one Member State on the same basis, the order of priority shall be established by referring to the following subsidiary criteria:
 - (i) in the case of rights available on the basis of an activity as an employed or self-employed person: the place of residence of the children, provided that there is such activity ...

...

2. In the case of overlapping entitlements, family benefits shall be provided in accordance with the legislation designated as having priority in accordance with paragraph 1. Entitlements to family benefits by virtue of other conflicting legislation or legislations shall be suspended up to the amount provided for by the first legislation and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount. ...’

Regulation No 987/2009

7 Under Article 60(1) of Regulation No 987/2009:

‘The application for family benefits shall be addressed to the competent institution. For the purposes of applying Articles 67 and 68 of the basic Regulation, the situation of the whole family shall be taken into account as if all the persons involved were subject to the legislation of the Member State concerned and residing there, in particular as regards a person’s entitlement to claim such benefits. Where a person entitled to claim the benefits does not exercise his right, an application for family benefits submitted by the other parent, a person treated as a parent, or a person or institution acting as guardian of the child or children, shall be taken into account by the competent institution of the Member State whose legislation is applicable.’

Austrian law

- 8 The Kinderbetreuungsgeldgesetz (Law on childcare allowance) introduced the childcare allowance as a family benefit. The grant of that allowance is not subject to the pursuit of a gainful activity prior to the birth of the child granting entitlement to it.
- 9 Originally, that law allowed parents entitled to the allowance to choose between three options, and the allowance was paid in the form of three flat rate amounts corresponding to three different coverage periods linked to the child’s age.
- 10 Following an amendment to that law, a fourth option was introduced. The childcare allowance may now also be granted in replacement of earnings until the child reaches 12 months of age or, at most, 14 months of age. The amount of the allowance that is paid is dependent, for that option, on the amount of previous earnings.

- 11 Paragraph 6(3) of that law, in the version applicable to the facts at issue in the main proceedings ('the KBGG'), provides:

'Entitlement to the childcare allowance shall, in so far as the person concerned is entitled to comparable family benefits in another State, be suspended up to the amount of the benefits payable in the other State. The difference between the comparable family benefits payable in the other State and the childcare allowance shall be credited to the childcare allowance once the comparable family benefits in the other State have stopped being paid.'

- 12 Paragraph 24 of the KBGG provides:

'(1) For the purposes of this section, a parent shall be entitled to the childcare allowance for his or her child ..., provided that:

1. the conditions of entitlement laid down in Paragraph 2(1), points 1, 2, 4 and 5, are met;

2. for the 6 months immediately preceding the birth of the child for whom the childcare allowance is to be claimed, that parent has continuously pursued gainful activity within the meaning of subparagraph (2) and has not been in receipt of any unemployment benefits during that period, entitlement to the allowance being unaffected by interruptions of no more than 14 calendar days in total ...

...

(2) For the purposes of this Federal Law, gainful activity shall mean the actual pursuit of a gainful activity subject to social security contributions in Austria ...'

- 13 Paragraph 24a of the KBGG provides:

'(1) The childcare allowance shall be equal, per day:

1. in the case of a woman in receipt of maternity benefit, to 80% of the maternity benefit provided for under Austrian law, expressed as a per-calendar-day rate, which is payable on the occasion of the birth of any child for whom the childcare allowance is claimed, ...

...

3. in the case of a father ..., to 80% of the maternity benefit, expressed as a per-calendar-day rate and to be calculated notionally, which would be payable to a woman in his position on the occasion of the birth of any child for whom the childcare allowance is claimed.

...

(2) The childcare allowance as provided for in subparagraph (1) shall in any event be at least equal to the daily rate referred to in subparagraph 1, point 5, but shall not exceed EUR 66 per day.

...'

- 14 According to Paragraph 24b of the KBGG, 'where the childcare allowance is claimed by only one parent ..., it shall be payable, at most, up until the child reaches the age of 12 months. Where that benefit is also claimed by the second parent, the period of entitlement shall be extended ... by the period for which the second parent is claiming, but shall not exceed the point at which the child reaches the age of 14 months. Only periods of actual receipt of the benefit shall be regarded as having been claimed for'.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 15 Mr and Mrs Moser live with their two daughters in Germany. Mr Moser has been employed in Germany since 1992, while Mrs Moser has been employed in Austria since 1 July 1996.
- 16 Following the birth of her first daughter on 14 June 2011, Mrs Moser took parental leave until 31 January 2013. Following the birth of her second daughter on 29 August 2013, she arranged with her Austrian employer to take a further period of parental leave lasting until 28 May 2015.
- 17 From the end of the maternity protection period, Mrs Moser received the German parental allowance, together with the German allowance for parents whose children are not placed in a childcare facility.
- 18 In addition, the Tyrol Regional Health Insurance Fund paid Mrs Moser, for the period from 25 October 2013 to 31 May 2014, an allowance supplementing the Austrian income-dependent childcare allowance.
- 19 Following an application brought by Mrs Moser before the Landesgericht Innsbruck (Regional Court, Innsbruck, Austria) for the purposes of receiving an additional supplementary allowance covering a period extending beyond that for which the first supplementary allowance was granted to her, namely for the periods from 25 October 2013 to 28 June 2014 and from 29 August to 28 October 2014, which that court granted, the Tyrol Regional Health Insurance Fund paid her the allowance applied for.
- 20 Mr Moser, for his part, took parental leave between 29 June and 28 August 2014, during which period he received the German parental allowance.
- 21 Mr Moser also brought an application before the Landesgericht Innsbruck (Regional Court, Innsbruck) seeking, for his part, payment of the additional supplementary allowance consisting in the difference between the amount of the German parental allowance received and that of the Austrian income-dependent childcare allowance, in the amount of EUR 66 per day for the period corresponding to his parental leave from 29 June to 28 August 2014.
- 22 By judgment of 10 November 2015, that court dismissed his application.
- 23 On appeal by Mr Moser, by decision of 27 April 2017 the Oberlandesgericht Innsbruck (Higher Regional Court, Innsbruck) granted that application in part and ordered the Tyrol Regional Health Insurance Fund to pay a daily supplementary allowance of EUR 29.86, amounting to a total of EUR 1 821.46.
- 24 That fund brought an appeal on a point of law (*Revision*) against that decision before the Oberster Gerichtshof (Supreme Court, Austria), submitting, first, that Mr Moser did not fulfil the conditions laid down by Austrian legislation for entitlement to a supplementary payment and that, secondly, the cross-border element for the purposes of Regulation No 883/2004 was lacking.
- 25 Mr Moser claims that the Austrian institution's obligation to pay the supplementary allowance stems from his wife's ongoing employment relationship with her Austrian employer and that any other interpretation of Paragraph 24(2) of the KBGG would be contrary to EU law.
- 26 The referring court notes that Mr Moser fulfils the conditions laid down by the Austrian legislation for entitlement to the allowance in respect of the two-month minimum period of leave and the minimum of 6 months' continuous gainful activity prior to the birth of the child. It points out that, as its own case-law shows, the limitation introduced by Paragraph 24(1), point 2, of the KBGG, read in conjunction with Paragraph 24(2), according to which entitlement to the childcare allowance is conditional upon the actual pursuit of a gainful activity subject to social security contributions in Austria, has been found contrary to EU law.

- 27 Consequently, the referring court considers that the dispute before it concerns only the question whether EU law, which lays down, in the second sentence of Article 60(1) of Regulation No 987/2009, an obligation to take into account the situation of the whole family, grants the father entitlement to the difference in relation to the income-dependent Austrian childcare allowance, in the case where the Republic of Austria has secondary competence in accordance with Article 68(1)(b) of Regulation No 883/2004 as the mother's Member State of employment, when the mother has already received an allowance supplementing the income-dependent childcare allowance.
- 28 By reference to the case-law of the Court, the referring court recalls that restrictive conditions relating to the grant or the amount of family allowances which prevent or dissuade the worker from exercising his right of free movement are contrary to EU law and must not be applied (judgments of 10 October 1996, *Hoever and Zachow*, C-245/94 and C-312/94, EU:C:1996:379, paragraphs 34 to 36, and of 15 December 2011, *Bergström*, C-257/10, EU:C:2011:839, paragraphs 43 and 44). By virtue of the deeming provision included in the second sentence of Article 60(1) of Regulation No 987/2009, the Court has held that the issue as to which parent is regarded under national law as the person entitled to receive such benefits is irrelevant (judgment of 22 October 2015, *Trapkowski*, C-378/14, EU:C:2015:720, paragraph 49).
- 29 However, the referring court states that the cases giving rise to those judgments concerned flat rate allowances, while the case before it concerns an income-dependent family allowance. Furthermore, there is, in its view, no threat to or restriction of the father's freedom of movement in the present case owing to the refusal, in Austria, to pay the supplementary childcare allowance.
- 30 In the event that, under EU law, the father would be entitled to the payment of the amount by which the Austrian income-dependent childcare allowance differs, the referring court has doubts as to whether that allowance must be calculated on the basis of the income actually earned in the Member State of employment or whether the income hypothetically earned from a comparable gainful activity in the Member State having secondary competence must be taken into account. Notwithstanding the Court's judgment of 15 December 2011, *Bergström* (C-257/10, EU:C:2011:839, paragraph 53), the referring court considers that the equal treatment of benefits, facts or events as prescribed in Article 5 of Regulation No 883/2004 is conducive to an interpretation that the income actually earned in Germany must form the basis of the calculation.
- 31 In those circumstances the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the second sentence of Article 60(1) of Regulation No 987/2009 be interpreted as meaning that a Member State having secondary competence (the Republic of Austria) must pay, as a family benefit, to a parent resident and employed in a Member State having primary competence in accordance with Article 68(1)(b)(i) of Regulation No 883/2004 (the Federal Republic of Germany) the difference between the *Elterngeld* (parental allowance) paid in the Member State having primary competence and the income-dependent *Kinderbetreuungsgeld* (childcare allowance) in the other Member State, in the case where both parents live with their common children in the Member State having primary competence and the second parent alone is employed as a frontier worker in the Member State having secondary competence?

In the event that the first question is answered in the affirmative:

(2) Must the income-dependent *Kinderbetreuungsgeld* be calculated by reference to the income actually earned in the Member State of employment (the Federal Republic of Germany) or by reference to the income which could hypothetically be earned from a comparable gainful activity in the Member State having secondary competence (the Republic of Austria)?'

The first question

- 32 By its first question, the referring court seeks, in essence, to ascertain whether the second sentence of Article 60(1) of Regulation No 987/2009 must be interpreted as meaning that the obligation laid down in that provision to take into account, for the purposes of determining the scope of a person's entitlement to family benefits, 'the whole family ... as if all the persons involved were subject to the legislation of the Member State concerned' applies both in the case where benefits are provided in accordance with the legislation designated as having priority under Article 68(1)(b)(i) of Regulation No 883/2004 and in the case where benefits are payable in accordance with one or more other laws.
- 33 It should be recalled that Article 60(1) of Regulation No 987/2009 provides that an application for family benefits is to be addressed to the competent institution and that, for the purposes of applying Articles 67 and 68 of Regulation No 883/2004, the situation of the whole family is to be taken into account as if all the persons involved were subject to the legislation of the Member State concerned and residing there, in particular as regards a person's entitlement to claim such benefits.
- 34 As is apparent from the very wording of that Article 60, the meaning and scope of that article must, on account of the reference it makes to Articles 67 and 68 of Regulation No 883/2004, be examined in relation to the provisions of those articles.
- 35 Article 67 of Regulation No 883/2004 establishes the principle that a person may claim family benefits for members of his family who reside in a Member State other than the Member State competent for paying those benefits, as if they resided in the latter Member State (judgment of 22 October 2015, *Trapkowski*, C-378/14, EU:C:2015:720, paragraph 35).
- 36 The Court has clarified, as regards Article 73 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), which was succeeded by Article 67 of Regulation No 883/2004 and the content of which is, in essence, identical to the latter, that that article is designed to make it easier for migrant workers to draw family allowances in the State where they are employed, in cases where their family has not moved with them, and in particular to prevent a Member State from being able to make the grant or the amount of family benefits dependent on members of the worker's family being resident in the Member State paying the benefit (judgment of 14 October 2010, *Schwemmer*, C-16/09, EU:C:2010:605, paragraph 41 and case law cited).
- 37 Accordingly, Article 67 of Regulation No 883/2004 is applicable to a worker who, like Mrs Moser in the main proceedings, works in a Member State but lives with her family in a Member State other than the one whose legislation is applicable to her (see, to that effect, judgment of 7 November 2002, *Maaheimo*, C-333/00, EU:C:2002:641, paragraph 32).
- 38 In such a case, the spouse of the worker is also entitled to rely on that article (judgment of 7 November 2002, *Maaheimo*, C-333/00, EU:C:2002:641, paragraph 33), in accordance with the deeming provision included in Article 67 of Regulation No 883/2004, under which the whole family is to be taken into account as if all the persons involved were subject to the legislation of the Member State concerned and residing there.
- 39 In the event that the grant of a family benefit is made subject to the condition that the person concerned has worked in the national territory of the competent Member State, such as that laid down in Paragraph 24(1), point 2, of the KBGG in the main proceedings, which makes entitlement to the allowance conditional upon the completion of periods of insurance in Austrian territory, that condition must be considered to have been fulfilled where the person concerned has worked in the territory of another Member State.

- 40 However, the principle of equal treatment established by Article 67 of Regulation No 883/2004 is not absolute, in the sense that, where several entitlements are payable under different laws, the rules against overlapping benefits laid down in Article 68 of Regulation No 883/2004 apply (see, as regards Article 73 of Regulation No 1408/71, judgment of 14 October 2010, *Schwemmer*, C-16/09, EU:C:2010:605, paragraphs 42 and 43 and the case-law cited).
- 41 In accordance with Article 68(1)(b) of Regulation No 883/2004, where, during the same period and for the same family members, benefits are provided for under the legislation of more than one Member State on the same basis, the priority of rights available on the basis of an activity as an employed or self-employed person is given to the legislation of the children's Member State of residence. Paragraph 2 of that article provides that, in the case of overlapping entitlements, family benefits are provided in accordance with the legislation designated as having priority, entitlements to family benefits under other legislation being suspended up to the amount provided for in the first legislation and a differential supplement being provided, if necessary, for the sum exceeding that amount.
- 42 The Court has held that such a rule against overlapping seeks to ensure that the person entitled to benefits paid by several Member States receives a total amount of benefits which is equal to the amount of the most favourable benefit to which he is entitled under the legislation of a single Member State (judgment of 30 April 2014, *Wagener*, C-250/13, EU:C:2014:278, paragraph 46 and the case-law cited).
- 43 In the main proceedings, the referring court stated that the Federal Republic of Germany has been recognised, in accordance with the priority rule set out in paragraph 41 of this judgment, as the Member State whose legislation has priority, with the result that family benefits payable under other legislation, namely that of the Republic of Austria, are suspended and paid, if necessary, in the form of a differential supplement.
- 44 As regards Article 60(1) of Regulation No 987/2009, it must be noted that the parents of the child for whom family benefits are claimed fall within the definition of 'persons involved' and are therefore authorised to claim payment of those benefits. The Court has previously stated that the deeming provision included in the second sentence of that article leads to the grant of entitlement to family benefits to a person who does not reside in the Member State competent for paying those benefits, where all the other conditions for the grant of those benefits laid down by national law are met (see, to that effect, judgment of 22 October 2015, *Trapkowski*, C-378/14, EU:C:2015:720, paragraphs 39 and 41).
- 45 Since the wording 'legislation of the Member State concerned' in Article 60 of Regulation No 987/2009 is not subject to any limitation as to the Member State in question, that article must be interpreted as applying both in the case where the benefit is granted under the legislation designated as having priority and in the case where it is provided in the form of a differential supplement by the legislation of a Member State having secondary competence.
- 46 Any other interpretation of Article 60 of Regulation No 987/2009, which would limit the application of the deeming provision solely to the Member State whose legislation has priority, would be contrary not only to the principle of equal treatment as laid down in Article 67 of Regulation No 883/2004, the implementation of which is to be ensured by Article 60(1) of Regulation No 987/2009, but also to the rule against overlapping provided for in Article 68 of Regulation No 883/2004, such interpretation seeking to ensure that the person entitled to benefits paid by several Member States receives a total amount which is equal to the amount of the most favourable benefit to which he is entitled under the legislation of a single Member State.
- 47 In that regard, it should be added that the application of Article 60 of Regulation No 987/2009, like the payment of the differential supplement resulting therefrom, does not require a cross-border element with regard to the entitled person in question.

48 It follows from the foregoing that the second sentence of Article 60(1) of Regulation No 987/2009 must be interpreted as meaning that the obligation laid down in that provision to take into account, for the purposes of determining the scope of a person's entitlement to family benefits, 'the whole family ... as if all the persons involved were subject to the legislation of the Member State concerned' applies both in the case where benefits are provided in accordance with the legislation designated as having priority under Article 68(1)(b)(i) of Regulation No 883/2004, and in the case where benefits are payable in accordance with one or more other laws.

The second question

49 By its second question the referring court asks, in essence, whether Article 68 of Regulation No 883/2004 must be interpreted as meaning that the amount of the differential supplement must be calculated by reference to the income actually earned in the Member State of employment or to an equivalent income earned from a comparable gainful activity in the Member State having secondary competence.

50 In connection with that question, the referring court made reference to the Court's judgment of 15 December 2011, *Bergström* (C-257/10, EU:C:2011:839, paragraph 53), while suggesting that, on account of the equal treatment of benefits, facts or events prescribed in Article 5 of Regulation No 883/2004, the income actually earned in Germany could form the basis for calculating the differential supplement.

51 It must be stated that the present case differs from the case that gave rise to the judgment of 15 December 2011, *Bergström* (C-257/10, EU:C:2011:839), in that the interpretation accepted in that judgment, consisting in calculating the amount of a parental allowance by reference to notional income unrelated to the income actually earned, cannot be transposed to the situation at issue in the main proceedings, in which Mr Moser is entitled to a family benefit under Articles 67 and 68 of Regulation No 883/2004.

52 In accordance with the case-law cited in paragraph 42 of this judgment, Article 68 of that regulation seeks to ensure that the person entitled to benefits receives a total amount of benefits from various Member States which is equal to the amount of the most favourable benefit to which he is entitled under the legislation of a single Member State.

53 In those circumstances, apart from the practical difficulties which the competent bodies might face when calculating benefits by reference to the notional income of the persons concerned, the interpretation consisting in determining the amount of the differential supplement by reference to the income actually earned in the Member State of employment is consistent with the objective pursued by both the national legislation at issue and the provisions of EU law on social security for migrant workers.

54 As can be seen from paragraph 10 of the present judgment, the Austrian childcare allowance, in its income-dependent variant, constitutes a benefit in replacement of earnings, thus enabling the worker to receive a benefit in an amount proportionate to the amount of remuneration he was receiving at the time when the allowance was granted. Consequently, in order to achieve that objective, the remuneration must be assessed in the Member State of employment, particularly when, in border situations, earnings are generally higher in the worker's Member State of employment.

55 It follows from the foregoing that Article 68 of Regulation No 883/2004 must be interpreted as meaning that the amount of the differential supplement to be granted to a worker under the legislation of a Member State having secondary competence in accordance with that article must be calculated by reference to the income actually earned by that worker in his Member State of employment.

Costs

⁵⁶ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

- 1. The second sentence of Article 60(1) of 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 must be interpreted as meaning that the obligation laid down in that provision to take into account, for the purposes of determining the scope of a person's entitlement to family benefits, 'the whole family ... as if all the persons involved were subject to the legislation of the Member State concerned' applies both in the case where benefits are provided in accordance with the legislation designated as having priority under Article 68(1)(b)(i) 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, and in the case where benefits are payable in accordance with one or more other laws.**
- 2. Article 68 of Regulation (EC) No 883/2004 must be interpreted as meaning that the amount of the differential supplement to be granted to a worker under the legislation of a Member State having secondary competence in accordance with that article must be calculated by reference to the income actually earned by that worker in his Member State of employment.**

[Signatures]