



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.09.1998
COM(1998) 547 final

98/0285 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

**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**

(Miscellaneous Amendments 1998)

(presented by the Commission)

EXPLANATORY MEMORANDUM

relating to the proposal for a Council Regulation (EC) 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 (Miscellaneous amendments 1998).

I. INTRODUCTION

Regulations (EEC) No 1408/71 and No 574/72 were updated by Regulation (EC) No 118/97¹ and last amended by Regulation (EC) No 1606/98².

The purpose of this proposal is to update these Community Regulations to take account of changes to national legislation, certain bilateral agreements concluded between Member States and the possibility of amendments to the Annexes of the implementing Regulation being made by the Commission.

II. COMMENTS ON THE ARTICLES

Article 1

Amendments to Regulation (EEC) No 1408/71

1. Amendments to Chapters 3 and 8

The present Chapter 8 provides for common rules in respect of orphan's pensions and family allowances for orphans. Given that interpretation of this Chapter by the Court³ gives rise to problems of an interpretational and administrative nature, it is proposed to transfer orphan's pensions to Chapter 3 and to apply the rules provided for in Chapter 8 only to family allowances for orphans. The Regulation thus follows the method already adopted for orphan's pensions arising from a special scheme for civil servants.

2. Amendment of Annex IIa

Annex IIa lists the special non-contributory benefits granted to persons exclusively in the territory of the Member State in which they reside, in accordance with Article 10a of the Regulation. These are social security benefits directly linked to the economic and social environment of the Member State concerned.

In view of the changes made to Portuguese legislation concerning some non-contributory benefits, family benefits and others, it is necessary to amend some items in section "L. PORTUGAL". The proposed amendments simply update the existing list in this section and are therefore not an extension of the list.

¹ OJ L 28, 30.1.1997.

² OJ L 209, 25.7.1998.

³ Judgment of 11 June 1991, Case C-251/89 ATHANASOPOULOS, Ground No 20 [1991] ECR I-2839; judgment of 27 February 1997, Case C-59/95 BASTOS MORIANA [1997] ECR I-1071.

3. Amendment of Annex VI

Annex VI lists the special procedures for applying the legislations of certain Member States.

a) and b) Amendment of section "G. IRELAND" and amendment of section "O. UNITED KINGDOM"

The proposed amendment introduces a specific rule of priority for family allowances where there is only one person employed. In principle, Article 73 of Regulation 1408/71 would be applicable, and, consequently, only the Member State in whose territory the employment is carried out would be responsible for the payment of benefits. However, legislation in the United Kingdom (Northern Ireland) and in Ireland guarantees entitlement to Family Credit (UK) and Family Income Supplement (IRL) to people who carry out employment in the territory of the other Member State. Rules of priority should therefore be drawn up in the event of cumulation of entitlement to family benefits under the legislation of the United Kingdom and Ireland through the exercising of a professional activity in the territory of one of these two Member States.

Article 2

Amendments to Regulation (EEC) No 574/72

1. Amendment of Article 122

Article 122 contains special provisions concerning the amendment of certain Annexes to the implementing Regulation.

The purpose of the proposal is to extend the Commission's authority to amend all the Annexes to Regulation (EEC) No 574/72 at the request of the Member State or Member States concerned or their competent authorities, and after the opinion of the Administrative Commission has been obtained. In the past, amendments to these Annexes accounted for the bulk of the proposals for Miscellaneous Amendments to Regulation 574/72. In order to facilitate the amendment procedure, the Commission should be authorised to amend not only Annexes 1, 4, 5, 6, 7 and 8, as is the case at present, but all the Annexes to this Regulation. It should also be taken into account that, firstly, the purpose of amending these Annexes is simply to incorporate into a Community instrument decisions taken by the Member States concerned or their competent authorities and, secondly, the provisions contained in these Annexes have no direct influence on the determination of the rights of individuals.

2. Amendment of Annex 5

Annex 5 refers to the implementing provisions of bilateral conventions which remain in force. An amendment is to be made to this Annex.

The proposed amendment to heading 43 results from the signing of an agreement between the competent authorities in Spain and Italy on the definition of late reciprocal claims and the setting up of a new procedure to simplify and improve the reimbursement of actual and lump-sum expenditure.

3. Amendment of Annex 10

Annex 10 lists the institutions and bodies designated by the competent authorities.

a) Amendment of section "E. FRANCE"

The proposed amendment to point 5 is a result of the administrative reorganisation in France concerning the examination of applications for the extension of postings or special postings.

III. JUSTIFICATION FOR THE PROPOSAL FOR A REGULATION WITH REGARD TO THE PRINCIPLE OF SUBSIDIARITY

This proposal for a Council Regulation conforms to the principle of subsidiarity as regards the two underlying criteria, namely necessity and proportionality, as specified in Article 3b of the European Community Treaty.

On the one hand, Article 51 requires the Council to adopt such measures in the field of social security as are necessary to provide freedom of movement for workers within the Community. The coordination of national social security schemes therefore falls exclusively within the competence of the Community. On the other hand, a binding legislative instrument, in the form of a regulation, is clearly proportionate to the objective pursued, i.e. ensuring effective freedom of movement. This is why the Council has chosen such an instrument as being the most appropriate means of achieving this objective.

IV. APPLICATION IN THE COUNTRIES OF THE EUROPEAN ECONOMIC AREA

Freedom of movement for persons is one of the objectives and principles of the Agreement on the European Economic Area (EEA), which entered into force on 1 January 1994⁴. In Chapter 1 of Part III on the free movement of persons, services and capital, Articles 28, 29 and 30 are devoted to the free movement of workers and self-employed persons. Article 29 more specifically reiterates the principles set out in Article 51 of the EC Treaty relating to social security for persons moving within the Community. Consequently, this proposal for a Regulation, if adopted, must be applied to the member countries of the EEA.

⁴ OJ L 1, 3.1.1994, as amended by Decision of the EEA Joint Committee No 7/94 of 21 March 1994 (OJ L 160, 28.6.1994).

**Proposal for a
COUNCIL REGULATION (EC)**

**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 UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 51 and 235 thereof,

Having regard to the proposal from the Commission⁵, presented after consulting the Administrative Commission on Social Security for Migrant Workers,

Having regard to the Opinion of the European Parliament⁶,

Having regard to the Opinion of the Economic and Social Committee⁷,

Whereas it is appropriate to make certain amendments to Council Regulations (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 Community⁸ and No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EC) 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 Community⁹; whereas these amendments are linked to changes which Member States have made to their social security legislation;

Whereas the application of Chapter 8 to orphan's pensions raises problems of interpretation and administration, and it is in the interests of the persons concerned for orphan's pensions to be calculated in accordance with the provisions of Chapter 3 of Title III, rather than on the basis of the provisions of Chapter 8;

Whereas it seems appropriate to amend section "L. PORTUGAL" of Annex IIa in order to take into account the changes made to Portuguese legislation;

Whereas a new point should be added to section "G. IRELAND" and another to section "O. UNITED KINGDOM" of Annex VI in order to take into account the specific rules of priority in the event of cumulation of entitlement to family allowances under United Kingdom and Irish

5

6

7

⁸ OJ L 149, 5.7.1971, p. 2. Regulation as updated by Regulation (EC) No 118/97 (OJ L 28, 30.1.1997) and last amended by Regulation (EC) No 1606/98 (OJ L 209, 25. 7.1998).

⁹ OJ L 74, 27.03.1972, p. 1. Regulation as updated by Regulation (EC) No 118/97 (OJ L 28, 30.1.1997) and last amended by Regulation (EC) No 1290/97 (OJ L 176, 4.7.1997).

legislation through the exercising of a professional activity in the territory of one of those two Member States;

Whereas the provisions contained in the Annexes to Regulation (EEC) No 574/72 have no direct influence on the determination of the rights of individuals;

Whereas it should be possible for all the Annexes to Regulation (EEC) No 574/72 to be amended by a Regulation adopted by the Commission at the request of the Member State or Member States concerned or their competent authorities, after the opinion of the Administrative Commission has been obtained; whereas in actual fact the purpose of amending these Annexes is simply to incorporate into a Community instrument decisions taken by the Member States concerned or their competent authorities;

Whereas it is necessary to amend section "43. SPAIN-ITALY" of Annex 5 to Regulation (EEC) No 574/72;

Whereas, as a result of the administrative reorganisation in France concerning the examination of applications for the extension of postings or special postings, section "E. FRANCE" of Annex 10 to Regulation (EEC) No 574/72 should be amended accordingly;

Whereas, in order to attain the objective of free movement for workers in the field of social security, it is necessary and appropriate to amend the rules relating to the coordination of national social security schemes through a Community legal instrument that is binding and directly applicable in each Member State;

Whereas this is consistent with the provisions of the third paragraph of Article 3b of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Article 44(3) is replaced by the following:
"3. This Chapter shall not apply to increases in or supplements to pensions in respect of children granted in accordance with the provisions of Chapter 8."
2. Article 78(1) is replaced by the following:
"1. The term 'benefits', for the purposes of this Article, means family allowances and, where appropriate, supplementary or special allowances for orphans."
3. Article 79(1) is replaced by the following:
"1. Benefits, within the meaning of Articles 77 and 78, shall be provided in accordance with the legislation determined by applying the provisions of those Articles by the institution responsible for administering such legislation and at its expense, as if the pensioner or the deceased had been subject only to the legislation of the competent State. However, if that legislation provides that the acquisition, retention or recovery of the right to benefits shall be dependent on the length of periods of insurance, employment, self-employment or residence, such length shall be determined taking into account, where appropriate, the provisions of Article 45 or, as the case may be, Article 72."

4. In Annex IIa, section "L. PORTUGAL" is replaced by the following:

"L. PORTUGAL

- a) *non-contributory family allowance for children and young persons and the associated additional sum payable for disability (Decree-Law No 160/80 of 27.5.1980, as amended by Decree-Law No 133-C/97 of 30.5.1997);*
 - b) *non-contributory allowance for attending a special educational establishment (Decree-Law No 160/80 of 27.5.1980, as amended by Decree-Law No 133-C/97 of 30.5.1997);*
 - c) *non-contributory orphan's pension (Decree-Law No 160/80 of 27.5.1980, as amended by Decree-Law No 133-C/97 of 30.5.1997);*
 - d) *non-contributory state old-age and invalidity pension (Decree-Law No 464/80 of 13.10.1980);*
 - e) *non-contributory allowance for care provided by a third party (Decree-Law No 160/80 of 27.5.1980, as amended by Decree-Law No 133-C/97 of 30.5.1997);*
 - f) *non-contributory widow's pension (Regulatory Decree No 52/81 of 11.11.1981)."*
5. Annex VI is amended as follows:
- a) the following point is added to section "G. IRELAND":

"11. Entitlement to family income supplement granted solely under the legislation of Ireland shall be suspended where, over the same period and in respect of the same member of the family, family benefits are payable solely under the legislation of the United Kingdom or up to the amount of those benefits pursuant to Articles 73, 74, 77 or 78 of the Regulation".

- b) the following point is added to section "O. UNITED KINGDOM":

"21. Entitlement to family credit granted solely under the legislation of the United Kingdom shall be suspended, where, over the same period and in respect of the same member of the family, family benefits are payable solely under the legislation of Ireland or up to the amount of those benefits pursuant to Articles 73, 74, 77 or 78 of the Regulation".

Article 2

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

1. Article 122 is replaced by the following:

"Article 122

Special provisions concerning the amendment of the Annexes

The Annexes to the implementing Regulation may be amended by a Commission Regulation at the request of the Member State or Member States concerned or their competent authorities, and after the opinion of the Administrative Commission has been obtained".

2. Annex 5 is amended as follows:

- a) under heading "43. SPAIN - ITALY", the word "None" is replaced by the following:

"The Agreement of 21 November 1997 concerning Article 36(3) of the Regulation (reimbursement of sickness and maternity benefits in kind) and Articles 93, 94, 95,

100 and 102(5) of the implementing Regulation (procedures for the refund of sickness and maternity insurance benefits and late claims)."

3. Annex 10 is amended as follows:

In section "E. FRANCE", point 5 is replaced by the following:

"5. For the purposes of applying Article 14(1)(b), Article 14a(1)(b) and Article 17 of the Regulation:

Centre de sécurité sociale des travailleurs migrants (Centre for the Social Security of Migrant Workers), Paris".

Article 3

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

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

Done at Brussels,

For the Council

The President

ISSN 0254-1475

COM(98) 547 final

DOCUMENTS

EN

Classification

in Manuscript

05 04 06 09

Catalogue number : CB-CO-98-555-EN-C

ISBN 92-78-39508-0

Office for Official Publications of the European Communities

L-2985 Luxembourg