

**COUNCIL REGULATION (EC) No. 3096/95**

of 22 December 1995

**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 recorder for implementing Regulation (EEC) No. 1408/71**

OJ No. L335, 30.12.95, p.10

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 Commission, submitted following consultation of the Administrative Commission on Social security for Migrant Workers<sup>(1)</sup>.

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

1. Whereas it is necessary to introduce certain amendments to Regulations (EEC) No. 1408/71<sup>(4)</sup> and (EEC) No. 574/72<sup>(5)</sup>; whereas some of these amendments are linked to changes introduced by Member States to their social security legislation, with others being technical in nature and intended to complete the said Regulations;

2. Whereas it is necessary, given the fact that the nature of and the conditions for granting special adoption allowances are similar to those for childbirth allowances, to supplement Article 1(u)(i) of Regulation (EEC) No. 1408/71 in order to enable reference to be made to these in Section II of Annex II;

3. Whereas it appears necessary to enable seconded employed persons employed on the territory of several Member States or employed on the territory of a Member State in an undertaking having its registered place of business in another Member State and operating across their shared frontier; self-employed worker in similar situations; seamen in comparable situations and persons benefiting from a derogation to the provisions of Articles 13 to 16 of Regulation (EEC) No. 1408/71 by agreement between competent authorities, including civil servants and persons treated as such; and to members of their families accompanying them, to benefit from the provisions of Article 22(1)(a) of Regulation (EEC) No. 1408/71 for any situation in which benefits are required, provided that the stay is for occupational purposes;

4. Whereas it is necessary, for reasons of simplification and unification of the administrative regulations, to delete Article 32 of Regulation (EEC) No. 1408/71;

5. Whereas Article 49(1)(b) permits payment of benefit taking account only of periods completed under legislation's conferring entitlement, when these periods suffice for calculating benefits by applying the legislation's whose conditions are satisfied; whereas however taking account of periods completed under legislation's whose conditions of entitlement are not satisfied may result in higher levels

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<sup>(1)</sup> OJ No. C260, 5.10.1995, p.13.

<sup>(2)</sup> OJ No. C339, 18.12.1995.

<sup>(3)</sup> Opinion delivered on 23 November 1995 (not yet published in the Official Journal).

<sup>(4)</sup> OJ No. L149, 5.7.1971, p. 2. Regulation as last amended by the 1994 Act of Accession.

<sup>(5)</sup> OJ No. L74, 27.3.1972, p.1. Regulation as last amended by the 1994 Act of Accession.

of benefit in certain situations, to be determined, under the legislation for which the conditions are satisfied; whereas it therefore appears useful to supplement Article 49(1)(b)(i) and (ii) in order to permit such periods to be taken into account when it results in the person concerned receiving a higher level of benefit;

6. Whereas it is necessary to amend the heading “B. DENMARK” of Annex I.II to Regulation (EEC) No. 1408/71 in order to specify the current definition of the expression ‘members of the family’;

7. Whereas, in the light of the amendment to be introduced to Article 1(u)(i) of Regulation (EEC) No. 1408/71, the title of Section II of Annex II must be amended accordingly; whereas the headings “a. BELGIUM” and “E. FRANCE” of this Annex should be supplemented to take account respectively of the adoption premium and adoption allowance which have been introduced in the legislation of these Member States in relation to family benefits;

8. Whereas it is necessary to add to Annex Iia to Regulation (EEC) No. 1408/71, under the heading “B. DENMARK”, the accommodation allowance for retired persons, and under the heading “O. UNITED KINGDOM”, the income-base allowances for jobseekers, which constitute special non-contributory benefit within the meaning of paragraph 2a of Article 4 of Regulation (EEC) No. 1408/71;

9. Whereas it would appear advantageous to specify in Annex III A and B, heading “35. GERMANY—AUSTRIA”, (e) to Regulation (EEC) No. 1408/71, that the temporary application of the provisions of the bilateral agreement between Germany and Austria also remain valid in the event of a transformation of a pension;

10. Whereas it has become necessary, following the judgments of the Court of Justice delivered in Case 87/76 (Bozzone) and Joined Cases 82 and 103/86 (Laboreror e Sabota), and make certain amendments to the Annexes to Regulations (EEC) No. 1408/71 and (EEC) No. 574/72 to take account of the fact that the Belgian Overseas Social Insurance System falls within the scope of the said Regulations;

11. Whereas the heading “O. UNITED KINGDOM” of Annex IV C to Regulation (EEC) No. 1408/71 should be amended to enable the competent United Kingdom authorities to renounce the pro rata calculation of the pension when this calculation does not give a result financially more favourable to the beneficiary;

12. Whereas, following changes in German legislation on this subject, it is necessary to adopt accordingly the heading “C. GERMANY” of Annex VI to Regulation (EEC) No. 1408/71;

13. Whereas it is also necessary to delete points 1 and 2 and insert a new point under the heading “L. PORTUGAL” of Annex vVI to regulation (EEC) No. 1408/71 in order that active or retired civil servants and members of their family may receive sickness and/or maternity benefits in kind in the event of immediate need during the course of a stay in the territory of another Member State or when travelling there to receive care appropriate to their state of health with the prior authorization of the competent Portuguese institutions;

14. Whereas, following the agreements concluded between Belgium and Luxembourg, point 1 of Annex VII to Regulation (EEC), No. 1408/71 should be adjusted accordingly;

15. Whereas it is necessary to insert a new Article 19a in Regulation (EEC) No. 574/72 in order to permit the administrative and financial implementation of the provision of benefits in kind in the event of a stay in the competent State of members of the family residing in a Member State other than that in which the employed or self-employed person resides;

16. Whereas, following an administrative reorganization in Austria, it is necessary to adapt accordingly the heading “K. AUSTRIA” in Annexes 1,2,3,4 and 10 to Regulation (EEC) No. 574/72;

17. Whereas items “4. BELGIUM—FRANCE”, “23. DENMARK —AUSTRIA”, “41. FRANCE—ITALY”, “82, ITALY—UNITED KINGDOM”, “84. LUXEMBOURG—AUSTRIA”, “95, AUSTRIA-FINLAND” and “97, AUSTRIA—UNITED KINGDOM” of Annex 5 to Regulation (EEC) No. 574/72 must be adopted to take account of agreements concluded by these Member States.

HAS ADOPTED THIS REGULATION:

- [Art. 1(1) substitutes art. 1(u)(i) of Reg. 1408/71.]
- [Art. 1(2) inserts art. 22b into Reg. 1408/71.]
- [Art. 1(3) deletes art. 32 from Reg. 1408/71.]
- [Art. 1(4) amends art, 36(1) of Reg. 1408/71.]
- [Art. 1(5) deletes art. 49(1)(b) of Reg. 1408/71.]
- [Art. 1(6) amends Section II of Annex I to Reg. 1408/71.]
- [Art. 1(7) amends Section II of Annex II to Reg. 1408/71.]
- [Art. 1(8) amends Annex IIa to Reg. 1408/71.]
- [Art. 1(9) amends Section A of Annex III to Reg. 1408/71.]
- [Art. 1(10) amends Section B of Annex III to Reg. 1408/71.]
- [Art. 1(11) amends Section A of Annex IV to Reg. 1408/71.]
- [Art. 1(12) amends Section C of Annex IV to Reg. 1408/71.]
- [Art. 1(13) amends Annex V to Reg. 1408/71.]
- [Art. 1(14) amends Annex VI to Reg. 1408/71.]
- [Art. 1(15) amends Annex VII to Reg. 1408/71.]
- [Art. 2(1) inserts art. 19a into Reg. 574/72.]
- [Art. 2(2) amends Annex 1 to Reg. 574/72.]
- [Art. 2(3) amends Annex 2 to Reg. 574/72.]
- [Art. 2(4) amends Annex 3 to Reg. 574/72.]
- [Art. 2(5) amends Annex 4 to Reg. 574/72.]
- [Art. 2(6) amends Annex 5 to Reg. 574/72.]
- [Art. 2(7) amends Annex 10 to Reg. 574/72.]

### Article 3

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

As regards old age benefits an survivor’s benefits Article 1(5) shall apply with effect from 1 June 1992.

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

Done at Brussels, 22 December 1995.

*For the council*  
*The President*  
L. ATIENZA SERNA

