

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 707 final.

Brussels, 22 December 1977

Proposal for a  
COUNCIL REGULATION (EEC)  
concerning the adaptation of Regulation (EEC) No 1408/71 of the  
Council of 14 June 1971 on the application of social security  
schemes to employed persons and their families moving within  
the Community, with a view to applying it to self-employed  
persons and their families .

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Proposal for a  
COUNCIL REGULATION (EEC)  
concerning the adaptation of the Annexes to Regulation (EEC)  
No 1408/71 of the Council of 14 June 1971 on the application  
of social security schemes to employed persons and their  
families moving within the Community, with a view  
to applying it to self-employed persons and  
their families

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(submitted to the Council by the Commission)

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ANNEX A

PROPOSALS FOR REGULATIONS OF THE COUNCIL

concerning the adaptation of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, and Annexes thereto, with a view to applying them to self-employed persons and their families.

### General introduction

The attainment of freedom of movement for employed persons of necessity means implementing a system to coordinate national social security schemes. Since 1959, when Regulations Nos 3 and 4 - which were replaced on 1 October 1972 by Regulations (EEC) Nos 1408/71 and 574/72 - on social security for migrant workers entered into force, employed persons are covered by Community rules guaranteeing them equality of treatment with regard to national legislations, the retention of rights acquired under the various national schemes to which they had been subject, and the abolition of conditions of residence for the award of benefits, in accordance with Articles 7 and 51 of the Treaty of Rome.

These rules apply, in the first place, to some 1 760 000<sup>1</sup> actual migrant workers, and to the members of their families. Its best-known feature, however, i.e. the provision of sickness insurance benefits in kind to persons who are holidaying in a Member State other than the State in which they are insured, concerns virtually all persons employed in the Community and the members of their families. The amount of money transferred in 1977 among the Member States pursuant to these rules is estimated at 15 000 million Belgian francs.

In view of the progress made in attaining freedom of establishment and freedom to provide services as regards self-employed persons, and of developments in the social security systems of the Member States, some of which already provide the self-employed with insurance cover almost as extensive as for employed persons, national social security schemes for the self-employed must now be coordinated at Community level. The Commission is therefore putting forward the following :

- a proposal for a regulation of the Council concerning the adaptation of Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community with a view to applying it to self-employed persons and their families (Annex I), and an explanatory memorandum (Annex II);
- a proposal for a regulation concerning the adaptation of the Annexes to Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community with a view to applying it to self-employed persons and their families (Annex III), and an explanatory memorandum (Annex IV).

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1. In 1973.

Content of the proposals

A. Persons covered

1. Self-employed persons who are
  - nationals of a Member State, or
  - stateless persons or refugees residing in the Community and the members of their families or their survivors.
2. Self-employed persons are persons who are considered as such under the legislation of the Member State where they are working.
3. It must be stressed that these proposals concern not only self-employed persons who worked in more than one Member State, but also those who worked in only one Member State and who move to another Member State, e.g. for a holiday, or to settle there after retiring.

B. Matters covered

1. All legislations and social security schemes of the Member States applicable to self-employed persons, regardless of whether they are special schemes for this category of insured persons or schemes covering all residents or the whole working population.
2. The following are, however, at least temporarily excluded :
  - in France, the invalidity and death insurance scheme for selfemployed persons in occupations outside agriculture set up by the persons concerned themselves;
  - in Germany, the schemes for the professions set up by special statute which, for technical reasons are outside the competence of the Federal State.

C. General principles

1. Equality of treatment

Persons covered by the proposed legislation may not be discriminated against because of their nationality.

## 2. Export of benefits

- Invalidity pensions, old-age pensions, survivor's pensions, pensions for accidents at work and for occupational diseases shall be paid, without any restrictions, regardless of which Member State the pensioner is residing in.
- The same facility applies, of course, to other benefits, but along lines which are often different, as set out in D. below.

## 3. Aggregation

In the wide meaning of the term aggregation means that one Member State takes account of events in another Member State as if they had happened in the former State. This is the case, in particular,

- if, in order to qualify for benefits, the insured person must have been insured or must have pursued a professional or trade activity for a specified period in a Member State<sup>1</sup>; account will therefore be taken, where necessary, of insurance periods or periods during which a professional or trade activity was pursued completed in another Member State as if they had been pursued in the State concerned;
- if acquiring the right to benefits is subject to the condition that the person concerned reside in the Member State concerned<sup>2</sup>, residence in another Member State shall be treated as residence in the Member State concerned.

## 4. Determining the legislation applicable

- Self-employed persons shall as a rule be subject to the legislation of the Member State where they are pursuing their professional or trade activity, even if they reside in the territory of another Member State.
- Exceptions will be made in some cases, in particular,
  - for persons who pursue their activity in the territory of several Member States simultaneously; different legislation, e.g. that of the country of residence, could be applied;
  - for self-employed persons who provide services in the territory of another Member State; during the period they provide that service, they may remain subject to the legislation of the Member State where they normally pursue their activity.

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1. As is, in general, the case of pensions.

2. Condition to be fulfilled by children for the award of family benefits.

D. Provision of benefits other than pensions

1. Sickness insurance benefits and short-term benefits for accidents at work

- The worker and/or the members of the family who are residing or staying in the territory of a Member State other than the State in which they are insured shall be entitled to :
  - (a) benefits in kind (medical treatment, treatment in hospital, drugs and medicines, etc.) as if they were insured in the country in which they are residing or staying;
  - (b) cash benefits (allowances) as if they were residing or staying in the Member State in which they were insured.
- By analogy, the same applies to pensioners and their families.

2. Family benefits

- Workers who are pursuing their activity in a Member State other than France are entitled to the family benefits provided by the Member State where they are insured in respect of members of the family who reside in another Member State.
- Workers who are pursuing their activity in France are entitled to the family allowances provided by the Member State where the members of the family are residing.

3. Death grants

Lump-sum death grants provided by the Member State where the deceased had been insured shall be paid to the beneficiaries regardless of which Member State they are residing in and of the Member State where the deceased had resided.

E. Calculation of invalidity pensions, old-age pensions and survivor's pensions

Persons who had been insured in several Member States are entitled, from each of those States, to

1. An "autonomous" pension calculated in accordance with the legislation of the Member State concerned if the qualifying conditions required under that legislation have been fulfilled; insurance periods, periods during which a professional or trade activity were pursued, or residence periods completed in another Member State do not need to be taken into account.

2. If that is not the case, a pro-rata pension, i.e. a pension calculated in terms of the insurance period, period during which the professional or trade activity was pursued or residence period completed in the Member State concerned as a proportion of the total of all such periods completed in all of the Member States where the person concerned had been insured.

A person who had thus been insured in two Member States would thus be entitled to, as appropriate :

- (i) two autonomous pensions,
- (ii) two pro-rata pensions, or
- (iii) an autonomous pension and a pro-rata pension.

F. Entry into force

As soon as the regulations contained in these proposals have been adopted, the Commission will work out the procedure for implementing that Regulation and will submit to the Council a proposal for a regulation concerning the adaptation of Regulation (EEC) No 574/72, which fixes the procedure for implementing Regulation No 1408/71. A further period of six months would be necessary to draft the forms required to implement these arrangements.

EXPLANATORY MEMORANDUM

on the proposal for a Council Regulation concerning the adaptation of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, with a view to applying it to self-employed persons and their families



I. BACKGROUND

Article 51 of the EEC Treaty obliges the Council to adopt, in the sphere of social security, such measures as are necessary for establishing freedom of movement for employed persons, by providing for

- aggregation of insurance periods and periods treated as such;
- payment of benefits in all of the Community's territory.

On this basis, and on the basis of Articles 2 and 3 of the Treaty, Council Regulations Nos 3 and 4 on social security for migrant workers were adopted; they were subsequently replaced, with effect from 1 October 1972, by EEC Regulation No 1408/71<sup>1</sup> and EEC Regulation No 574/72<sup>2</sup>, respectively.

The Treaty did not, however, lay down a similar provision allowing for the removal of barriers in the social security schemes to the introduction of freedom of movement for self-employed persons in the framework of freedom of establishment and freedom to provide services.

The coordination of social security schemes for self-employed persons, which the Commission had already considered when amending Regulations Nos 3 and 4 in 1966 but which it had not adopted then, is now imperative, because of progress made in implementing freedom of establishment and freedom to provide services, the development of the social security systems of the six original Member States, which are increasingly providing social insurance cover for self-employed persons, and the fact that in two of the new Member States self-employed persons are entitled to the same - or almost the same - insurance cover as employed persons.

The need to take action in this field was repeatedly stressed, both by the European Parliament<sup>3</sup> and by the Economic and Social Committee<sup>4</sup>, and recognized by the Council, which, in its Resolution of 21 January 1974 concerning a social action programme<sup>5</sup>, expressed the political will to adopt the necessary measures "to promote the coordination of social security schemes for self-employed workers with regard to freedom of establishment and freedom to provide services".

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1. Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ No L 149 of 5 July 1971).
  2. Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ No L 74 of 27 March 1972).
  3. Cf, in particular, Resolution of 25 January 1968, OJ No C 10 of 14 February 1968, p. 30; Resolution of 25 November 1968, OJ No C 135 of 14 December 1968, p. 4; Resolution of 10 July 1975, OJ No C 239 of 20 October 1975.
  4. Cf, in particular, Opinion of 25 January 1967, OJ No C 64 of 5 April 1967, p. 1009; Opinion of 28 March 1974, OJ No C 125 of 16 October 1974; Opinion of 30 October 1975, OJ No C 12 of 17 January 1976; Opinion of 26 October 1977 on proposals for regulations to amend Regulations (EEC) 1408/71 and 574/72 (not yet published in OJ).
  5. OJ No C 13 of 12 February 1974

Having carried out preliminary studies on the specific features of social security for migrant workers in the different Member States, the Administrative Commission on Social Security for Migrant Workers began preparations to extend the provisions of EEC Regulation No 1408/71 to self-employed persons and the members of their families. The present proposal for a regulation has been worked out on the basis of these preparations, after consultations with the Advisory Committee on Social Security for Migrant Workers and the professional and trade organizations concerned. The Commission will, as soon as possible and applying the same procedure, draft a proposal for a regulation to supplement similarly the implementing procedure laid down in Regulation (EEC) No 574/72.

#### LEGAL BASIS

The attached proposal for a Regulation is intended to adapt certain provisions of Regulation (EEC) No 1408/71 so as to apply it to self-employed persons. It is therefore based on the same provisions of the EEC Treaty as the Regulation - i.e. Articles 2, 7 and 51 - and on Article 235 of the Treaty, as it is imperative that action be undertaken in the field of social security to achieve the objectives of the Community, i.e. freedom of establishment and freedom to provide services, and as the Treaty has not provided for the necessary powers.

#### GENERAL REMARKS

1. As the aim is to extend provisions applicable to employed persons to self-employed persons, the proposal in no way amends the provisions that apply to employed persons.
2. In order to be as fair as possible and to keep matters as simple as possible, it has been proposed that, wherever possible, the same rules shall apply to self-employed persons as to employed persons. Apart from some exceptions - set out below - self-employed persons will be covered by the same Community scheme as employed persons as regards
  - (a) equality of treatment with nationals under the domestic legislation of the Member States;
  - (b) determination of the legislation applicable;
  - (c) aggregation of insurance periods for entitlement to benefits provided under sickness and maternity insurance, invalidity insurance, old-age insurance, survivors' insurance and unemployment insurance, as well as death grants and family benefits;
  - (d) the provision of benefits in cash and in kind provided under sickness and maternity insurance, insurance against accidents at work, death insurance (death grants), and family benefits, regardless of the Member State where the person concerned or the members of his family are staying or residing;

- (e) the export of pensions for invalidity, old age, survivors and accidents at work to the territory of any other Community Member State;
- (f) the method of calculating pensions for invalidity, old age and survivors, if the person concerned was subject to the legislation of more than one Member State.

In addition to this, the general provisions, miscellaneous provisions and transitional and final provisions (with the exception of Article 94) of EEC Regulation No 1408/71 shall also apply to self-employed persons.

3. There are a few exceptions which concern mainly:

- (a) some details on the aggregation of insurance periods for entitlement to pensions<sup>1</sup>;
- (b) obtaining unemployment benefits outside the competent State.<sup>2</sup>

To this must be added that in view of their special nature, the pension insurance schemes for self-employed persons of some Member States have,<sup>3</sup> at least for the time being, been left outside the scope of the Regulation.

4. As for the form of the new regulation, the Commission would have preferred to forward a single draft regulation to replace Regulation (EEC) No 1408/71. Consolidating that Regulation and all subsequent amending Regulations as well as this proposal would have delayed considerably the forwarding of the proposal. It was therefore considered preferable to opt for an amending regulation, which does not rule out consolidation at a later stage, to speed up the procedure.

#### IV. SPECIFIC REMARKS

##### Article 1 (1) (a)

(Article 1(a) of Regulation (EEC) No 1408/71)

Whereas the concept of "worker" as defined in Article 1(a) of Regulation No 1408/71 at present means an employed person or any other person who is treated as such by virtue of being or having been insured under a social security scheme for employed persons, that concept will, in the present proposal, mean an employed person as well as a self-employed person, as both of those terms are specifically defined in Article 1(a)a.

In general, it follows that Regulation No 1408/71 is automatically extended to cover the self-employed, with the exception of provisions which, on the basis of amendments proposed, refer expressly to employed persons, and of provisions which are so worded that they apply either to employed persons or to self-employed persons.

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- 1. Cf Section IV below, on Article 1(8)(b) and (10)(c) and (d).
  - 2. Cf Section IV below, on Article 1(14), (15) and (16).
  - 3. Cf Section IV below, on Article 1(1)(d).

Article 1 (1) (b)

(Article 1(a) of Regulation No 1408/71)

For the purpose of the Regulation, the words "employed person" and "self-employed person" are defined in the new subparagraph (a)a.

The definition is based on the same principle as that adopted in the current definition of "worker" in Article 1(a) of Regulation No 1408/71. According to that principle, which is modelled on the case law of the Court of Justice of the European Communities, the distinction between employed and self-employed persons should not be dependent on the nature of the occupation pursued as laid down in labour law, but should be based on the definitions given by national social security law. This means that persons who are insured under a social security scheme for employed persons are classed as employed, while those insured under a scheme for the self-employed are classed as self-employed, regardless of the nature of their professional or trade activity. On this basis Regulation No 1408/71 which, theoretically, at present applies only to employed persons in the strict sense of the term, already covers self-employed persons where they are insured under a scheme for employed persons. This is the case of the professions in Luxembourg and of craftsmen in Italy.

As regards the substance, and with reference to employed persons, the proposed new definition differs from the present definition on only one point. While Article 1(a)(iii) of Regulation No 1408/71 includes voluntarily insured persons only if they had previously been compulsorily insured for the same contingency in the same Member State, that condition has, in the new definition, been relinquished with respect to voluntarily insured persons covered by schemes for employed persons.

As regards the form, the new definition differs from the present one in Article 1(a) in that it specifically states that whether a person is employed or self-employed must be determined with regard to each contingency covered by the Regulation. This means, for example, that a person could be regarded as a self-employed person for the purpose of applying the provisions of the Chapter on old age because he is, in a Member State, insured with an old-age insurance scheme for the self-employed, and, simultaneously, as an employed person for the purpose of applying the provisions of the Chapter on sickness insurance because he is insured with the general scheme for employed persons in that same State. It should be noted, however, that in practice the scope of this distinction will be limited as, to a very large extent, it is proposed that the same provisions will apply to employed and to self-employed persons.

The following are therefore covered by the Regulation with regard to all of the contingencies concerned:

- (1) any person who is insured compulsorily, on an optional continued basis or voluntarily insured under a scheme for employed or for self-employed persons.

This provision covers virtually all social security schemes in Belgium, Germany, France, Ireland, Italy and Luxembourg, in addition to some specified schemes for employed persons (accident at work, unemployment) in the other Member States [(a)a(-)];

- (2) any person who is compulsorily insured under a scheme which applies to all residents, certain categories of residents or the whole working population,

- (a) if he can be identified as an employed person or as a self-employed person from the way the scheme is administered or financed [(a)a(ii)]. This applies, in particular, to social insurance in the United Kingdom and to the family benefits scheme in France;

- (b) failing this, if the persons insured under such schemes are insured for another contingency under another scheme for employed or for self-employed persons [(a)a(iii), first indent]. For example, at present persons who are insured in Germany under the national family allowances scheme and simultaneously under the unemployment insurance scheme are considered to be employed persons for the purpose of applying the provisions on family benefits of the Regulation;

- (c) finally, where the criteria laid down in (a) and (b) for identification cannot be applied, if the persons insured under such schemes satisfy the criteria laid down in Annex V, which are the same as those laid down by labour law. They will be used to identify self-employed persons covered by the national insurance scheme in the Netherlands and in Denmark, and in the children's allowances scheme and national Health Service in Ireland;

- (d) moreover, persons who have been compulsorily insured under those schemes, either as employed or as self-employed persons, and who continue to be insured under such a scheme in another capacity, either as residents or as voluntarily insured persons. This could be the position, for example, of a married woman who was previously insured in the United Kingdom in Class I (employed person) or Class II (self-employed person) and who is now insured in Class III (non-employed person).

To conclude, the following will be covered by Regulation No 1408/71 as amended:

all employed and self-employed persons for all contingencies for which they are insured under schemes which apply to them in the Member States to whose legislation they are subject, and, under certain conditions and for certain contingencies, persons who do not or who no longer pursue a professional or trade activity.

Article 1 (1) (c)

(Article 1(b) of Regulation No 1408/71)

The definition of frontier workers has been amended and extended to take account of self-employed persons who reside in one Member State but work in a neighbouring Member State. The practical effect of this amendment is to apply to employed and self-employed frontier workers the same scheme for the award of sickness and maternity insurance benefits. Cf Articles 19 and 20 of Regulation No 1408/71.

Article 1 (1) (d)

(Article 1(j) of Regulation No 1408/71)

The extension of Article 1(j) is intended to delete the following from the matters covered by the Regulation:

- (a) specified French death insurance or invalidity insurance schemes for self-employed persons in non-agricultural sectors. Those schemes are comparable to the provisions of industrial agreements referred to in the abovementioned Article 1(j) in the sense that they were set up not by legislation but on the initiative of the persons concerned. It is thus up to the latter, if they consider it to be in their interest, to request that the Regulation apply to them. This could be done by way of a declaration by the French Government in accordance with the third sentence of Article 1(j);
- (b) German schemes for the professions, the members of which are grouped in professional associations under public law; such professions are known as "kammerfähige freie Berufe". Among others, there are professional associations of doctors, dentists, veterinary surgeons, pharmacists, lawyers, and tax consultants. These schemes are outside the competence of the Federal state, as they were set up under the legislation of the Länder. In each of the Länder, there are numerous schemes of this type for the various professions. The benefits provided are usually benefits for occupational invalidity and/or retirement pensions or survivors' pensions, death grants and other benefits of minor importance. Most of these schemes are financed from funds held by the professional associations. These schemes are not coordinated on the national level. If a person ceases to be insured under such a scheme, some funds refund contributions paid, while others allow for voluntary continued insurance. In view of regional, professional and technical diversity, and of peculiarities of the various schemes, it does not appear that they could be coordinated on the international level.

It should be noted that equality of treatment as well as the export of benefits are in any case guaranteed.

Article 1 (1) (e) and (f)

(Article 1(r) and (s) of Regulation No 1408/71)

These two definitions have been extended to ensure that for self-employed persons account can be taken of periods of professional or trade activity.

Article 1 (2) (a) and (b)

(Article 13(2)(a) and (b) of Regulation No 1408/71)

The proposed amendment is intended to adjust the present terms to apply the provisions concerned to self-employed persons.

It should be noted that to retain the present wording of Article 13(1) of Regulation No 1408/71 would imply that the principle that only one legislation shall apply also applies to self-employed persons. This means that a person who is working in the territory of two or more Member States is subject to the legislation of only one Member State determined in accordance with the special rules laid down in Article 14.

In the case of self-employed persons, and more particularly in the case of persons who pursue, in one Member State, an activity covered by a scheme for self-employed persons, while, in another Member State, they pursue an activity, possibly the same, coming under a scheme for employed persons, applying the legislation of one Member State could solve any objections.

A worker who is subject to the legislation of a State other than the one where he is self-employed would be better off or worse off than his competitors depending on whether he had to pay less or more contributions than they. In view of the difficult financial situation of special schemes for the self-employed, it may seem more difficult to accept that some are not compelled to pay contributions which are due in the normal course of events.

It should be noted, however, that such drawbacks are limited. Applying the principle that only one legislation shall apply means that all activities pursued in the territory of all the Member States concerned are taken into account by the institution of the competent Member State as if they were all pursued in the territory of that State. This means that contributions are due in respect of all of these activities and not just for those pursued in the territory of the competent State (1). This reduces the risk of a distortion of competition.

If, under the legislation applicable, the worker may be insured with a scheme for employed persons pursuant to the provisions of that legislation on the pursuit of two activities, those very rules could require the worker to be insured only with the scheme for self-employed persons or with both schemes simultaneously, depending on the legislation concerned.

In view of what has been stated above, and of the fact that there are probably not many workers who pursue their activities in more than one Member State, the incidence of implementing this principle on the financial equilibrium of the schemes for self-employed persons should be negligible.

(1) Cf Article 1(3)(c), second indent, below.

On the other hand, the drawback of being simultaneously insured with social security schemes in two Member States appear to be more serious. The person concerned would have to pay double contributions for benefits which could not overlap like sickness insurance benefits in kind or family benefits. In this regard, for these workers to be insured under the legislation of a single Member State for short-term benefits (sickness, family allowances) and simultaneously insured under the legislation of Member States for long-term benefits (invalidity pensions, old-age pensions, survivors' pensions) is scarcely conceivable to the extent to which contributions are not generally broken down for each risk but are aggregated for schemes covering several branches. The schemes in the various Member States, however, are not alike. For instance, in Belgium invalidity is covered by the sickness and invalidity insurance scheme while in Germany it falls under the pension scheme. On the other hand, a worker might have to pay contributions at the full rate in each of the Member States without receiving the corresponding benefits. The converse of this is the payment of minimum contributions in return for a full benefit which might even overlap with a full benefit provided by another Member State. Furthermore, simultaneously applying two distinct legislations, including all their coordinating provisions on schemes for employed persons and schemes for self-employed persons, could make the award and payment of benefits a lot more complex.

It thus appears that the worker's interests, which are the main goal of the Community rules, require that self-employed persons and persons with a "mixed" career be subject, like employed persons, to the principle that only one legislation shall apply.

Article 1 (3) (a)

(New paragraph (b) of Article 14(1) of Regulation No 1408/71)

This new provision is the equivalent of Article 14(1)(a) which applies to employed persons who are posted abroad; it allows self-employed persons who are subject to the legislation of the Member State where they normally pursue their activity to remain subject to that legislation if they provide services in another Member State for a period of not more than a year, which may be extended by at most another year.

Article 1 (3) (c)

(Article 14(1)(c) of Regulation No 1408/71)

The proposed addition is intended to regulate the position of self-employed persons who are pursuing their activities in the territory of more than one Member State while residing in a Member State in which they do not pursue any activity.

In conjunction with Article 14(1)(c) at present in force of Regulation No 1408/71, this amendment affects self-employed persons who pursue their activity in more than one Member State in the following ways:

- if they reside in a Member State where they pursue their activity, they are subject to the legislation of the country of residence;
- if they reside in the territory of another Member State, they are subject to the legislation of the Member State where they pursue their main activity.



It should be noted that these provisions also apply to cases where a worker is pursuing an activity by virtue of which he is regarded as an employed person in one Member State and as self-employed in another, and in cases where he is employed in one Member State and self-employed in another.

In the latter case, the worker is subject to the whole range of legislation laid down by these provisions, including possible insurance with a scheme for employed persons and with one for self-employed persons if that legislation so provides for persons pursuing those activities in the territory of the Member State concerned.

Article 1 (3) (d)

(Article 14(1)(d) of Regulation No 1408/71)

The proposed amendment is intended to cover also self-employed persons in a position similar to that of employed persons referred to in Article 14(1)(d) of Regulation No 1408/71. It applies, in particular, to farmers whose lands straddle the common frontier of two Member States.

Article 1 (3) (e)

(New paragraphs (f) and (g) of Article 14(1) of Regulation No 1408/71)

The new paragraph (f) is intended to guarantee to workers who are self-employed in more than one Member State and who, on the basis of the criteria laid down, would be subject to the legislation of a Member State under which they were not allowed to take out compulsory or voluntary old-age insurance, the right to insurance in other Member States where they also pursue a professional or trade activity. This position is likely to arise in Ireland, where self-employed persons are entitled only to medical treatment and to family allowances.

The new paragraph (g) provides that the institution responsible for applying the legislation determined in Article 14(1)(d) and (f) shall take into account all the professional or trade activities a person pursues in all of the Member States concerned, with regard to insurance, the calculation of benefits as well as the recovery of contributions. With reference to the latter, further details have been inserted in Article 92. This is a principle not found in Regulation No 1408/71, but it is the direct consequence of the principle that only one legislation shall apply. Strictly speaking, it is only an explanatory detail.

Article 1 (4) (a)

(New paragraph (b) of Article 14(2) of Regulation No 1408/71)

The purpose of this new provision is to allow self-employed persons to pursue temporarily their activity on board a vessel flying the flag of a Member State other than the State to whose legislation they are normally subject, while remaining subject to that legislation. It is the corollary to Article 14(2)(a), on employed persons.

Article 1 (4) (b)

(Article 14(2)(b) of Regulation No 1408/71)

The amendment, merely one of wording, extends this provision to self-employed persons.

Article 1 (5)

(Article 23 of Regulation No 1408/71)

The amendment, merely one of wording, extends this provision to self-employed persons.

Article 1 (6) (a)

(Article 34 of Regulation No 1408/71)

The new paragraph 1 is intended to specify that Articles 28, 28a, 29 and 31 also apply to cases where a person is receiving more than one pension under the legislation of one Member State. If this detail were to be added to each of the Articles concerned, the texts of those Articles, which are already quite unwieldy, would become even more so.

Article 1 (7)

(New paragraph (2) of Article 35 of Regulation No 1408/71)

While it may be accepted, for the purpose of simplifying administrative procedures, that self-employed persons who are staying or residing in a Member State other than the competent State receive benefits in kind which are more favourable than those they would receive in the competent State, impartiality demands that such workers do not receive benefits which are more favourable than those received by self-employed nationals of the country of stay or of residence.

The same applies to pensioners who are receiving one or more pensions in respect of a self-employed activity. If the pensioner is also receiving a pension from a scheme for employed persons in a Member State where, if he resides in that State, he would be entitled to benefits in kind in the scheme for employed persons in the Member State of stay or of residence, pursuant to Article 35(1).

Self-employed persons and persons receiving a pension for the self-employed who are covered in the competent State by a scheme corresponding to a scheme for employed persons are also entitled to benefits in kind provided under the scheme for employed persons.

In order to simplify matters, the limitation laid down shall apply only if, in the country of stay or of residence, there is a single scheme for all self-employed persons, or if there are several schemes which apply to most self-employed persons (this refers in particular to France and Belgium, and, provisionally, to Italy).

Article 1 (8) (a)

(Article 38(2) of Regulation No 1408/71)

The purpose of the proposed amendments is to restrict this provision to employed persons and to define the scope of the provision.

Article 1 (8) (1)

(New Paragraph 3 of Article 38 of Regulation No 1408/71)

Some special invalidity insurance or old-age and death insurance schemes for self-employed persons require, as a qualifying condition, that a minimum period during which the person pursued his professional or trade activity or paid contributions must have been completed. If account cannot be taken, to satisfy this condition, of insurance periods completed in another scheme in the same Member State, the aggregation exclusively of insurance periods completed abroad in a corresponding scheme or, failing this, in the same trade or profession, is warranted. On the other hand, if, pursuant to the domestic coordination procedure, periods completed in one or more other schemes in the same Member State have to be taken into account, the same applies to periods in identical schemes completed in other Member States. This is one of the consequences of Paragraph (1) which provides that account shall be taken of insurance periods completed under the legislation of any other Member State as if they had been completed under the legislation of the Member State concerned.

Article 1 (9)

(Article 39(3) of Regulation No 1408/71)

The detail added is intended to apply to workers who, after having been subject to two legislations of type A, became disabled while subject to a legislation which did not provide for invalidity benefits for self-employed persons. In such a case, the persons concerned could qualify for invalidity benefit pursuant to the legislation to which they were last subject, provided that they were within the time-limit after the end of the period of insurance to qualify for the benefit.

Article 1 (10) (b)

(New Paragraph (3) of Article 45 of Regulation No 1408/71)

See remarks on Article 1(9)(b) above.

Article 1 (10) (c) and (d)

(New Paragraphs 4 and 5 of Article 45 of Regulation No 1408/71)

A feature of Netherlands legislation on incapacity for work (WAO and AAW) and on survivors' benefits (AWW) is that the only condition laid down is that the person concerned is covered by the scheme at the time the contingency insured against materializes. Article 45(3) of Regulation No 1408/71 allows employed persons or their survivors to receive benefits under one of these schemes, even if the persons concerned are no longer covered by the scheme when the risk occurs, if they are at the time subject to the legislation of another Member State.

This is merely applying the principle of aggregating insurance periods to Netherlands legislation. As regards employed persons and their survivors, the Netherlands have granted an additional advantage in that even if the person concerned is no longer subject to any legislation at the time the contingency materializes, and regardless of the length of time since the termination of

insurance, a proportion of the benefit will be provided if the person concerned or his survivors can prove entitlement to a pension under the legislation of another Member State. While the Netherlands are willing to retain this rule for employed persons and their survivors, and to extend it to the survivors of self-employed persons, they require that self-employed persons must be insured against invalidity at the time it occurs in order to be entitled to invalidity benefits.

It should be noted that the criterion for applying these provisions is the person's status - employed or self-employed - at the time he was subject to Netherlands legislation.

Article 1 (11) and (12)

(Articles 47(1) and 58(1) and (2) of Regulation No 1408/71)

The amendments, merely to the wording, extend these provisions to self-employed persons.

Article 1 (13)

(Article 68(1) of Regulation No 1408/71)

The purpose of this amendment is to extend the provision to self-employed persons.

It should be pointed out that owing to the existence in Denmark of a special unemployment insurance scheme for self-employed persons, Article 67, on the aggregation of periods of insurance or employment, of Regulation No 1408/71 will also apply to self-employed persons.

In Denmark, the unemployment insurance funds for the self-employed are quite distinct from funds for employed persons. Self-employed persons must have been insured for one year to qualify for daily allowances, while the requisite period for employed persons is six months.

If a self-employed person becomes employed, he is immediately transferred to an unemployment insurance fund for employed persons, and vice versa. Pursuant to domestic coordinating provisions, a self-employed person who takes up employment may aggregate insurance periods completed with a fund for the self-employed, but only half of that period is taken into account. Conversely, an employed person who becomes self-employed may aggregate periods completed with a fund for employed persons, but the length of such periods is doubled.

For the Danish unemployment insurance scheme for self-employed persons, to apply Article 67 to self-employed persons means having to take account of periods of unemployment insurance or of employment completed by persons covered by the scheme in other Member States as if those periods had been completed in Denmark. Conversely, unemployment insurance schemes or unemployment assistance schemes for employed persons in force in other Member States will have to take account of insurance periods completed in Denmark under this scheme for self-employed persons.

Article 1 (14), (15) and (16)

(Articles 69, 70 and 71 of Regulation No 1408/71)

In view of the fact that only Denmark provides an unemployment insurance scheme for self-employed persons, Articles 69, 70 and 71 of Regulation No 1408/71, which lay down the provision of unemployment benefits in a Member State other than the competent State, cannot as yet be extended to the self-employed. It is therefore specified that these Articles apply only to employed persons.

Article 1 (17)

(Article 72 of Regulation No 1408/71)

This amendment, merely one of wording, extends this provision to self-employed persons.

Article 1 (18)

(Article 73(2) of Regulation No 1408/71)

The last part of Article 73(2) has been deleted to take account of amendments to French legislation on family benefits.

Article 1 (19)

(Article 79(1)(a) of Regulation No 1408/71)

This amendment, merely one of wording, extends this provision to self-employed persons.

Article 1 (20)

(Article 92 of Regulation No 1408/71)

Cf Article 1(3)(e).

Article 1(21)

The title of Article 94 has been amended to restrict it to employed persons.

Article 1(22)

This Article takes over, in favour of self-employed persons, the corresponding provisions of Article 94 of Regulation No 1408/71, which apply to all rights likely to be affected by the entry into force of this Regulation.

The first three paragraphs lay down the general principles for applying this Regulation with regard to rights previously acquired; it does not provide for entitlement to benefits in respect of periods before it entered into force (Paragraph 1) but entitlement in the process of being acquired before that date is taken into account after that date (Paragraph 2). The materialization of the contingency insured against before entry into force is taken into account (Paragraph 3).

The next four paragraphs concern the review of cases where the risk occurred before this Regulation enters into force and which had been decided either favourably or unfavourably.

Article 2

Extending Regulation (EEC) No 1408/71 to the self-employed will require amending the title of the Regulation.

Article 3

Regulation (EEC) No 1408/71 as amended by this proposal is not to enter into force immediately. Regulation No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71 will also have to be amended. In addition to this, amending all the forms currently used to implement Regulations Nos 1408/71 and 574/72 so that they can be used for the benefit of self-employed persons will also take some time.

EXPLANATORY MEMORANDUM

on the proposal for a Council Regulation concerning the adaptation of the Annexes to Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, with a view to applying it to self-employed persons and their families.

## I. GENERAL REMARKS

The present proposal is aimed at adapting the Annexes to Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, with a view to making the Regulation applicable to cover self-employed persons and members of their families. The proposal for a Regulation on the adaptation to this end of the body of Regulation (EEC) No 1408/71 is submitted together with this proposal which is an essential supplement to the Regulation.

EEC Regulation No 1408/71 comprises five Annexes :

- Annex I Special childbirth allowances excluded from the scope of the Regulation.
- Annex II Provisions of social security conventions remaining applicable.
- Annex III Legislations under the terms of which the amount of invalidity benefit does not depend on the length of periods of insurance or residence.
- Annex IV Concordance between the legislations of Member States on conditions relating to the degree of invalidity.
- Annex V Special procedures for applying the legislations of certain Member States.

Only Annexes III and V require amendment owing to the amendments to the body of Regulation (EEC) No 1408/71 made with a view to extending its scope to self-employed persons. Thus :

- as regards Annex I, there are no specific special childbirth allowances for the self-employed under Member States' legislations;
- as regards Annex II, it was not considered necessary to keep in force the very few provisions of bilateral conventions applicable to the self-employed;
- as regards Annex IV, it should be noted that the establishment of concordance between the legislations of Member States on conditions relating to the degree of invalidity is a long and highly complex task. In view of the fact that concordance is not essential to the award of benefits, any amendments that may be necessary to this Annex will be carried out at a later date.



## II. SPECIFIC REMARKS

### Article 1

(amendments to Annex III)

These amendments concern the mention in this Annex of "Type A" invalidity legislations for self-employed persons namely, where the amount of the invalidity benefit does not depend on the length of the period of insurance or residence.

### Article 2

(amendments to Annex V)

#### A. Identification of employed persons and self-employed persons in the social security schemes of Member States for the purposes of the Regulation.

These are the most extensive amendments to be made to Annex V pursuant to the new Article 1(a) a of Regulation (EEC) No 1408/71<sup>1</sup>. The new provision in question comprises a definition of the expressions "employed person" and "self-employed person" which means that Annex V should include a definition of the criteria for identifying employed and self-employed persons, in cases where they are members of a scheme applicable to all residents, to certain categories of residents or to the working population as a whole, where the manner in which such a scheme is administered or financed does not make it possible to identify an insured person as employed or self-employed (Art. 1(a) a (iii) of Regulation No 1408/71).

In that event, an employed or self-employed person can be identified through his insurance under another scheme (Art. 1(a) a (iii), first indent) to be mentioned in Annex V or, where this is not possible, by means of other criteria laid down in Annex V (Art. 1(a) a (iii), second indent).

#### Article 2(2)(a)

(B. Denmark, paragraph 1)

The purpose of the amendments proposed is to identify employed and self-employed persons who are subject to Danish legislation on invalidity, old-age and widows' pensions, the public health service and family allowances, which has created schemes applicable to all residents for each of the above-mentioned branches.

#### Article 2(3)(a) and (b)

(C. Germany, new paragraph 1)

The purpose of the proposed amendment is to identify employed persons and self-employed persons in the German family allowances scheme which is applicable to all residents.

#### Article 2(5)(a) and (b)

(E. Ireland, paragraphs 1 and 2)

The purpose of the proposed amendment is to identify employed persons and self-employed persons in the public health service set up by the Health Act and the family allowances scheme applicable to all residents (Subject to an earnings ceiling as regards the public health service). It should be noted that it was necessary to use a labour law criterion in order to identify self-employed persons who are not subject to any other social security scheme.

<sup>1</sup> Cf Article 1(b) of the proposal for a regulation amending the body of Regulation No 1408/71.

Article 2(6)

(H. Netherlands, new paragraph 5)

This concerns the identification of self-employed persons in insurance schemes applicable to all residents, or schemes against incapacity for work (AAW), old-age pensions (AOW), widow's and orphan's pensions (AWW), family allowances (AKW) and special sickness expenses (AWBZ). Here, too, it is not possible to identify self-employed persons through their insurance under another scheme.

Article 2(7)(a)

(I. United Kingdom, new paragraph 1)

1. This concerns the identification of employed persons and self-employed persons in family allowances schemes and the national health schemes applicable to all residents.
2. The United Kingdom has in this case made use of the possibility provided for by Article 1(a)a (iv) to confine the application of the Regulation to persons insured under a scheme applicable to all residents, where such persons are no longer employed or self-employed. The purpose of the limitation proposed is to exclude such persons benefiting from the export of family allowances.

Article 2(2)(b)(paragraph 2 of B. Denmark is deleted) should be added to those provisions. The deleted provision was not required owing to the fact that the new definition of "employed person" no longer requires persons who are voluntarily insured to have been insured previously against the same contingency in the same Member State under a scheme for employed persons. The same applies to the present text of E. Ireland, paragraph 2, which is deleted and replaced with another provision (see Art. 2(5)(b) above).

B. Other amendments

1. Amendments designed to include self-employed persons in certain provisions which, as they stand, would continue to apply only to employed persons :

- Article 2(2)(c) and (e)

(paragraphs 3 and 8 of B. Denmark amended)

- Article 2(7)(b)(c) and (d)

(paragraph 17 of I. United Kingdom amended).

2. Miscellaneous

- Article 2(1)(a)

(paragraph 1 of A. Belgium amended)

The new Article 35(2) of Regulation No 1408/71 (see Article 1(7)(b) of the proposal for a Regulation amending the body of Regulation No 1408/71) contains special provisions for the providing of sickness insurance benefits in kind for certain self-employed persons in the event of periods of residence or stay in a Member State other than the competent State.

As regards the application of this provision, it is specified that the special rules applicable to self-employed persons of the Belgian sickness and invalidity scheme applicable to all workers constitute a special scheme for self-employed persons. Consequently, such self-employed persons, who in Belgium are entitled to benefits which are less advantageous than those for the employed persons, will receive equal treatment in the event of residence or stay in certain other Member States.

Article 2(1)(b)

(new paragraph 4 added to A. Belgium)

This provision makes it possible to :

- (1) take account of the full insurance history in Belgium of self-employed persons for the pro rata temporis calculation of invalidity benefits and not, as hitherto, only the periods completed under a sickness or invalidity insurance scheme set up after the old-age insurance scheme;
- (2) give self-employed persons the right to a Belgian pro-rata invalidity benefit, provided that he was subject to Belgian legislation prior to the entry into force of the Law on the incapacity for work of self-employed persons and had not completed periods of insurance under that Law.

Article 2(2)(d)

(B. Denmark, paragraph 4)

This simply involves a minor adjustment of the text to include the amendments to the Danish law on the health service. The adjustment does not change the principle according to which beneficiaries of the Regulation who reside or are staying in Denmark and whose right to sickness insurance benefits in kind is covered by the legislation of another Member State, obtain the most favourable benefits provided for by Danish legislation.

Article 2(3)(c)

(C. Germany, new paragraph 10)

The German unemployment assistance scheme grants benefits to self-employed persons who have ceased their occupational activity and who have registered as persons seeking employment. There are no stipulations concerning the duration of occupational activity or prior residence. The purpose of the proposed amendment is to prevent the possibility of speculative activities requiring no investment by persons taking up residence in Germany, their sole aim being to obtain unemployment benefits provided for an unspecified period of time.

Article 2(4)

(D. France, paragraph 4(d))

The proposed amendment takes account of the amendments made to the French family benefits scheme pursuant to Law No 77.665 of 12 July 1977. This Law replaces the single wage or salary allowance (for employed persons), allowance for mothers at home (for the self-employed) and the child-minding allowance with a single allowance termed the "family supplement".

Article 3  
(entered into force)

These are the same provisions as those of Article 3 of the proposal for regulation adapting Regulation (EEC) No 1408/71.

### Proposals for Council Regulations

- I. concerning the adaptation of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, with a view to applying it to self-employed persons and their families
- II. concerning the adaptation of the Annexes to Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, with a view to applying it to self-employed persons and their families

*(Submitted by the Commission to the Council on 31 December 1977)*

### I

#### **Proposal for a Council Regulation concerning the adaptation of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, with a view to applying it to self-employed persons and their families**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 2, 7, 51 and 235 thereof,

Having regard to the proposal of the Commission drawn up after consultation of the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas, in order to attain freedom of movement for workers and eliminate the obstacles that would, in the sphere of social security, result from the application of national legislations only, the Council adopted, on the basis of Article 51 of the Treaty, Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community <sup>(1)</sup>, as last amended by Regulation (EEC) No 2595/77 <sup>(2)</sup>, fixing the rules for

coordinating social security schemes for employed persons;

Whereas freedom of movement for persons, which is one of the cornerstones of the Community, is not confined to employed persons but also extends to self-employed persons in the framework of the freedom of establishment and the freedom to supply services;

Whereas, in pursuance of the Treaty, any discrimination on grounds of nationality with regard to establishment and the provision of services has been prohibited since the end of the transitional period;

Whereas, in the sphere of social security, the application of national legislations only would not afford sufficient protection to self-employed persons moving within the Community; whereas, in order to make the freedom of establishment and the freedom to provide services fully effective, the social security schemes for self-employed persons should therefore be coordinated;

Whereas the Council furthermore recognized the need for such action in its resolution of 21 January 1974 concerning a social action programme <sup>(3)</sup>, in which it expressed the political will to adopt the measures necessary to promote the coordination of social security schemes for self-employed persons within the framework of the freedom of establishment and the freedom to provide services;

<sup>(1)</sup> OJ No L 149, 5. 7. 1971, p. 2.

<sup>(2)</sup> OJ No L 302, 26. 11. 1977, p. 1.

<sup>(3)</sup> OJ No C 13, 12. 2. 1974.

Whereas the Treaty makes no provision for powers to take action to this effect but recourse to Article 235 of the Treaty is nevertheless fully justified as these measures concern a Community action which has proved necessary to achieve, for the proper functioning of the common market, the Community objective of bringing about freedom of establishment and freedom to provide services;

Whereas Regulation (EEC) No 1408/71, even though it applies to employed persons, already covers certain categories of self-employed persons; whereas, for reasons of equity, it would therefore be appropriate to apply, to the largest possible extent, the same rules to self-employed persons as are laid down for employed persons;

Whereas, however, the aim being to retain the rights of workers under the different social security schemes that apply to employed persons and those applying to self-employed persons in the case of persons having worked both as employed and as self-employed persons, this objective cannot be fully attained in the absence of a coordination of these schemes at the internal level by all the Member States;

Whereas, for the sake of simplification, it is important that all rules applying to both employed and self-employed persons and to persons who have been both employed and self-employed be brought together in one single instrument;

Whereas there are thus grounds for making the necessary adaptations to Regulation (EEC) No 1408/71 to make it possible to apply the provisions of that Regulation to self-employed persons and their families moving within the Community to the largest possible extent that is compatible with the nature of their professional or trade activity and the characteristics of the special social security schemes that cover them,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EEC) No 1408/71 shall be adapted as follows:

1. Article 1 shall be amended as follows:

(a) the text under (a) shall be replaced by the following:

'(a) "worker" means an employed person or a self-employed person;'

(b) after paragraph (a) the following new paragraph (a) shall be added:

'(a) a "employed person" or "self-employed person" means, respectively, with regard to each of the contingencies corresponding to the social security branches listed in Article 4 (1) against which he is insured:

(i) any person who is insured compulsorily, on an optional continued basis or voluntarily under a social security scheme organized for the benefit of employed persons or of self-employed persons;

(ii) any person who is compulsorily insured under a social security scheme for all residents, certain categories of residents or for the whole working population if such person can be identified as an employed or self-employed person by virtue of the manner in which such scheme is administered or financed;

(iii) any person who is compulsorily insured under a social security scheme for all residents, certain categories of residents or the whole working population if such person cannot be identified as an employed or self-employed person by virtue of the manner in which such scheme is administered or financed:

— if he is compulsorily insured under another social security scheme listed in Annex V as an employed or self-employed person within the meaning of paragraphs (i) or (ii),

— failing this, if he satisfies the criteria laid down in Annex V;

(iv) subject to the provisions of Annex V, any other person insured compulsorily, on an optional continued basis or voluntarily, under a scheme as referred to in (ii) or (iii), if he has previously been insured under such scheme as an employed or self-employed person within the meaning of (ii) or (iii);'

(c) The text in paragraph (b) shall be replaced by the following:

'(b) "frontier worker" means any worker who pursues his professional or trade activity in the territory of a Member State and resides in the territory of another Member State to which he returns as a rule daily or at least once a week; however, a frontier worker who is posted elsewhere in the territory of the same or another Member State by the undertaking to which he is normally attached, or who engages in the provision of services elsewhere in the territory of the same or another Member State, shall nevertheless retain the status of frontier worker for a period not exceeding four months, even if, in the course of that period, he cannot return daily or at least once a week to the place where he resides;'

(d) Paragraph (j) shall be amended as follows:

(i) in the second paragraph, in (i) and (ii), the word 'subparagraph' shall be replaced by 'paragraph';

(ii) after the second paragraph, the following new paragraph shall be inserted:

'The term also excludes provisions governing special schemes for self-employed persons the creation of which is left to the initiative of those concerned or which apply only to a specified part of the Member State concerned. These restrictions may be lifted under the same conditions as those provided for in the preceding paragraph in respect of industrial agreements;'

(iii) in the first and second lines of the third paragraph, the word 'subparagraph' shall be replaced by the words 'second paragraph';

(e) in the first and second lines of paragraph (r), the words 'contribution periods or periods of employment' shall be replaced by the words 'contribution periods, periods of employment, of professional or trade activity or of residence';

(f) the text of paragraph (s) shall be replaced by the following:

'(s) "periods of employment" and "periods of professional or trade activity" means periods of employment or periods of professional or trade activity as defined

or recognized as such by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or of professional or trade activity.'

2. Article 13 (2) shall be amended as follows:

(a) in the first line of paragraph (a), the word 'employed' shall be replaced by the words 'who normally pursues his professional or trade activity';

(b) in the first line of paragraph (b), the word 'employed' shall be replaced by the words 'who pursues his professional or trade activity'.

3. Article 14 (1) shall be amended as follows:

(a) after subparagraph (a) a new subparagraph (b) shall be inserted, to be worded as follows:

'(b) (i) a worker who normally pursues his professional or trade activity in the territory of a Member State and who engages in the provision of services in the territory of another Member State shall remain subject to the legislation of the former State, provided that the expected duration of such provision of services does not exceed 12 months;

(ii) if the duration of the provision of services is prolonged as a result of unforeseen circumstances beyond the duration originally envisaged, and exceeds 12 months, the legislation of the former State shall remain applicable until such time as this provision of services has been completed, provided that the competent authority of the State to whose territory the worker has gone to engage in the said provision of services or the body designated by that authority has given its consent; this consent must be sought before the end of the initial period of 12 months; however, this consent cannot be given for any period exceeding 12 months;'

(b) paragraph (b) shall become paragraph (c);

(c) paragraph (c) shall become paragraph (d) and the following new text shall be added thereto:

- (iii) to the legislation of the Member State in whose territory he pursues his main activity, in the cases not provided for in (i) and (ii) above; the criteria for determining which is the main activity shall be defined by the Implementing Regulation referred to in Article 97;
- (d) paragraph (d) shall become paragraph (e) and shall read as follows:
- (e) a worker who pursues his professional or trade activity in an undertaking which has its registered office or place of business in the territory of a Member State and which straddles the common frontier of two Member States shall be subject to the legislation of the Member State in whose territory the undertaking has its registered office or place of business;
- (e) after the new paragraph (e), the following new paragraphs shall be added:
- (f) if the legislation to which the worker should be subject in accordance with the provisions of paragraphs (d) and (e) does not allow him to join, even voluntarily, an old-age insurance scheme, the person concerned shall be subject to the legislation of the other Member State, which shall apply to him independently of these provisions or, if the legislation of two or more Member States thus apply to him, to the legislation determined by common agreement between these States or their competent authorities;
- (g) in the cases provided for in paragraphs (d) and (f), the institution or institutions that administer the legislation determined in accordance with these provisions shall take into account any professional or trade activity pursued in the territory of another Member State.
4. Article 14 (2) shall be amended as follows:
- (a) after paragraph (a), the following new paragraph shall be inserted:
- (b) a worker who normally pursues his professional or trade activity either in the territory of a Member State or on board a vessel flying the flag of a Member State, and who, on his own account, carries out work on board a vessel flying the flag of another Member State, shall remain subject to the legislation of the first State, provided that the expected duration of that activity does not exceed 12 months;
- (b) paragraph (b) shall become paragraph (c) and shall read as follows:
- (c) a worker who, while not habitually pursuing his professional or trade activity at sea, pursues his activity in the territorial waters or in a port of a Member State on a vessel flying the flag of another Member State, but is not a member of the crew, shall be subject to the legislation of the first State;
- (c) paragraph (c) shall become paragraph (d).
5. In paragraphs 1 and 2 of Article 23, the words 'wage or salary' and 'wages or salaries' shall be replaced by 'earnings'.
6. Article 34 shall be amended as follows:
- (a) after the title the following new paragraph 1 shall be inserted:
- '1. For the purposes of Articles 28, 28a, 29 and 31, a worker who is in receipt of two or more pensions due under the legislation of a single Member State shall be regarded as a pensioner entitled to draw a pension under the legislation of one Member State, within the meaning of these provisions.'
- (b) the present text of Article 34 shall become paragraph 2.
7. Article 35 shall be amended as follows:
- (a) paragraph 1 shall read as follows:
- '1. Subject to the provisions of paragraph 2, if the legislation of the country of stay or residence contains several sickness or maternity insurance schemes, the provisions applicable under Articles 19, 21 (1), 22, 25, 26, 28 (1), 29 (1) or 31 shall be those of the scheme covering manual workers in the steel industry. Where, however, the said legislation includes a special scheme for workers in mines and similar undertakings, the provisions of such scheme shall apply to that category of workers and members of their families provided the institution of the place of stay or residence to which application is made is competent to administer such scheme.'
- (b) the following new paragraph 2 shall be inserted after paragraph 1:
- '2. If the legislation of the country of stay or residence contains one or several special schemes covering all or most occupational categories of self-employed persons, which grant benefits in kind less favourable than those granted to employed persons; the provisions applicable to the person



concerned and to the members of his family in pursuance of Articles 19 (1) (a) and (2), 22 1) (i) and (3), 28 (1) (a) and 31 (a), shall be those of the scheme or schemes determined by the Implementing Regulation referred to in Article 97,

(a) if, in the competent State, the person concerned is insured under a special scheme for self-employed persons which also grants less-favourable benefits in kind than those granted to employed persons, or

(b) if the pensioner in receipt of one or more pensions is, under the legislation of the Member State or Member States competent for pensions, entitled only to the benefits in kind provided for by a special scheme for self-employed persons which also grants less favourable benefits in kind than those granted to employed persons.'

(c) paragraphs 2 and 3 shall become paragraphs 3 and 4, respectively.

8. In Article 38:

(a) paragraph 2 shall be amended as follows:

— in the third line, after the word 'completed', the word 'only' shall be added;

— in the fifth line, after the words 'special scheme', the words 'applying to employed persons' shall be added;

(b) the following new paragraph 3 shall be added:

'3. Where the legislation of a Member State makes the granting of certain benefits conditional upon the insurance periods having been completed only in an occupation subject to a special scheme for self-employed persons, insurance periods completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing this, in the same occupation.'

9. The text of paragraph 3 of Article 39 shall be replaced by the following:

'3. A person who is not entitled to benefits under paragraph 1 shall receive the benefits to which he is still entitled under the legislation of another Member State, taking account, where appropriate, of the provisions of Article 38.'

10. In Article 45:

(a) paragraph 2 shall be amended as follows:

— in the third line, the word 'only' shall be added after the word 'completed';

— in the fourth line, the words 'for employed persons' shall be added to the words 'special scheme';

(b) the following new paragraph shall be inserted after paragraph 2:

'3. Where the legislation of a Member State makes the granting of certain benefits conditional upon the insurance period having been completed only in an occupation subject to a special scheme for self-employed persons, periods completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if they have been completed under a corresponding scheme or, failing this, in the same occupation'.

(c) paragraph 3 shall become paragraph 4 and be amended as follows:

(i) the word "benefits" in the second and twelfth lines shall be replaced by the words "survivors' benefits";

(ii) the words "can establish" in the eleventh line shall be replaced by the words "if the person concerned can establish";

(d) the following new paragraph 5 shall be added after paragraph 4:

'5. Where the legislation of a Member State which makes the granting of invalidity benefits conditional upon a worker being subject to its legislation at the time when the risk materializes has no requirements as to the length of insurance periods either for the entitlement to or the calculation of benefits, any worker who is no longer subject to that legislation shall, for the purposes of this chapter, be deemed to be still so subject at the time when the risk materializes, if at that time he is subject to the legislation of another Member State or, failing this, in the case of an employed person, if he can establish a claim to benefits under the legislation of another Member State. However, this latter condition shall be deemed to be satisfied in the case referred to in Article 48 (1).'

11. In Article 47 (1), the words 'wage or salary' and 'wages or salaries' shall be replaced by the word 'earnings'.
12. In Article 58 (1) and (2), the words 'wage or salary' and 'wages or salaries' shall be replaced by the word 'earnings'.
13. The text of Article 68 (1) shall be replaced by the following:
- '1. The competent institution of a Member State whose legislation provides that the calculation of benefits should be based on the amount of the previous earnings shall take into account exclusively the earnings of the person concerned in respect of his last professional or trade activity under the legislation of that State. However, if the person concerned had been in his last activity under that legislation for less than four weeks, the benefits shall be calculated on the basis of the normal earnings corresponding, in the place where the unemployed person is residing or staying, to an equivalent or similar activity to his last activity under the legislation of another Member State.'
14. In the first line of Article 69 (1), the words 'a worker' shall be replaced by the words 'an employed person'.
15. In the second line of the second subparagraph of Article 70 (1), the words 'a worker' shall be replaced by the words 'an employed person'.
16. In Article 71:
- (a) in the first line of paragraph 1 (a) (i), the words 'a frontier worker' shall be replaced by the words 'an employed person who is a frontier worker and';
- (b) in the first line of paragraph 1 (a) (ii), the words 'a frontier worker' shall be replaced by the words 'an employed person who is a frontier worker and';
- (c) in the first line of paragraph 1 (b) (i), the words 'a worker' preceding the words 'other than' shall be replaced by the words 'an employed person';
- (d) in the first line of paragraph 1 (b) (ii), the words 'a worker' preceding the words 'other than' shall be replaced by the words 'an employed person'.
17. In the title, the third and fourth lines and the sixth line of Article 72, the words 'periods of insurance or employment' shall be replaced by the words 'periods of insurance, employment or professional or trade activity'.
18. Article 73 shall be amended as follows:
- (a) in paragraph 2, the part of the sentence starting with the words 'the worker must satisfy' shall be deleted;
- (b) the text of paragraph 3 shall be replaced by the following:
- '3. However, a worker who is subject to French legislation by virtue of the provisions of Article 14 (1) (a) or (b) shall be entitled to the family benefits set out in Annex V in respect of members of his family who accompany him to the territory of the Member State where he is posted or where he is engaged in the provision of services.'
19. In the fourth line of Article 79 (1) (a), the words 'professional or trade activity' shall be inserted after the word 'employment'.
20. In Article 92:
- (a) the following new paragraph 1 shall be added:
- '1. For the purpose of fixing the amount of contribution payable to the institution of a Member State, account shall, where appropriate, be taken of any income obtained and any professional or trade activity pursued in the territory of any other Member State.'
- (b) paragraphs 1 and 2 shall become paragraphs 2 and 3 respectively.
21. The title of Article 94 shall be replaced by the following:
- 'Miscellaneous provisions applicable to employed persons.'
22. After Article 94, the following new Article 94a shall be added:
- 'Article 94a
- Miscellaneous provisions applicable to self-employed persons
1. This Regulation shall create no entitlement to benefits for a period prior to ... <sup>(1)</sup>.
2. All insurance periods, as also, where applicable, all periods of employment, of
- (<sup>1</sup>) Date of entry into force of the Regulation contained in this proposal.

- professional or trade activity or of residence completed under the legislation of a Member State before ...<sup>(1)</sup> shall be taken into consideration for the purpose of determining entitlement to benefits in accordance with the provisions of this Regulation.
3. Subject to the provisions of paragraph 1, an entitlement shall exist under this Regulation even if it relates to an event prior to ...<sup>(1)</sup>.
  4. Any benefit which has not been determined or has been suspended by reason of the nationality or place of permanent residence of the person concerned shall, on the application of the person concerned, be determined or resumed with effect from ...<sup>(1)</sup> unless the entitlement previously determined has been compounded by a capital payment.
  5. Persons whose pension rights were determined before ...<sup>(1)</sup> may apply for such pension rights to be reviewed, taking account of the provisions of this Regulation. This provision shall also apply to the other benefits referred to in Article 78 of Regulation (EEC) No 1408/71.
  6. If the application referred to in paragraphs 4 and 5 is submitted within two years from ...<sup>(1)</sup> persons concerned shall by virtue of this Regulation acquire from that date the entitlement to benefits, and the provisions of the legislation of any Member State concerning the forfeit or limitation of rights shall not apply to them.

7. If the application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period following ...<sup>(1)</sup> a right to benefit that has not lapsed or is not barred by limitation shall be acquired from the date on which the application was submitted except where more favourable provisions of the legislation of a Member State apply.

#### Article 2

The title of Regulation (EEC) No 1408/71 shall be replaced by the following:

'Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed and self-employed persons and their families moving within the Community.'

#### Article 3

This Regulation shall enter into force on the first day of the seventh month following the publication in the *Official Journal of the European Communities* of the Regulation adapting Regulation (EEC) No 574/72 to make it applicable to self-employed persons and their families.

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

<sup>(1)</sup> Date of entry into force of the Regulation contained in this proposal.

## II

**Proposal for a Council Regulation concerning the adaptation of the Annexes of Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, with a view to applying it to self-employed persons and their families**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community<sup>(1)</sup>, as last

amended by Regulation (EEC) No 2595/77<sup>(2)</sup>, and in particular Article 95 thereof,

Having regard to the proposal of the Commission drawn up after consultation of the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the European Parliament,

<sup>(1)</sup> OJ No L 149, 5. 7. 1971, p. 2.

<sup>(2)</sup> OJ No L 302, 26. 11. 1977, p. 1.

Having regard to the opinion of the Economic and Social Committee,

Whereas the adjustments to be made to the aforementioned Regulation (EEC) No 1408/71 in order to make it applicable to self-employed persons and members of their families necessitate the adaptation of certain Annexes of the abovementioned Regulation;

Whereas the legislations applicable to self-employed persons, which stipulate that the amount of invalidity benefits is independent of the length of insurance or residence periods, must be listed in Annex III, pursuant to Article 37 (2) of Regulation (EEC) No 1408/71,

Whereas it is necessary to amend certain detailed rules for implementing the legislations of certain Member States listed in Annex V with a view to their application to self-employed persons;

Whereas, more especially, subsequent to the new definition of the term 'worker' introduced in Regulation (EEC) No 1408/71 it is necessary, as laid down in the definition, to specify in Annex V whether the expressions 'employed person' or 'self-employed person' within the meaning of the Regulation apply to persons who are insured under a social security scheme for all residents, certain categories of residents or for the whole of the working population of a Member State,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Annex III of Regulation (EEC) No 1408/71 shall be adapted as follows:

1. The text of A. Belgium shall be amended as follows:

'The legislations relating to the general invalidity scheme, to the special invalidity scheme for miners, to the special scheme for sailors in the Merchant Navy and to the legislation concerning insurance against incapacity for work for self-employed persons.'

2. The text of D. France shall be replaced by the following:

D. FRANCE:

1. Employed persons:

All the legislations on invalidity insurance, except for the legislation concerning the

invalidity insurance of the miners' social security scheme.

2. Self-employed persons:

The legislation on the invalidity insurance of self-employed agricultural workers.'

#### *Article 2*

Annex V of Regulation (EEC) No 1408/71 shall be adapted as follows:

1. A. BELGIUM:

- (a) The text of paragraph 1 shall be replaced by the following:

'For the purposes of Article 35 (2) of the Regulation, the provisions of the compulsory sickness and invalidity insurance scheme applicable to self-employed persons shall be considered as a special scheme applicable to self-employed persons.'

- (b) A new paragraph 4, as follows, shall be inserted:

'4. For the purposes of Article 46 (2) of the Regulation the old-age insurance periods completed by self-employed persons under Belgian legislation, prior to the entry into force of the legislation on the incapacity for work of self-employed persons, shall be considered as periods completed under the latter legislation.'

2. B. DENMARK:

- (a) The text of paragraph 1 shall be replaced by the following:

'1. (a) Any person who, from the fact of pursuing an activity as an employed person, is subject to legislation on accidents at work and occupational diseases shall be considered an employed person within the meaning of Article 1 (a) a (iii), first indent, of the Regulation;

- (b) Any person who, pursuant to the law on daily cash benefits in the event of sickness or maternity, is entitled to such benefits on the basis of an earned income other than a wage or salary shall be considered as a self-employed person within the meaning of Article 1 (a) a (iii), first indent, of the Regulation.'

(b) Paragraph 2 shall be deleted and the following paragraphs shall therefore be renumbered;

(c) The text of the new paragraph 2 shall read as follows:

'2. Periods of insurance, employment or occupational activity completed in a Member State other than Denmark shall be taken into account for admission to membership of an approved unemployment insurance fund in the same way as if they were periods of employment or occupational activity completed in Denmark.'

(d) In the new paragraph 3, line 8 to line 11, the words 'persons whose income does not exceed the level indicated in Article 3 of Law No 311 of 9 June 1971 concerning the Public Health Service' shall be replaced with 'persons who, pursuant to the Law concerning the Public Health Service, shall be insured in category 1.'

(e) The text of the new paragraph 7 shall read as follows:

'(a) The periods during which a frontier worker residing within the territory of a Member State other than Denmark has pursued his occupational activity in Denmark shall be considered as periods of residence for the purposes of Danish legislation. The same applies to periods in which a frontier worker is posted to or provides services in a Member State other than Denmark;

(b) The periods during which a seasonal worker residing within the territory of a Member State other than Denmark has worked in Denmark shall be considered as periods of residence for the purposes of Danish legislation. The same applies to periods in which a seasonal worker is posted to the territory of a Member State other than Denmark.'

### 3. C. GERMANY:

(a) Paragraph 1 shall read as follows:

'1. If the competent institution for granting family benefits, is a German institution, in accordance with Title III, Chapter 7 of the Regulation:

(a) any person compulsorily insured against unemployment or any person

who, as a result of such insurance, obtains cash benefits under sickness insurance or comparable benefits shall be considered as an employed person within the meaning of Article 1 (a) a (iii), first indent, of the Regulation;

(b) any person pursuing a self-employed activity who is bound to join, or pay contributions in respect of old-age insurance to a special insurance scheme for the self-employed or who is bound to join a pension insurance scheme for employed persons shall be considered as a self-employed person within the meaning of Article 1 (a) a (iii), first indent, of the Regulation.'

(b) The following paragraphs shall be renumbered and the text of the present paragraph 6 shall be deleted.

(c) The following paragraph 10 shall be added after paragraph 9:

'10. Unemployment assistance (Arbeitslosenhilfe) for the self-employed shall be granted provided that, before he registers as unemployed, the person concerned has pursued a principal, self-employed activity for at least one year in the territory of the Federal Republic of Germany and that he has not ceased such activity temporarily.'

### 4. D. FRANCE:

In paragraph 4 (d), the words 'The single wage or salary allowance' shall be deleted and replaced with 'the family supplement.'

### 5. E. IRELAND:

(a) The text of paragraph 1 shall be replaced by the following:

'1. Any person who is compulsorily or voluntarily insured pursuant to the provisions of Section 4 of the Social Welfare Act 1952 shall be considered an employed person within the meaning of Article 1 (a) a (iii), first indent, of the Regulation.'

(b) The text of paragraph 2 shall read as follows:

'2. Any person who is pursuing an occupational activity without a contract of employment or who has retired from such

activity shall be considered a self-employed person within the meaning of Article 1 (a) a (iii), second indent, of the Regulation. As regards sickness benefits in kind, the person concerned must also be entitled to such benefits under Section 45 or 46 of the Health Act 1970.'

#### 6. H. NETHERLANDS:

The following paragraph 5 shall be added after paragraph 4:

- '5. Any person pursuing an activity or occupation without a contract of employment shall be considered a self-employed person within the meaning of Article 1 (a) a (iii), second indent, of the Regulation.'

#### 7. I. UNITED KINGDOM:

- (a) Paragraph 1 shall read as follows:

- '1. (a) Any person required to pay contributions as an employed person or as a self-employed person pursuant to the National Insurance Act shall be considered an employed person or a self-employed person respectively within the meaning of Article 1 (a) a (iii), first indent, of the Regulation.'

- (b) For the purposes of Title III, Chapter 7, of the Regulation, account shall not be taken of Article 1 (a) a (iv).'

- (b) In paragraph 17 (1) (a), line 3, the word 'worker' shall be amended to read 'employed person'.

- (c) In paragraph 17 (1), the following text shall be inserted after paragraph (a):

- '(b) For each week of insurance, occupational activity or residence as a self-employed person, the person concerned shall be deemed to have paid a Class 2 contribution as a self-employed person.'

- (d) In paragraph 17 (1), paragraph (b) shall be renumbered paragraph (c). In line 5, the words 'person concerned' shall read 'worker'.

#### Article 3

This Regulation shall enter into force on the first day of the seventh month following the publication in the *Official Journal of the European Communities* of the Regulation adapting Regulation (EEC) No 574/72 with a view to applying it to self-employed persons and their families.

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

# COMMISSION DES COMMUNAUTÉS EUROPÉENNES

COM(77) 707 final/2.

## I

Versions DE, NL, DK

CORRIGENDA A LA  
Proposition de  
REGLEMENT DU CONSEIL

concernant l'adaptation du règlement (CEE) n° 1408/71 du Conseil, du 14 juin 1971, relatif à l'application des régimes de sécurité sociale aux travailleurs salariés et à leur famille qui se déplacent à l'intérieur de la Communauté, en vue de permettre son application aux travailleurs non salariés et à leur famille  
(annexes I et II du doc. COM(77) 707 final du 22.12.1977)

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## II

Versions FR, DE, IT, NL, EN, DK

CORRIGENDUM A LA  
Proposition de  
REGLEMENT DU CONSEIL

concernant l'adaptation des annexes du règlement (CEE) n° 1408/71 du Conseil, du 14 juin 1971, relatif à l'application des régimes de sécurité sociale aux travailleurs salariés et à leur famille qui se déplacent à l'intérieur de la Communauté, en vue de permettre son application aux travailleurs non salariés et à leur famille  
(annexe III du doc. COM(77) 707 final du 22.12.1977)

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(présentés par la Commission au Conseil)





Rectificatifs à apporter aux versions  
danoise, allemande et néerlandaise des  
propositions de règlements du Conseil  
concernant l'adaptation du règlement n°  
1408/71 et de ses annexes en vue de per-  
mettre son application aux travailleurs  
non salariés et à leur famille

## Corrigendum

Vorschlag einer Verordnung des Rates zur Anpassung der Verordnung (EWG) Nr. 1408/71 des Rates vom 14. Juni 1971 zur Anwendung der Systeme der sozialen Sicherheit auf Arbeitnehmer und deren Familien, die innerhalb der Gemeinschaft zu- und abwandern, zwecks Ermöglichung ihrer Anwendung auf die Selbständigen und ihre Familien

(Von der Kommission dem Rat vorgelegt)

Nach Artikel 2 ist folgender Artikel 2 a einzufügen:

### "Artikel 2a

An folgenden Stellen der Verordnung (EWG) Nr. 1408/71 ist "Arbeitnehmer", "-arbeitnehmer" durch "Erwerbstätiger, "Erwerbstätige", "-erwerbstätige" im jeweils entsprechenden Kasus zu ersetzen:

Artikel 1 Buchstabe c)

Artikel 1 Buchstabe f) (zweimal)

Artikel 1 Buchstabe g) (zweimal)

Artikel 2 Absatz 1

Artikel 2 Absatz 2 (zweimal)

Artikel 9 Absatz 1

Artikel 10 Absatz 2

Artikel 13 Absatz 1

Artikel 13 Absatz 2 Buchstabe a)

Artikel 13 Absatz 2 Buchstabe b)

Artikel 13 Absatz 2 Buchstabe d) (zweimal)

Artikel 14 Absatz 1 Buchstabe d)

Artikel 17 (zweimal)

Artikel 18 Absatz 2

Titel III Kapitel 1 Abschnitt 2 (x)

Artikel 19 Absatz 1  
Artikel 19 Absatz 2 zweiter Unterabsatz  
  
Artikel 21 Absatz 1  
Artikel 21 Absatz 2 zweiter Unterabsatz  
Artikel 21 Absatz 4  
  
Artikel 22 Absatz 1  
Artikel 22 Absatz 2 erster Unterabsatz  
Artikel 22 Absatz 2 zweiter Unterabsatz  
Artikel 22 Absatz 3 zweiter Unterabsatz  
Artikel 22 Absatz 3 Buchstabe a)  
Artikel 22 Absatz 4  
Artikel 24 Absatz 1 (zweimal)  
Artikel 26 Absatz 1  
Artikel 34 Absatz 2 (zweimal)  
Artikel 35 Absatz 3  
  
Titel III Kapitel 2 Abschnitt 1 (⌘)  
Artikel 37 Absatz 1  
  
Titel III Kapitel 2 Abschnitt 2 (⌘)  
Artikel 40 Absatz 1  
Artikel 40 Absatz 2  
Artikel 40 Absatz 2 erster Gedankenstrich  
Artikel 40 Absatz 2 zweiter Gedankenstrich  
Artikel 40 Absatz 3 Buchstabe a)  
  
Artikel 41 Absatz 1  
Artikel 41 Absatz 1 Buchstabe a)  
Artikel 41 Absatz 1 Buchstabe b)  
Artikel 41 Absatz 1 Buchstabe c)  
Artikel 41 Absatz 2  
  
Artikel 42 Absatz 2  
Artikel 44 - Vorspann  
Artikel 44 Absatz 1  
Artikel 44 Absatz 2  
  
Artikel 45 - Vorspann  
Artikel 45 Absatz 4 (zweimal)

Artikel 46 Absatz 1

Artikel 46 Absatz 2 (zweimal)

Artikel 46 Absatz 2 Buchstabe a)

Artikel 46 Absatz 3 erster Unterabsatz

Artikel 52

Artikel 54 Absatz 1

Artikel 54 Absatz 2

Artikel 55 Absatz 1

Artikel 55 Absatz 2 erster Unterabsatz

Artikel 55 Absatz 2 zweiter Unterabsatz

Artikel 60 Absatz 1

Artikel 60 Absatz 1 Buchstabe a)

Artikel 60 Absatz 1 Buchstabe b) (dreimal)

Artikel 60 Absatz 1 Buchstabe c)

Artikel 61 Absatz 1

Artikel 62 Absatz 1 (einmal, und zwar im Satzteil "so werden die  
Rechtsvorschriften ...")

Artikel 65 Absatz 1

Titel III Kapitel 7 (⌘)

Titel III Kapitel 7 Abschnitt 2 (⌘)

Artikel 73 - Überschrift

Artikel 73 Absatz 1

Artikel 73 Absatz 2

Artikel 75 Absatz 1 Buchstabe a)

Artikel 75 Absatz 2 Buchstabe b)

Artikel 78 Absatz 2 Buchstabe a)

Artikel 78 Absatz 2 Buchstabe b)

Artikel 78 Absatz 2 Buchstabe b) Ziffer ii)

Artikel 79 Absatz 1

Artikel 79 Absatz 2

Artikel 79 Absatz 3

Titel IV (⌘)

Artikel 80 Absatz 1

Titel V (⌘)

Artikel 82 Absatz 1"

Die mit (⌘) bezeichneten Stellen sind ebenfalls im Inhaltsverzeichnis zu ändern.

## Corrigendum

Vorschlag für eine Verordnung des Rates zur Anpassung der Anhänge der Verordnung (EWG) Nr. 1408/71 des Rates vom 14. Juni 1971 zur Anwendung der Systeme der sozialen Sicherheit auf Arbeitnehmer und deren Familien, die innerhalb der Gemeinschaft zu- und abwandern, zwecks Ermöglichung ihrer Anwendung auf die Selbständigen und deren Familien.

(Von der Kommission dem Rat vorgelegt)

Nach Artikel 2 ist folgender Artikel 2 a einzufügen:

### "Artikel 2a

An folgenden Stellen der Anhänge zur Verordnung (EWG) Nr. 1408/71 ist "Arbeitnehmer" durch "Erwerbstätiger", "Erwerbstätige" im jeweils entsprechenden Kasus zu ersetzen:

Anhang V Abschnitt A. Belgien Nummer 4.

Anhang V Abschnitt B. Dänemark Nummer 3.

Anhang V Abschnitt B. Dänemark Nummer 4.

Anhang V Abschnitt B. Dänemark Nummer 5.

Anhang V Abschnitt D. Frankreich

Anhang V Abschnitt D. Frankreich Nummer 1. Buchstabe a) (zweimal, und zwar nach "Rechtsvorschriften")

Anhang V Abschnitt D. Frankreich Nummer 3. erster Gedankenstrich

Anhang V Abschnitt D. Frankreich Nummer 3. zweiter Gedankenstrich

Anhang V Abschnitt E. Irland Nummer 3.

Anhang V Abschnitt E. Irland Nummer 3. Buchstabe a) erster Unterabsatz

Anhang V Abschnitt E. Irland Nummer 3. Buchstabe a) zweiter Unterabsatz

Anhang V Abschnitt E. Irland Nummer 3. Buchstabe a) dritter Unterabsatz

Anhang V Abschnitt E. Irland Nummer 5.

Anhang V Abschnitt E. Irland Nummer 8.

Anhang V Abschnitt E. Irland Nummer 9.

Anhang V Abschnitt G. Luxemburg Nummer 2.

Anhang V Abschnitt H. Niederlande Nummer 3 Buchstabe a)

Anhang V Abschnitt I. Vereinigtes Königreich Nummer 5.

Anhang V Abschnitt I. Vereinigtes Königreich Nummer 6.

Anhang V Abschnitt I. Vereinigtes Königreich Nummer 15.

Anhang V Abschnitt I. Vereinigtes Königreich Nummer 17.

Anhang V Abschnitt I. Vereinigtes Königreich Nummer 18."

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## Rectificatie

Voorstel voor een Verordening van de Raad tot aanpassing van Verordening (EEG) nr 1408/71 van de Raad, van 14 juni 1971, betreffende de toepassing van de sociale zekerheidsregelingen op loontrekkenden en hun gezinnen die zich binnen de Gemeenschap verplaatsen, ten einde deze van toepassing te doen zijn op de niet in loondienst werkenden en hun gezinsleden

(door de Commissie bij de Raad ingediend)

Na artikel 2, moet het volgende artikel 2bis ingevoegd worden

### "Artikel 2bis

In de volgende bepalingen van Verordening (EEG) nr 1408/71 worden de woorden "werknemer" en "werknemers" respectievelijk vervangen door de woorden "arbeidskracht" en "arbeidskrachten" :

- artikel 1, alinea c)
- artikel 1, alinea f) (twee maal)
- artikel 1, alinea g) (twee maal)
- artikel 2, lid 1
- artikel 2, lid 2 (twee maal)
- artikel 9, lid 1
- artikel 10, lid 2
- artikel 13, lid 1
- artikel 13, lid 2, alinea a)
- artikel 13, lid 2, alinea b)
- artikel 13, lid 2, alinea d) (twee maal)
- artikel 14, lid 1, alinea d)
- artikel 17 (twee maal)
- artikel 18, lid 2
- Titel III, Hoofdstuk 1, Afdeling 2, opschrift \*

- artikel 19, lid 1
- artikel 19, lid 2, 2e alinea
- artikel 21, lid 1
- artikel 21, lid 2, 2e alinea
- artikel 21, lid 4
- artikel 22, lid 1
- artikel 22, lid 1, sub i)
- artikel 22, lid 3, eerste alinea
- artikel 22, lid 3, tweede alinea
- artikel 22, lid 3, tweede alinea, sub a)
- artikel 22, lid 4
- artikel 24, lid 1 (twee maal)
- artikel 26, lid 1
- artikel 34, lid 2 (twee maal)
- artikel 35, lid 3
- Titel III, Hoofdstuk 2, Afdeling 1, opschrift \*
- artikel 37, lid 1
- Titel III, Hoofdstuk 2, Afdeling 2, opschrift \*
- artikel 40, lid 1
- artikel 40, lid 3, alinea a)
- artikel 41, lid 1
- artikel 41, lid 2
- artikel 44, opschrift
- artikel 44, lid 1 (twee maal)
- artikel 44, lid 2
- artikel 45, opschrift
- artikel 45, lid 4 (twee maal)
- artikel 46, lid 1



- artikel 46, lid 2
- artikel 46, lid 2, alinea a)
- artikel 49, lid 2
- artikel 52
- artikel 54, lid 1
- artikel 54, lid 2
- artikel 55, lid 1
- artikel 60, lid 1
- artikel 60, lid 1, alinea a)
- artikel 60, lid 1, alinea b) (twee maal)
- artikel 60, lid 1, alinea c)
- artikel 61, lid 1
- artikel 62, lid 1, tekst na de woorden : "op deze categorie"
- artikel 65, lid 1
- Titel III, hoofdstuk 7, opschrift \*
- Titel III, hoofdstuk 7, afdeling 2, opschrift \*
- artikel 73, opschrift
- artikel 73, lid 1
- artikel 73, lid 2
- artikel 75, lid 1, alinea a)
- artikel 75, lid 2, alinea b)
- artikel 78, lid 2, alinea a)
- artikel 78, lid 2, alinea b)
- artikel 78, lid 2, alinea b), sub ii)
- artikel 79, lid 1
- artikel 79, lid 2
- artikel 79, lid 3
- Titel IV, opschrift \*
- artikel 80, lid 1
- Titel V, opschrift \*
- artikel 82, lid 1."

De met een \* gemerkte opschriften dienen ook in de inhoudsopgave gewijzigd te worden.

## Rectificatie

Voorstel voor een Verordening van de Raad tot aanpassing van de bijlagen van Verordening (EEG) nr 1408/71 van de Raad van 14 juni 1971 betreffende de toepassing van de sociale zekerheidsregelingen op loontrekkenden en hun gezinsleden die zich binnen de Gemeenschap verplaatsen ten einde deze van toepassing te doen zijn op de niet in loondienst werkenden en hun gezinsleden.

(door de Commissie bij de Raad ingediend)

Na artikel 2 moet het volgende artikel 2bis ingevoegd worden.

### "Artikel 2bis

In de volgende bepalingen van de bijlagen van Verordening (EEG) nr 1408/71 worden de woorden "werknemer" en "werknemers" respectievelijk vervangen door de woorden "arbeidskracht" en "arbeidskrachten" :

- bijlage V, punt A. België, paragraaf 4
- bijlage V, punt B. Denemarken, paragraaf 3
- bijlage V, punt B. Denemarken, paragraaf 4
- bijlage V, punt B. Denemarken, paragraaf 5
- bijlage V, punt D. Frankrijk, paragraaf 1 a) tekst na de woorden "Franse wetgeving" (twee maal)
- bijlage V, punt D. Frankrijk, paragraaf 3 (twee maal)
- bijlage V, punt E. Ierland, paragraaf 3
- bijlage V, punt E. Ierland, paragraaf 3bis (drie maal)
- bijlage V, punt E. Ierland, paragraaf 5
- bijlage V, punt E. Ierland, paragraaf 8
- bijlage V, punt E. Ierland, paragraaf 9

- bijlage V, punt G. Luxemburg, paragraaf 2
- bijlage V, punt H. Nederland, paragraaf 3 a)
- bijlage V, punt I. Verenigd Koninkrijk, paragraaf 5
- bijlage V, punt I. Verenigd Koninkrijk, paragraaf 6
- bijlage V, punt I. Verenigd Koninkrijk, paragraaf 15
- bijlage V, punt I. Verenigd Koninkrijk, paragraaf 17 (1) tekst vóór subparagraaf a)
- bijlage V, punt I. Verenigd Koninkrijk, paragraaf 18 ."

## Berigtigelse

Forslag til Rådets forordning om tilpasning af Rådets forordning (EØF) nr. 1408/71 af 14. juni 1971 om anvendelse af de sociale sikringsordninger på arbejdstagere og deres familiemedlemmer, der flytter inden for Fællesskabet, for at gøre det muligt at anvende bestemmelserne på selvstændige erhvervsdrivende og deres familiemedlemmer.

(forelagt Rådet af Kommissionen)

Efter artikel 2 indføres følgende artikel 2 a:

### "Artikel 2 a

I følgende bestemmelser i forordning (EØF) nr. 1408/71 ændres udtrykket "arbejdstager" og "arbejdstagere" til henholdsvis erhvervsmæssigt beskæftiget person" og "erhvervsmæssigt beskæftigede personer":

- Artikel 1, litra c)
- Artikel 1, litra f) (to gange)
- Artikel 1, litra g) (to gange)
  
- Artikel 2, stk. 1
- Artikel 2, stk. 2 (to gange)
  
- Artikel 9, stk. 1
  
- Artikel 10, stk. 2
  
  
- Artikel 13, stk. 1
- Artikel 13, stk. 2, litra a)
- Artikel 13, stk. 2, litra b)
- Artikel 13, stk. 2, litra d) (to gange)
  
- Artikel 14, stk. 1, litra d)
  
  
- Artikel 17 (to gange)
  
  
- Artikel 18, stk. 2
  
  
- Afsnit III, kapitel 1, afdeling 2, overskriften (x)

- Artikel 19, stk. 1
- Artikel 19, stk. 2, andet afsnit
  
- Artikel 21, stk. 1
- Artikel 21, stk. 2, andet afsnit
- Artikel 21, stk. 4
  
- Artikel 22, stk. 1
- Artikel 22, stk. 3, første afsnit
- Artikel 22, stk. 3, andet afsnit
- Artikel 22, stk. 3, litra a)
- Artikel 22, stk. 4
  
- Artikel 24, stk. 1 (to gange)
  
- Artikel 26, stk. 1
  
- Artikel 34, stk. 2 (to gange)
  
- Artikel 35, stk. 3
  
- Afsnit III, kapitel 2, afdeling 1, overskriften (☒)
  
- Artikel 37, stk. 1
  
- Afsnit III, kapitel 2, afdeling 2, overskriften (☒)
  
- Artikel 40, stk. 1
- Artikel 40, stk. 2
- Artikel 40, stk. 3, litra a)
  
- Artikel 41, stk. 1
- Artikel 41, stk. 2
  
- Artikel 44, overskriften
- Artikel 44, stk. 1
  
- Artikel 45, overskriften
- Artikel 45, stk. 4 (to gange)

- Artikel 46, stk. 1
- Artikel 46, stk. 2, første afsnit
- Artikel 46, stk. 2, litra a)
  
- Artikel 52
  
- Artikel 54, stk. 1
- Artikel 54, stk. 2
  
- Artikel 55, stk. 1
  
- Artikel 60, stk. 1
- Artikel 60, stk. 1, litra a)
- Artikel 60, stk. 1, litra b) (to gange)
- Artikel 60, stk. 1, litra c)
  
- Artikel 61, stk. 1
  
- Artikel 62, stk. 1 efter udtrykket "nævnte kategori af"
  
- Artikel 65, stk. 1
  
- Afsnit III, kapitel 7, overskriften (☒)
  
- Afsnit III, kapitel 7, afdeling 2, overskriften (☒)
  
- Artikel 73, overskriften
- Artikel 73, stk. 1
- Artikel 73, stk. 2
  
- Artikel 75, stk. 1, litra a)
- Artikel 75, stk. 2, litra b)
  
- Artikel 78, stk. 2, litra a)
- Artikel 78, stk. 2, litra b)
- Artikel 78, stk. 2, litra b), ii)
  
- Artikel 79, stk. 1
- Artikel 79, stk. 2

- Artikel 79, stk. 3
- Afsnit IV, overskriften (☒)
- Artikel 80, stk. 1
- Afsnit V, overskriften (☒)
- Artikel 82, stk. 1

De ændringer, der er mærket med (☒) foretages ligeledes i indholdsfortegnelser.

## Berigtigelse

Forslag til Rådets forordning om tilpasning af bilagene til Rådets forordning (EØF) nr. 1408/71 af 14. juni 1971 om anvendelse af de sociale sikringsordninger på arbejdstagere og deres familiemedlemmer, der flytter inden for Fællesskabet, for at gøre det muligt at anvende bestemmelserne på selvstændige erhvervsdrivende og deres familiemedlemmer.

(forelagt Rådet af Kommissionen)

Efter artikel 2 indføjes følgende artikel 2a:

### "Artikel 2a

I følgende bestemmelser i bilagene til forordning (EØF) nr. 1408/71 ændres udtrykket "arbejdstager" og "arbejdstagere" til henholdsvis "erhvervsmæssigt beskæftiget person" og "erhvervsmæssigt beskæftigede personer":

- Bilag V, punkt A. Belgien, stk. 4
- Bilag V, punkt B. Danmark, stk. 3
- Bilag V, punkt B. Danmark, stk. 4
- Bilag V, punkt B. Danmark, stk. 5
  
- Bilag V, punkt D. Frankrig, stk. 1, litra a), teksten efter udtrykket "fransk lovgivning"
- Bilag V, punkt D. Frankrig, stk. 3, første led
- Bilag V, punkt D. Frankrig, stk. 3, andet led
  
- Bilag V, punkt E. Irland, stk. 3
- Bilag V, punkt E. Irland, stk. 3, litra a), første afsnit
- Bilag V, punkt E. Irland, stk. 3, litra a), andet afsnit
- Bilag V, punkt E. Irland, stk. 3, litra a), tredje afsnit
- Bilag V, punkt E. Irland, stk. 5
- Bilag V, punkt E. Irland, stk. 8
- Bilag V, punkt E. Irland, stk. 9
  
- Bilag V, punkt G. Luxembourg, stk. 2



- Bilag V, punkt H. Nederlandene, stk. 3, litra a)
- Bilag V, punkt I, Det forenede Kongerige, stk. 5
- Bilag V, punkt I, Det forenede Kongerige, stk. 6
- Bilag V, punkt I, Det forenede Kongerige, stk. 15
- Bilag V, punkt I, Det forenede Kongerige, stk. 17
- Bilag V, punkt I, Det forenede Kongerige, stk. 18

Rectificatif à apporter à la proposition de règlement du Conseil concernant l'adaptation du règlement n° 1408/71 en vue de permettre son application aux travailleurs non salariés et à leur famille (changement de références)

RECTIFICATIF

Proposition de règlement du Conseil

concernant l'adaptation des annexes du règlement (CEE) n° 1408/71 du Conseil, du 14 juin 1971, relatif à l'application des régimes de sécurité sociale aux travailleurs salariés et à leur famille qui se déplacent à l'intérieur de la Communauté, en vue de permettre son application aux travailleurs non salariés et à leur famille

(présenté par la Commission au Conseil)

1. Article 2, paragraphe 1 alinéa b) : remplacer par :

"b) le paragraphe 5 nouveau est inséré :

"5. Les périodes d'assurance .....

2. Article 2, paragraphe 6 :

remplacer par :

"Après le paragraphe 6 est ajouté le paragraphe 7 suivant :

"7. Est considérée comme .....

CORRIGENDUM

Vorschlag einer Verordnung des Rates

zur Anpassung der Anhänge der Verordnung (EWG) Nr. 1480/71 des Rates vom 14. Juni 1971 zur Anwendung der Systeme der sozialen Sicherheit auf Arbeitnehmer und deren Familien, die innerhalb der Gemeinschaft zu- und abwandern, zwecks Ermöglichung ihrer Anwendung auf die Selbständigen und deren Familien

(Von der Kommission dem Rat vorgelegt)

1. Artikel 2 Absatz 1 Buchstabe b) ist wie folgt zu berichtigen:

"b) Folgende neue Nummer 5 wird eingefügt:

"5. Von Selbständigen ....."

2. Artikel 2 Absatz 6 ist wie folgt zu berichtigen:

"Nach Nummer 6 ist folgende Nummer 7 anzufügen:

"7. Als Selbständige ....."

## MODIFICA

### PROPOSTA DI REGOLAMENTO DEL CONSIGLIO

che adatta gli allegati del regolamento (CEE) n. 1408/71 del Consiglio, del 14 giugno 1971, relativo all'applicazione dei regimi di sicurezza sociale ai lavoratori subordinati ed ai loro familiari che si spostano all'interno della Comunità, allo scopo di permetterne l'applicazione ai lavoratori autonomi ed ai loro familiari

(presentata dalla Commissione al Consiglio)

Si apportino le seguenti modifiche:

1. All'articolo 2, paragrafo 7, lettera b):  
"b) viene aggiunto il seguente nuovo paragrafo 5:  
"5. I periodi di assicurazione ..."
2. All'articolo 2, paragrafo 6:  
"Dopo il paragrafo 6 viene aggiunto il seguente paragrafo 7:  
"7. Il termine "lavoratore autonomo" ..."

## RECTIFICATIE

### Voorstel voor een verordening van de Raad

tot aanpassing van de bijlagen van Verordening (EEG) nr. 1408/71 van de Raad van 14 juni 1971 betreffende de toepassing van de sociale zekerheidsregelingen op loontrekkenden en hun gezinnen die zich binnen de Gemeenschap verplaatsen, teneinde deze van toepassing te doen zijn op de niet in loondienst werkenden en hun gezinsleden.

(door de Commissie bij de Raad ingediend)

1. Artikel 2, lid 1, sub b) vervangen door :

"b) De volgende nieuwe paragraaf 5 wordt ingevoegd :

"5. Voor de toepassing van artikel 46, lid 2 .....

2. Artikel 2, lid 6 vervangen door :

"Na paragraaf 6 wordt de volgende paragraaf 7 toegevoegd :

"7. Als niet in loondienst werkende ....."

CORRIGENDUM

Proposal for a Council Regulation

concerning the adaptation of the Annexes to Regulation (EEC)N° 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, with a view to applying it to self-employed persons and their families.

(presented by the Commission to the Council)

1. Article 2(1)(b): the first and second lines shall be amended as follows:

"(b) A new paragraph 5, as follows, shall be inserted:

"5. For the purposes of Article 46 (2) ....."

2. Article 2(6): the first and second lines shall be amended as follows:

"The following paragraph 7 shall be added after paragraph 6:

"7. Any person pursuing....."

## BERIGTIGELSE

### Forslag til Rådets forordning

om tilpasning af bilagene til Rådets forordning (EØF) nr. 1408/71 af 14. juni 1971 om anvendelse af de sociale sikringsordninger på arbejdstagere og deres familiemedlemmer, der flytter inden for Fællesskabet, for at gøre det muligt at anvende bestemmelserne på selvstændige erhvervsdrivende og deres familiedlemmer

(forelagt Rådet af Kommissionen)

1. Artikel 2, stk. 1, litra b) : affattes således:

"b) Der tilføjes følgende nye stk. 5 :"

"5. Ved anvendelsen af ....."

2. Artikel 2, stk. 6:

affattes således:

"Efter stk. 6 tilføjes følgende stk. 7 :

"7. Som selvstændig erhvervsdrivende anses ....."





