RESOLUTION

of the Administrative Commission of 29 June 2000 concerning criteria for the inclusion of benefits as 'special non-contributory benefits' in Annex II, Section III or in Annex IIa of Regulation (EEC) No 1408/71

(2001/C 44/06)

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

On the basis of Article 81(g) 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 members of their families moving within the Community, pursuant to which it may submit proposals to the Commission for working out subsequent regulations and for the revision of the existing and subsequent regulations,

Whereas, in its judgments of 4 November 1997 in Case C-20/96, *Snares*, and 11 June 1998 in Case C-297/96, *Partridge*, the European Court of Justice implicitly held that it is for the Council to examine benefits in respect of the prerequisites for inclusion as 'special non-contributory benefits' in Annex IIa to Regulation (EEC) No 1408/71; whereas, therefore, responsibility lies mainly with the Council; whereas the Administrative Commission also has a certain responsibility for preparing the necessary legal instruments;

Whereas in the past it was particularly difficult to accommodate the wishes of certain Member States for the inclusion of certain benefits in this annex because no generally accepted criteria for the classification of a benefit as 'special non-contributory benefit' have been adopted;

Whereas the new applicant countries in particular have repeatedly stressed the need for such objective criteria;

Whereas commonly agreed objective criteria for the inclusion of certain benefits in this annex do not call for a review of the benefits which already, by common accord, have been included in this annex;

Convinced that an agreement on criteria for the inclusion of a benefit as a 'special non-contributory benefit' in Annex IIa to Regulation (EEC) No 1408/71 would considerably speed up the associated preparatory discussions at the Administrative Commission on social security for migrant workers, and also contribute to legal certainty, whereby in particular there is a need to distinguish regional special non-contributory benefits that are excluded pursuant to Article 4(2)(b) of Regulation (EEC) No 1408/71,

HAS REACHED AGREEMENT ON THE FOLLOWING CRITERIA:

1. Regulation (EEC) No 1408/71 sets out the criteria to be met for a benefit to be classified as a 'special non-contributory benefit'. These criteria are examined below on a systematic basis.

2. Article 4(2)(a) of the Regulation applies to special non-contributory benefits, which are provided under legislation or schemes other than those referred to in Article 4(1) and are not benefits excluded pursuant to Article 4(4), in so far as these benefits are intended to provide supplementary, substitute or ancillary cover against the risks referred to in Article 4(1) or are intended solely as specific protection for the disabled. Although Article 4(2)(a) applies to both special non-contributory benefits in kind and in cash, Article 19(a) only concerns cash benefits.

3. Because of the close material links, the criteria set out in Article 4(2)(a) also cover those special non-contributory benefits that are confined to part of a territory of a Member State, and which therefore, pursuant to Article 4(2)(b) can be fully excluded from matters covered by the Regulation, by entering them in section III of Annex II. However, for these benefits there is an additional criterion in that they must not apply in a uniform manner to the entire territory of the Member State concerned, and that responsibility for regulating these benefits lies exclusively with the local authorities. It is not enough merely to decentralise the administration of these benefits for them to be considered as special non-contributory benefits within the meaning of Article 4(2)(b) of Regulation (EEC) No 1408/71.

THE MEANING OF NON-CONTRIBUTORY

4. The following criteria are particularly relevant in determining whether a benefit is 'non-contributory' or not:

   (a) The funding of the benefit should be considered as a decisive factor and the scheme, which could be a special or general scheme, should be exclusively financed by taxes designed to meet general public charges or by taxes whose purpose is to finance social security.

(b) The fact that a benefit is funded exclusively by employers' contributions does not mean that the benefit is non-contributory from the point of view of the protected worker.

THE MEANING OF 'SPECIAL'

5. The following cumulative criteria are particularly relevant in determining whether a benefit is 'special':

(a) The benefit has the characteristics of a social security benefit of a 'mixed type', in that it gives the beneficiary a legally defined right to benefit which is a characteristic of a social security benefit but also contains features of social assistance, in that the particular financial and/or other needs of the individual are taken into account.

(b) The characteristics of the category of benefit are closely linked to a particular social and economic context in the Member State where the beneficiary resides.

(c) In the case of insufficient economic resources, the benefit is designed to provide assistance.

(d) The award could be subject to means testing, although due to its general nature it is not always necessary to examine the specific circumstances of each individual case. Means testing is an important though not an essential criterion, which may, in particular, take into account income from gainful activity or other social security benefits.

THE MEANING OF SUPPLEMENTARY, SUBSTITUTE, AND ANCILLARY COVER

6. Substitute benefits are benefits provided instead of the 'normal' benefits granted in respect of the risks referred to in Article 4(1) of Regulation (EEC) No 1408/71. Thus in the case of these benefits the risk covered must be identical. This category concerns in particular benefits that are granted to persons who do not, for example, satisfy the insurance conditions for entitlement to the 'normal' benefits.

7. Supplementary/ancillary benefits are, firstly, benefits granted in conjunction with one of the 'normal' benefits referred to in Article 4(1) that cover the same risks as these benefits. (Hence the basic prerequisite is that the person must also be receiving such a 'normal' benefit, such as a benefit that 'tops up' the recipient's income to that of a minimum pension granted to residents who qualify for the 'normal' old age pension granted to the working population, when this pension is lower than the statutory minimum.) This category also includes benefits granted together with the 'normal' benefits covered by Article 4(1), but which cover a different risk than these benefits (hence the basic prerequisite is that the person must also be receiving such a 'normal' benefit — e.g. pension supplements because of mental or physical disability).

BENEFITS SOLELY AS SPECIFIC PROTECTION FOR THE DISABLED

8. These may be benefits that are paid to, or in respect of, a disabled person for the general purpose of helping to meet the extra outlays associated with the disability, for example help towards the costs arising from the care and mobility needs of a disabled person, or benefits intended to guarantee a minimum income.

9. The may include benefits intended to assist a disabled person into work, to enable them to continue in work, or to provide help with the additional needs connected with the employment.

10. They may also include benefits awarded to a person in relation to that person's role in the provision of care to a disabled person falling within paragraphs 8 or 9.

The Chairman of the Administrative Commission

Pinto PIZARRO