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REGULATION (EEC) No 2864/72 OF THE COUNCIL
of 19 December 1972

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty concerning the accession of the new Member States to the European Economic Community and the European Atomic Energy Community¹ signed on 22 January 1972, and in particular Article 153 of the Act annexed thereto;

Having regard to the proposal from the Commission;

Whereas by virtue of Article 30 of the Act of Accession, Council Regulation (EEC) No 1408/71² of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, as amended by the Act of Accession, should be modified on the lines laid down in Part VII of Annex II to that Act;

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1408/71 shall be amended as follows:

1. The following shall be substituted for Article 1 (s) (a):

‘“Periods of residence” means periods of residence as defined or recognized as such by the legislation under which they were completed or are deemed to have been completed.’

2. The following shall be substituted for Article 9 (2):

‘Where, under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of insurance periods, the insurance periods or periods of residence completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State.’

3. The following shall be substituted for the heading and paragraph 1 of Article 18:

‘Aggregation of insurance periods or periods of employment or residence

1. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of insurance periods or periods of employment or residence shall, to the extent necessary, take account of insurance periods or periods of employment or residence completed under the legislation of any other Member State as if they were periods completed under the legislation which it administers.’

4. The following subparagraph shall be added to Article 19 (2):

‘Where the members of the family reside in the territory of a Member State under whose legislation the right to receive benefits in kind is not subject to conditions of insurance or employment, benefits in kind which they receive shall be considered as being on behalf of the institution with which the worker is insured, unless the spouse or the person looking after the children exercises a professional or trade activity in the territory of the said Member State.’

¹ OJ Special Edition, 27.3.1972, p. 5.

² OJ No L 149, 5.7.1971, p. 2.

5. The following shall be substituted for Article 27:

'Pensions payable under the legislation of several Member States where a right to benefits is enjoyed in the country of residence

A pensioner who is entitled to draw pensions under the legislation of two or more Member States, of which one is that of the Member State in whose territory he resides, and who is entitled to benefits under the legislation of the latter Member State, taking account where appropriate of the provisions of Article 18 and Annex V shall, with the members of his family, receive such benefits from the institution of the place of residence and at the expense of that institution as though the person concerned were a pensioner whose pension was payable solely under the legislation of the latter Member State.'

6. The following shall be substituted for Article 28 (2) (b):

'(b) where the pensioner is entitled to the said benefits under the legislations of two or more Member States the cost thereof shall be borne by the competent institution of the Member State to whose legislation the pensioner has been subject for the longest period of time; should the application of this rule result in several institutions being responsible for the cost of benefits the cost shall be borne by the institution administering the legislation to which the pensioner was last subject.'

7. The following Article 28a shall be added after Article 28:

'Article 28a

Pensions payable under the legislation of one or more of the Member States other than the country of residence where a right to benefits is enjoyed in the latter country

Where the pensioner entitled to a pension under the legislation of one Member State, or pensions under the legislations of two or more Member States, resides in the territory of a Member State under whose legislation the right to receive benefits in kind is not subject to conditions of insurance or employment, nor is any pension payable, the cost of benefits in kind enjoyed by him and members of his family shall be borne by the institution of one of the Member States competent in respect of pensions, determined according to the rules laid down in Article 28 (2), to the extent that the

pensioner and members of his family would have been entitled to such benefits under the legislation administered by the said institution if they resided in the territory of the Member State where that institution is situated.'

8. The following shall be substituted for the first part of Article 31:

'A pensioner entitled to draw a pension or pensions under the legislation of one or more Member States who is also entitled to benefits under the legislation of one of those States shall, with members of his family, who are staying in the territory of a Member State other than the one in which they reside, receive:'

9. The following shall be substituted for Article 33:

'Article 33

Contributions payable by pensioners

The institution responsible for payment of a pension, and belonging to a Member State whose legislation provides for deductions from pensions in respect of contributions for sickness and maternity shall be authorized to make such deductions from the pension payable by such institution, calculated in accordance with the legislation concerned to the extent that the cost of the benefits under Articles 27, 28, 28a, 29, 31 and 32 are to be borne by an institution of the said Member State.'

10. The following shall be reinserted as the heading of Section 1, Chapter 2 of Title III:

'Workers subject only to legislation under which the amount of invalidity benefits is independent of the duration of insurance periods.'

11. The following shall be reinserted as Article 37 (1):

'1. A worker who has been successively or alternatively subject to the legislations of two or more Member States and who has completed insurance periods exclusively under legislations according to which the amount of invalidity benefits is independent of the duration of insurance periods, shall receive benefits in accordance with Article 39. This Article shall not affect pension increases or supplements in respect of children, granted in accordance with the provisions of Chapter 8.'

12. The following shall be reinserted as the heading and paragraph 1 of Article 38:

'Aggregation of insurance periods

1. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefit conditional upon the completion of insurance periods shall take account, to the extent necessary, of insurance periods completed under the legislation of any other Member States, as though they had been completed under its own legislation.'

13. The following shall be substituted for Article 45 (1):

'An institution of a Member State whose legislation makes the acquisition, retention or recovery of the rights to benefits conditional upon the completion of insurance periods or periods of residence shall take into account, to the extent necessary, insurance periods or periods of residence completed under the legislation of any Member State as though they had been completed under the legislation which it administers.'

14. Article 45 (4) shall be repealed.

15. The following shall be substituted for the first subparagraph of Article 46 (1):

'1. Where a worker has been subject to the legislation of a Member State and where the conditions for entitlement to benefit have been satisfied, without application of the provisions of Article 45 being necessary, the competent institution of that Member State shall, in accordance with the legislation which it administers determine the amount of benefit corresponding to the total length of the insurance periods or periods of residence to be taken into account in pursuance of such legislation.'

16. The following shall be substituted for Article 46 (2) (a):

'(a) the institution shall calculate the theoretical amount of benefit that the person concerned could claim if all the insurance periods or periods of residence completed under the legislation of the Member States to which the worker has been subject had been completed in the State in question and under the legislation administered by it on the date the benefit is awarded. If, under that legislation, the amount of the benefit does not depend on the length of the

periods completed then that amount shall be taken as the theoretical amount referred to in this subparagraph.'

17. Chapter 4 of Title III shall be amended as follows:

Section 1 and Article 51a shall be repealed. Sections 2, 3, 4 and 5 shall be renumbered 1, 2, 3 and 4 respectively.

18. The following shall be substituted for Article 64:

'Article 64

Aggregation of insurance periods or periods of residence

The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to death grants subject to the completion of insurance periods or periods of residence shall take account, to the extent necessary, of insurance periods or periods of residence completed under the legislation of any other Member State as though they had been completed under the legislation which it administers.'

19. The following shall be substituted for Article 77 (2) (b) (ii):

'(ii) in other cases in accordance with that legislation to which he has been subject for the longest period of time, provided that, taking into account where appropriate Article 79 (1) (a), a right to one of the benefits referred to in paragraph (i) is acquired under such legislation; if no right to benefit is acquired under that legislation, the conditions for the acquisition of such right under the legislations of the other Member States concerned shall be examined in decreasing order of the length of insurance periods or periods of residence completed under the legislation of those Member States.'

20. The following shall be substituted for Article 78 (2) (b) (ii):

'(ii) in other cases in accordance with the legislation of the Member State to which the deceased worker had been subject for the longest period of time, provided that, taking into account, where appropriate Article 79 (1) (a), the right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State; if no right is acquired under that legislation, the condi-

- tions for the acquisition of such right under the legislations of the other Member States shall be examined in decreasing order of the length of insurance periods or periods of residence completed under the legislation of those Member States.'
21. The following shall be substituted for Article 79 (2):
- '(2) In a case where the effect of applying the rule laid down in Article 77 (2) (b) (ii) and 78 (2) (b) (ii) would be to make several Member States competent, the length of the periods being equal, benefits within the meaning of Article 77 or Article 78, as the case may be, shall be granted in accordance with the legislation of the Member State to which the worker was last subject.'
22. Article 79 (4) shall be repealed.
23. The following shall be substituted for Annex III, B:
- 'B. DENMARK
None.'
24. Annex V, B shall be amended as follows:
- (a) the following shall be substituted for paragraph 4:
- '4. Workers, applicants for pensions and pensioners with members of their family referred to in Articles 19, 22 (1) and (3), 25 (1) and (3), 26 (1), 28a, 29 and 31 of the Regulation, resident or staying in Denmark shall be entitled to benefits in kind on the same terms as those laid down by Danish legislation for persons whose income does not exceed the level indicated in Article 3 of the Law No 311 of 9 June 1971 concerning the Public Health Service, where the cost of the said benefits shall be borne by the institution of a Member State other than Denmark.'
- (b) the following shall be substituted for paragraph 5:
- '5. Article 1 (1) No 2 of the Law on old age pensions, Article 1 (1) No 2 of the Law on invalidity pensions and Article 2 (1) No 2 of the law on widows' pensions and allowances are not applicable to workers or their survivors whose residence is in the territory of a Member State other than Denmark.'
- (c) the following paragraphs 6, 7, 8 and 9 shall be inserted after paragraph 5:
- '6. The Danish legislation governing old age and widows' pensions is applicable to the widow of a worker subject to the

Danish legislation, even if she was not resident in Denmark.

7. The terms of the Regulation shall be without prejudice to the provisional rules under the Danish Laws of 7 June 1972 on the pension rights of Danish nationals having their effective residence in Denmark for a specified period immediately preceding the date of the application. A pension shall be granted under those conditions laid down for Danish nationals to nationals of other Member States having their effective residence in Denmark during the year immediately preceding the date of application.

8. The periods during which a frontier worker or a seasonal worker residing within the territory of a Member State has worked in Denmark are to be considered as periods of residence for the purposes of the Danish legislation. The same applies to those periods during which such a worker is posted to the territory of a Member State other than Denmark.

9. In order to determine whether the conditions of a right to maternity benefits laid down in Chapter 12 of the Law on the daily cash benefits for sickness or maternity are satisfied in the case where the person concerned was not subject to the Danish legislation throughout the whole period referred to in Article 34 (1) or (2) of the aforementioned Law:

- (a) account shall be taken of the insurance periods completed, as appropriate, under the legislation of a Member State other than Denmark, during which the person concerned was not subject to the Danish legislation, as if those periods completed were under the latter legislation, and
- (b) the person concerned shall be deemed to have received during the periods taken into account an average salary equal to that of the average salary confirmed as having been paid during the periods completed under the Danish legislation for the said periods of reference.'

Article 2

This Regulation shall enter into force upon the accession of the new Member States to the European Communities.

Nevertheless, application of this Regulation shall be postponed in the new Member States until:

- 1 April 1973 for Denmark
- 1 April 1973 for Ireland
- 1 April 1973 for the United Kingdom.

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

Done at Brussels, 19 December 1972.

For the Council
The President
T. WESTERTERP
