II

(Acts whose publication is not obligatory)

COMMISSION

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

DECISION No 156

of 7 April 1995

concerning the rules of priority with regard to sickness and maternity insurance

(95/419/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 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed person and to members of their families moving within the Community, under which it is made responsible for dealing with all administrative questions arising from the provisions of that Regulation,

Having regard to Article 34 (2) of Regulation (EEC) No 1408/71 under which the provisions of the said Regulation concerning the grant of sickness and maternity insurance benefits in kind to pensioners and to members of their families (Articles 27 to 33) 'shall not apply to a pensioner or to members of his family who are entitled to benefits under the legislation of a Member State as a result of pursuing a professional or trade activity. In such a case, the person concerned shall, for the purposes of the implementation of this chapter, be considered as an employed or self-employed person or as a member of an employed or self-employed person's family';

Whereas it is necessary to delimit accurately the scope of this Article and to extend its field of application so as to avert divergencies of interpretation between the social security institutions of the Member States;

Whereas rules of priority should be laid down for the application of the chapter on sickness and maternity of the Regulation where an unemployed person resumes a part-time professional or trade activity in the territory of a Member State other than that under whose legislation he continues to receive unemployment benefits;

Whereas it is necessary to lay down rules of priority for the application of the chapter on sickness and maternity where a pensioner who pursues a professional or trade activity in another Member State becomes unemployed;

Whereas, however, these rules of priority must not affect the precedence of the rule of pirority of personal rights over derived rights,

HAS DECIDED AS FOLLOWS:

1. Article 25 of Regulation (EEC) No 1408/71 shall not be applicable to a wholly unemployed person who resumes a part-time professional or trade activity or to members of his family who are entitled to benefits under the legislation of a Member State because of the pursuit of such professional or trade activity. In this case the person concerned shall, for the purposes of the chapter on sickness and maternity of the said Regulation, be considered an employed or self-employed person and the members of his family as members of an employed or self-employed person's family.

2. Articles 27 to 33 of Regulation (EEC) No 1408/71 shall not be applicable to pensioners or members of their families who are entitled to benefits under the legislation of a Member State by vitue of the receipt of unemployment benefit. In this case, the person concerned shall, for the purposes of the chapter on sickness and maternity of the said Regulation, be considered an employed or self-employed person who has become unemployed and the members of his family as members of the family of an employed or self-employed person who has become unemployed.

3. The application of Article 34 (2) of Regulation (EEC) No 1408/71 and of the abovementioned provisions cannot reverse, for the person concerned, the order of priority of rights personally he has acquired by pursuing a professional or trade activity, by being wholly unemployed or by receiving a pension over derived rights he has acquired through another person of whom he is a member of the family or a survivor.

4. This Decision shall be applicable from the first day of the month following its publication in the *Official Journal of the European Communities.*

The Chairman
of the Administrative Commission
Monique MOUSSEAU