DECISION No 152

of 13 May 1993

on the implementation of Article 10a of Regulation (EEC) No 1408/71 and Article 2 of Regulation (EEC) No 1247/92

(94/603/EC)

THE ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES ON SOCIAL SECURITY FOR MIGRANT WORKERS,

Having regard to Article 81 (a) of Council 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, under which it is made responsible for dealing with all administrative questions and questions of interpretation arising from Council Regulation (EEC) No 1408/71 and subsequent Regulations,

Having regard to Council Regulation (EEC) No 1247/92 of 30 April 1992 establishing a specific coordination system for special non-contributory benefits,

Whereas the said Regulation, by adding an Article 10a to Regulation (EEC) No 1408/71, provides that the persons concerned shall be granted the special benefits exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State, provided that such benefits are listed in Annex IIa;

Whereas under Regulation (EEC) No 1247/92 a right to special non-contributory benefits may be acquired simultaneously under the legislation of the country of residence and under that of one or more other Member States pursuant to Article 10a of Regulation (EEC) No 1408/71 and Article 2 of Regulation (EEC) No 1247/92;

Whereas, in the interests of beneficiaries, it is necessary to ensure coherent implementation of the coordination system established;

Whereas, the administrative steps which the persons concerned must take ought to be simplified as much as possible in order to ensure that they can receive in full and without interruption the special benefits to which they are entitled;

Whereas it is furthermore necessary to lay down the conditions for the application of national provisions on the reduction, suspension or withdrawal of benefit in order to enable those concerned to receive in total the highest non-contributory special benefits which they may claim under the various legislations involved and in order to avert unwarranted overlapping of the said benefits;

Whereas the amount of special benefits paid may thus be deducted from the amount of benefits remaining to be paid under the legislation of the other Member State or States involved, with the latter paying the beneficiary a differential supplement, where appropriate;

Whereas the rules thus laid down in no way affect the acquisition of entitlement under the legislations of all Member States involved,

HAS DECIDED AS FOLLOWS:

1. Subject to paragraph 2 and under the conditions laid down in paragraph 4 (b) of this Decision the special non-contributory benefits referred to in Article 4 (2) (a) of Regulation (EEC) No 1408/71 shall be provided in accordance with Article 2 of Regulation (EEC) No 1247/92 even if during the same period and for the same person such benefits are provided or could be provided in accordance with Article 10a of Regulation (EEC) No 1408/71.

2. With regard to the cases referred to in Article 2 (2) of Regulation (EEC) No 1247/92 and under the conditions laid down in paragraph 4 (b) of this Decision, the special benefits recognized under the legislation of the Member State in which the person concerned resides shall or shall continue to be provided in accordance with Article 10a of Regulation (EEC) No 1408/71 even if such benefits can be provided in accordance with Article 2 (2) of Regulation (EEC) No 1247/92.

   If when Regulation (EEC) No 1247/92 enters into force no special benefits have been recognized by the Member State of residence to whose legislation the person concerned was subject because of the pursuit of an occupation, the claim for special benefits submitted in the State of residence shall be valid as a claim in the other Member State or Member States concerned to whose legislation the person concerned was subject because of the pursuit of an occupation, and vice versa.

   Cost-sharing arrangements between the Member State of residence and the other Member State or States concerned may be agreed upon at bilateral or multilateral level between the States concerned.

3. Where special benefits may during the same period and for the same person be provided under Article 2 of Regulation (EEC) No 1247/92 in accordance with the legislation of two or more Member States, the provisions of this Article shall be applied by the competent institution of the Member State in which the person concerned completed the longest period of insurance, work or residence and thereafter by each of the competent insitutions of the other Member States in descending order in proportion to the length of the periods of insurance, work or residence completed by the person concerned in each of these States, under the conditions laid down in paragraph 4 (b) of this Decision.

4. (a) The provisions on reduction, suspension or withdrawal laid down by the legislation of a Member State in the event of the overlapping of a special non-contributory benefit as provided for in Article 4 (2) (a) of Regulation (EEC) No 1408/71 with other special benefits or with other income of any kind shall be applicable to the beneficiary even if the latter's benefits were acquired under the legislation of another Member State or if such income was obtained in the territory of another Member State.

   (b) However,

   — within the framework of paragraph 1 of this Decision, where a special benefit provided under Article 2 of Regulation (EEC) No 1247/92 is subject to a provision on the reduction, suspension or withdrawal of benefit in the event of overlapping with other special benefits or with other income of any nature, no account shall be taken for the application of such provision of special benefits that are provided or could be provided under Article 10a of Regulation (EEC) No 1408/71,

   — within the framework of paragraph 2 of this Decision, where a special benefit provided under Article 10a of Regulation (EEC) No 1408/71 is subject to such a provision, no account shall be taken for the application of such provision of

other special benefits that may be provided under Article 2 (2) of Regulation (EEC) No 1247/92,

— within the framework of paragraph 3 of this Decision, the competent institution of the Member State that is the priority State in descending order which administers a legislation including such a provision shall not take account either, for the application of such provision, of special benefits remaining due under the legislation of other non-priority Member States in accordance with Article 2 of Regulation (EEC) No 1247/92.

5. This Decision shall be applicable from the first day of the month following its publication in the *Official Journal of the European Communities*. It shall be effective from the date of entry into force of Regulation (EEC) No 1247/92.

The Chairman

of the Administrative Commission

Poul VORRE