

COUNCIL REGULATION (EEC) No 3811/86

of 11 December 1986

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 submitted by the Commission after consulting the Administrative Commission on Social Security for Migrant Workers⁽¹⁾,

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

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

Whereas it is necessary to make certain amendments to Council Regulations (EEC) No 1408/71⁽⁴⁾ and (EEC) No 574/72⁽⁵⁾ as last amended by the Act of Accession of Spain and Portugal and Commission Regulation (EEC) No 513/86⁽⁶⁾;

Whereas it is laid down in Article 14 c (1) a) of Regulation (EEC) No 1408/71 that a person who is employed simultaneously in the territory of one Member State and self-employed in the territory of another Member State shall be subject to the legislation of the Member State in the territory of which he is engaged in paid employment; whereas in Article 14 c (1) b) it is laid down that in the instances referred to in Annex VII, a person shall be subject to the legislation of each of the Member States in question as regards the activities carried out on their territory;

Whereas Article 14 c does not regulate those cases which have occurred in practice where more than two activities in a combination of paid employment and in self-employment are carried out in the territory of two or more Member States; whereas measures should be taken to remedy this situation by making an addition to Article 14 c;

Whereas it is necessary to determine the method of implementation of the present Article 14 c (1) b) in accor-

dance with paragraph 2 of that Article and the method of implementation required to regulate the pursuance of more than two activities where there is mixed paid employment and self-employment in the territory of different Member States;

Whereas it is necessary to amend Regulation (EEC) No 574/72 in order to fix the method of implementing Article 14 c thus supplemented;

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Article 14 c shall be replaced by the following:

'Article 14c

Special rules applicable to persons who are simultaneously employed in the territory of one Member State and self-employed in the territory of another Member State

A person who is simultaneously employed in the territory of one Member State and self-employed in the territory of another Member State shall be subject:

(a) save as otherwise provided in subparagraph b) to the legislation of the Member State in the territory of which he is engaged in paid employment or, where he pursues such an activity in the territory of two or more Member States, to the legislation determined in accordance with Article 14 (2) or (3);

(b) in the cases mentioned in Annex VII:

— to the legislation of the Member State in the territory of which he is engaged in paid employment, that legislation having been determined in accordance with the provisions of Article 14 (2) or (3), where he pursues such an activity in the territory of two or more Member States, and

— to the legislation of the Member State in the territory of which he is self-employed, that legislation having been determined in accordance with Article 14 a (2), (3) or (4), where he pursues such an activity in the territory of two or more Member States.';

⁽¹⁾ OJ No C 103, 30. 4. 1986, p. 5.

⁽²⁾ OJ No C 227, 8. 9. 1986, p. 152.

⁽³⁾ OJ No C 207, 18. 8. 1986, p. 27.

⁽⁴⁾ OJ No L 230, 22. 8. 1983, p. 8.

⁽⁵⁾ OJ No L 230, 22. 8. 1983, p. 86.

⁽⁶⁾ OJ No L 51, 28. 2. 1986, p. 44.

2. Article 14 d shall be amended as follows :

(a) in paragraph 1, '(1)' after 'Article 14 c' shall be deleted ;

(b) the following paragraph shall be inserted :

'2. The person referred to in Article 14 c b) shall be treated, for the purposes of determining the rates of contributions to be charged to self-employed workers under the legislation of the Member State in whose territory he is self-employed, as if he pursued his paid employment in the territory of the Member State concerned.'

(c) the present paragraph 2 shall become paragraph 3 ;

3. In the title of Annex VII, '(1)' shall be deleted.

Article 2

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

1. The following paragraph 3 shall be added to Article 8 :

'3. In the cases referred to in Article 14 c b) of the Regulation, where the person in question or a member of his family is entitled to claim benefits in kind in respect of sickness or maternity under the two legislations in question, the following rules shall be applicable :

(a) where at least one of those legislations stipulates that the benefits shall be awarded in the form of a reimbursement to the person entitled to benefit, this shall be the exclusive responsibility of the institution of the Member State in whose territory they have been awarded ;

(b) if the benefits have been awarded in the territory of a Member State other than the two Member States in question, they shall be the exclusive responsibility of the institution of the Member State to whose legislation the person in question is subject by virtue of his paid employment.'

2. The following paragraph 3 shall be added to Article 9 :

'3. By way of derogation from paragraphs 1 and 2 in the instances referred to in Article 14 c b) of the Regulation, entitlement to death grants acquired under the legislation of each of the two Member States concerned referred to in Annex VII shall be retained.'

3. Article 12 a shall be amended as follows :

(a) '(1) a)' after '14c' in the title and the introductory sentence shall be deleted ;

(b) in point 7 a), '(1)' after 'Article 14c' shall be deleted ;

(c) the following point shall be added :

'8. Where, in accordance with the provisions of Article 14c b) of the Regulation, a person who is simultaneously employed in the territory of

one Member State and self-employed in the territory of another Member State is subject to the legislation of two Member States, the provisions of points 1, 2, 3 and 4 shall be applicable in respect of paid employment, and the provisions of points 1, 2, 3, 5 and 6 shall be applicable *mutatis mutandis* in respect of self-employment.

The institutions designated by the competent authorities of the two Member States, whose legislation is determined to be applicable, shall inform each other accordingly.'

4. At the end of Article 15 (1) a), the semicolon shall be replaced by a full stop and the following sentence shall be added :

'Nevertheless, in the cases referred to in Article 4c b) of the Regulation, the abovementioned institutions shall likewise take account, for the award of benefits, of the periods of insurance or of residence completed under an obligatory insurance scheme under the legislation of the two Member States in question which overlap each other ;'

5. In the first subparagraph of Article 46 (1), the words 'Article 15 (1) b), c) and d)' shall be replaced by the words 'Article 15 (1) a), last sentence, b), c) and d) ;

6. After Article 119, the following Article shall be inserted :

'Article 119a

Transitional provisions relating to pensions for the purpose of applying the last part of Article 15 (1) a) of the implementing Regulation

1. Where the date on which the contingency arises precedes 1 January 1987 and where the claim for a pension has not yet resulted in an award before that date, such claim shall, in as much as benefits must be granted, pursuant to such contingency, for a period prior to the last-mentioned date, give rise to a double award :

(a) for the period prior to 1 January 1987, in accordance with the provisions of the Regulation or of agreements in force between the Member States concerned ;

(b) for the period commencing on 1 January 1987, in accordance with the provisions of the Regulation.

If, however, the amount calculated in pursuance of the provisions referred to under (a) is greater than that calculated in pursuance of the provisions referred to under (b), the person concerned shall continue to be entitled to the amount calculated in pursuance of the provisions referred to under (a).

2. A claim for invalidity, old-age or survivors' benefits submitted to an institution of a Member State from 1 January 1987 shall automatically necessitate the reassessment, in accordance with the provisions of the Regulation, of the benefits which have been awarded for the same contingency prior to that date by the institution or institutions of one or more of the other Member States, without prejudice to the provisions of Article 3.
3. The rights of the persons concerned who obtained the award of pensions prior to 1 January 1987 in the territory of the Member State in question may be revised at their request in the light of the provisions of Council Regulation (EEC) No 3811/86⁽¹⁾.
4. If the request referred to in paragraph 3 is submitted within one year following 1 January 1987, entitlement to rights under Regulation (EEC) No 3811/86 shall be acquired from 1 January 1987 or from the date of the entitlement to a pension where the last-mentioned date is subsequent to 1 January 1987; in such case the provisions of the legislation of any Member State with regard to the withdrawal or limitation of rights may not be relied upon as against the persons concerned.
5. If the request referred to in paragraph 3 is submitted after expiry of the period of one year following 1 January 1987, entitlement to rights acquired under Regulation (EEC) No 3811/86 which have not been withdrawn or in respect of which the period of limitation has not been exceeded shall be acquired from the date on which the request is submitted, unless more favourable provisions of the legislation of any of the Member States are applicable.

⁽¹⁾ OJ No L 355, 16. 12. 1986, p. 5.

Article 3

This Regulation shall not prejudice rights acquired before it entered into force by virtue of Regulations (EEC) No 1408/71 and (EEC) No 574/72.

Article 4

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

It shall apply with effect from 1 January 1987.

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

Done at Brussels, 11 December 1986.

For the Council

The President

K. CLARKE