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Title

Non Active persons

Created 23/08/2009

Modified 25/11/2009

References:

- **Recitals :** 1, 13, 42 BR
- **BR :** Articles 2, 11.(1),(2), and (3)(e)
- **IR:** Article 11
- **AC Decision :**
- **ECJ CASE Law:**

Comments:

- There is no proper definition of this notion which is used only in Recital 42 BR. However, part of this category of persons was already covered by Regulation 1408/71, namely pensioners and persons covered by Article 13 (2) (f) of Regulation 1408/71. In addition, Regulation 1408/71 also covered family members and survivors of a worker, who may not necessarily be economically active themselves. Regulation 1408/71 also applied to students.
- What brings us to deal with "non active persons" as a prominent category is the extension of the personal scope of Regulation 883/04. The modernised coordination rules apply to all persons "who are or have been subject to the legislation of one or more Member States as well as to the members of their families and to their survivors" (see Article 2 BR). Where a non-active person presents a cross-border dimension and a Member State's social security (including healthcare) legislation applies, or has applied, to him, then he comes within the personal scope of Regulation 883/2004.
- Active persons are obviously people who work, be it as employed, self employed or civil servant; but also people who receive a sickness benefit in cash, or an unemployment benefit (see Article 11 (2) BR.
- By contrast, people receiving invalidity, old-age or survivors' pension, or pensions in respect of accidents at work or occupational diseases, or sickness benefits in cash covering treatment for an unlimited period are to be considered as non active persons.
- To give an idea of other persons to be considered as non active persons: these are persons who are not economically active and do not have a link with entitlement to social security benefits deriving from a current or past employment relationship. This can be a temporary status, students during their schooling (or education) period, or an unemployed person with no more or no entitlement to

unemployment benefits (he will be considered as a non active until he hopefully finds a new job). A non-active person can also be a permanent status, for example, a person who has never worked and never will for whatever reasons (severe disability, no financial need).

- The distinction between active and non-economically active persons is of great importance for the determination of the applicable legislation. In fact, this question becomes a central issue for institutions, as a non active person can become an active one, and vice versa. Such a change of status has a direct impact on the determination of the applicable legislation.
- For active persons the "lex loci labori" applies and has even been reinforced (see Article 11 BR).
- Non active persons are subject to the legislation of the MS of residence, (Article 11 (3) (e) BR However, it is important to stress that this legislation applies "without prejudice to other provision of the BR Regulation". It is thus necessary to check in each branch of insurance in Title III whether another specific provision has to be applied. For instance, in the case of a person who gets a pension from one MS but resides in another, the competent MS in the case of sickness benefits is the MS which pays the pension. In the same way, also in the case of pensioners, the MS which pays the pension is also the MS of priority for family benefits in accordance with Chapter 8 BR
- There is a special rule for persons residing in a Member State other than the competent State and who receive an unemployment benefit from the country where they reside. These persons are subject to the legislation of the MS of residence (Article 11 (3) (c) BR)
- The guidance on this concept is of necessity general. It is probable that, in the light of experience, further clarification on this concept will be provided by the AC.

To go further:

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