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APPLIES TO THE E/D/I/N/DK VERSIONS

AMENDMENTS TO 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

AMENDMENTS TO 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 applica-
tion 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 pursuant to the
second paragraph of Article 149 of the EEC Treaty)

COM (78) 466 final /2

EXPLANATORY MEMORANDUM

of the amendments to

1. 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

2. 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

submitted to the Council by the Commission

I. INTRODUCTION

1. On 31 December 1977 the Commission forwarded to the Council two proposals for regulations concerning:

(i) 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

(ii) the adaptation of the Annexes to the said Regulation, with a view to applying them to self-employed persons and their families (1).

2. The European Parliament and the Economic and Social Committee delivered Opinions on these proposals on 10 May (2) and 31 May 1978 (3) respectively.

In their Opinions they stressed in particular the need for:

(a) extending the Community Regulations to insured persons who are neither employed nor self-employed;

(b) removing the restrictions which the Commission's proposals impose on the extension of the Regulations to self-employed persons.

3. In the Commission's present amendments to its proposals account has been taken of these requests.

Account has also been taken of certain observations as to the form of the proposed texts which were not mentioned in the Opinions, as well as of additional information which the Commission has since received from the Member States and of which it has become clear that it must be incorporated in the Annexes to EEC Regulation No. 1408/71.

(1) Official Journal No. C 14 of 18 January 1978, page 9.

(2) Official Journal No. C 131 of 5 June 1978, page 45.

(3) Official Journal No.

4. These amendments are therefore of three kinds :

- (i) amendments connected with the extension of EEC Regulation No 1408/71 and its Annexes to persons not pursuing a professional or trade activity ;
- (ii) amendments as to the substance of the rules that had been proposed for self-employed persons ;
- (iii) amendments as to the form, designed to elucidate the text of the proposals.

5. Extension to non-employed insured persons.

- Before considering this question it should be recalled that the Community Regulations on social security for migrant workers did not set up a special social security scheme for workers moving within the Community but is only an instrument for coordinating the application of the Member States' social security schemes to these workers in order to guarantee to them the retention and exercise of the rights which they derive from the national schemes to which they are or have been subject. Thus, this instrument is closely linked with the contents of national social security legislations.

These legislations differ greatly from country to country but, in the absence of harmonization, they are tending towards comprehensive schemes, i.e. systems protecting the entire population and not just the working population. Comprehensiveness is achieved either by adopting new schemes covering all residents or by extending schemes based on the pursuit of occupational activity to categories of persons not covered by insurance, particularly by providing for voluntary insurance.

Under these circumstances, it has become more and more difficult at Community level to make distinctions between insured persons who for one or several branches of social security have the same rights and duties at the national level, depending on whether they are employed or self-employed persons or other insured categories.

- The extension of the Community Regulations to self-employed persons makes such distinctions even less justifiable ^{on the administrative level} as only a very small number of insured persons would remain outside the scope of the Regulations. It is noted that by becoming applicable to self-employed persons the Community Regulations would cover :

1. employed or self-employed persons pursuing an occupational activity ;
2. employed or self-employed persons who are unable to work because of illness, disablement, unemployment or retirement ;
3. members of their families and their survivors.

This means that the following would still be excluded :

1. persons having an income from sources other than the pursuit of an occupational activity, viz. persons of independent means but also those incapable of working such as disabled adults ; and,
2. for certain risks against which they are privately insured rather than as dependants of employed or self-employed persons, members of employed or self-employed persons' families,

whom we will call "non-employed insured persons".

- On these grounds it is proposed to extend to non-employed insured persons moving within the Community the Community scheme covering employed persons, for which a proposal was made earlier to extend it to self-employed persons, with regard to the granting of sickness and maternity benefits, contributory benefits for invalidity, old age and death (pensions and allowances) and benefits for pensioners' children and for orphans. For the award of these benefits, non-employed insured persons would be guaranteed equality of treatment on a par with nationals of the Member State in which they are insured, aggregation of insurance periods for the acquisition of the right to benefits, and the provision of benefits outside the insuring country (in particular sickness benefits in kind during a stay abroad). An extension of Community provisions on the payment of family allowances for children not resident in the insuring country has been judged premature because of the

exceptional nature of their situation and because the rules currently in force are contested by some Member States for employed persons themselves. Apart from this exception, it is therefore proposed to extend EEC Regulation No 1408/71 to non-employed insured persons in respect of all contingencies of social security against which they are insured in the Member States.

- The extension of the Community Regulations first to self-employed persons and next to non-employed insured persons means that they will henceforth apply to all persons insured in the Member States, with the exception of civil servants covered by a special scheme. This would normally have required a complete overhaul of the Regulations, but, in order to avoid delaying the extension to self-employed persons which remains the principal objective of the Commission's proposals, it is proposed that the extension of the Regulations to non-employed insured persons should be achieved through "assimilation", meaning that, within the strict limits laid down in the proposals, non-employed insured persons will be treated as employed or self-employed persons for the purposes of the Regulations. As it is still necessary to make certain changes in the wording of the Regulations, the proposed texts are relatively long.
6. It is also proposed in the present set of amendments to comply with the requests of the European Parliament and the Economic and Social Committee to extend the provisions of the Regulation concerning the granting of unemployment insurance periods self-employed persons who have become unemployed will have the possibility of looking for work in a Member State while, for a period of three months, continuing to receive unemployment benefits from the country in which the last activity was pursued.
 7. The purpose of these amendments is also to improve the layout and wording of the Commission's proposals. In particular, a new Annex I, specifying the categories of persons covered by EEC Regulation No 1408/71, has been introduced in order to shorten the present Annex V, and the provisions on determining the legislation applicable have been completely re-written.

II. SPECIFIC OBSERVATIONS

A. Amendments to the proposal for a Council Regulation concerning the adaptation of EEC Regulation No 1408/71

Extension of the scope of the Regulation as to the persons covered (points 2 and 3)

Point 2.

- Dropping the concept of "worker"

The concept of "worker" to cover "employed persons" and "self-employed persons" has been given up because of the difficulties involved in translating this word ("travailleur") in certain Community languages. Therefore, wherever a provision of EEC Regulation No 1408/71 covers both employed persons and self-employed persons, the words "employed or self-employed person" will be used.

- New wording of the definitions of the expressions "employed person" and "self-employed person"

Article 1(a) of EEC Regulation No 1408/71 has consequently been replaced by definitions of the expressions "employed person" and "self-employed person". To take account of observations made by the various bodies that examined the Commission's proposal, the definition has been simplified without changing its scope. The texts now appearing in the new Annex I were taken over from the Commission's original text. As regards the new paragraph (iii) proposed, the exclusion of persons insured voluntarily or optionally on a continued basis from the definition of the words "worker" or "self-employed person" is a result of the extension of EEC Regulation No 1408/71 to non-employed persons. However, this exclusion is without prejudice to the scope of the present definition as it does not cover :

- employed or self-employed persons who are not compulsorily insured (1) or where compulsory insurance is subject to an earnings ceiling (2) ;
- voluntarily insured persons who are regarded as workers within the meaning of the present Article 1(a)(iii) of EEC Regulation No 1408/71.

(1) Unemployment insurance in Denmark

(2) Social insurance in Ireland and sickness insurance in Germany

Point 3

- Extension of EEC Regulation No 1408/71 to non-employed insured persons

Under the new Article 1(a)a of EEC Regulation No 1408/71 insured persons other than employed or self-employed persons are, for the award of certain benefits, treated as employed or self-employed persons. It should be noted that provision for such treatment is made among other things for benefits for dependent children of pensioners and orphans governed by Chapter 8 of Title III of EEC Regulation No 1408/71 since Articles 37(1) and 44(3) of this Regulation exclude the granting of pension increases or supplements in respect of children and also orphans' pensions, while Articles 39(4) and 47(3) provide for the granting of pension increases or supplements for members of the family other than the children when these persons are resident in another Member State. Rather than settling this problem in Chapters 2 and 3 of Title III of EEC Regulation No 1408/71, it appeared more practical to adhere to the provisions of Chapter 8 in which pension increases or supplements and orphans' pensions are treated as family allowances, especially since the number of such cases will probably be quite small.

Consequently, in addition to the special provisions of Title III concerning these benefits (Chapters 1, 2, 3, 5 and 8), the provisions applicable for the granting of the benefits referred to in the new Article 1(a)a are all of the general provisions laid down in the other Titles of the Regulation except for provisions whose application is expressly reserved for employed and/or self-employed persons, as the case may be.

The new Article 1(a)b has two objectives, viz.

- to specify what is to be understood by compulsorily insured persons in social security schemes lacking the concept of insurance ;
- to treat the benefits provided for by these schemes -- which are necessarily non-contributory benefits -- as contributory benefits where there are no other schemes in the Member State concerned, as is the case in Denmark. For this purpose, the relevant details will be recorded in Annex II (formerly Annex I) which will henceforth comprise the entries relating to the matters covered by the Regulation (cf also point 6 below).

The new Article 1(a)c introduces the concept of "insured person" covering "employed person", "self-employed person" and "person treated as such" in the provisions of the Regulation that apply simultaneously to these three categories of beneficiaries ; they are used in lieu of the former term "worker".

Changes in wording arising from the deletion of the term "worker"

(points 4, 5.1, 14, 17.3 and 4, 19.1, 29, 31, 35, 37, 38, 39.1 and 5, 43 and 48)

As the term "worker" has been abandoned, it must be replaced by the expressions "employed or self-employed person", "employed person" or "self-employed person", as appropriate (cf Point 1 above).

Changes in wording arising from the extension of the Regulation to non-employed insured persons

(points 5.2 and 3, 9.3 and 6, 15, 17.1, 2 and 5, 18, 19.2, 20.1 and 2(a), 23.1, 2(a), 2(c) second indent, 3(a) and (c), 24, 25, 27, 32, 39.2, 3(a) and 4, 45.1 and 46).

Changes in wording arising from the introduction of a new Annex I

(points 5.2 and 6, 9.1, 3 and 4, 20.2(b), 23:2(b), 2(c) first indent, 2(d) and 3(b), and 38(c))

No comments.

Other amendments

Point 5.2

The new sentence added in Article 1(f) of EEC Regulation No 1408/71 is meant to simplify Annex VI (formerly Annex V) by transferring from that Annex the provisions on the definition of members of the family to Annex I.

Point 6

The aim of the rewording of the addition to Article 1(j) of EEC Regulation No 1408/71 made in the original proposal is to list in the new Annex II the

special schemes for self-employed persons that are excluded from the scope of the Regulation. It is pointed out that this cannot be done for schemes set up under industrial agreements for employed persons because they are too numerous.

Points 7, 8, 36, 39.3(b) and 45.2

In order to avert any confusion that could arise from the use of the expression "professional or trade activity", which covered activities of employed persons and those of self-employed persons, and the expression "period of professional or trade activity", which covered only periods of self-employed activity as contrasted with periods of employment, the words "periods of professional or trade activity" are replaced by "periods of self-employed activity".

Point 9.5

The new wording of Article 9(1) of EEC Regulation No 1408/71 serves a dual purpose:

- to clarify the earlier wording;
- to offer non-employed insured persons the possibility of continued coverage for pension insurance by taking out voluntary insurance in a Member State in which they are no longer resident.

Points 10, 11 and 12

The changes made by these points to the Commission's proposal are meant to clarify the provisions of Title II of EEC Regulation No 1408/71 to make a clear distinction between provisions that apply to "employed persons" and those applying to "self-employed persons". The new wording takes account of the fact that the definition of "employed person" or "self-employed person" refers back to the definitions given in national social security legislation and that therefore a person can only be regarded as employed or self-employed once the legislation applying to him has been determined. It is thus logical that the use of these concepts in the provisions for determining the legislation applicable is avoided. For this reason the new wording of Articles 13 and 14 does not include these concepts but refers to persons pursuing a professional or trade activity, an employed activity or a self-employed activity, as the case may be.

A new provision (Article 14(c)) has been introduced, also for the sake of clarity, relating to persons simultaneously pursuing an employed and a self-employed activity in the territory of several Member States.

The rules for determining the legislation applicable are substantively the same as those contained in the original proposal.

Point 13.1 and 38

Changes in reference due to the amendment of Articles 13 and 14 of EEC Regulation No 1408/71.

Point 13.2

The purpose of this new provision is to enable self-employed persons who are compulsorily subject to Belgian legislation to take out voluntary insurance in another Member State to whose legislation they were previously subject in order to acquire pension rights, as the award of a pension for self-employed persons in Belgium is subject to a means test.

Point 17.3

This amendment has become necessary following the extension of Article 69 to self-employed persons.

Points 21 and 26.1

These new provisions supplement the new Articles 38(3) and 45(3) of EEC Regulation No 1408/71 as they appear in the original proposal. The aim is to indicate how, for the purpose of aggregation in one Member State, periods completed in self-employment under the general scheme of another Member State should be taken into account. These periods are first taken into account for the acquisition of the right to the benefits of the special scheme of the former Member State in accordance with Article 38(3), first sentence, and Article 45(3), first sentence. If the person concerned is not entitled to benefits under the special scheme, the periods are counted by the general scheme of the former Member State provided that the person concerned was previously insured under that scheme.

Points 26.2 and 3

The rewording of the new Article 45(3) and (4) of EEC Regulation No 1408/71 serves to clarify the position of employed persons on the one hand and the self-employed on the other. The amendment does not entail any changes of substance.

Point 33

The aim of the amendment to Article 68(1) of EEC Regulation No 1408/71 is to restrict the application of the second sentence of this paragraph to cases where an unemployed person who pursued his last activity for less than four weeks under the legislation of the Member State under which he is claiming benefits had pursued an activity as an employed person under the legislation to which he was subject before. If the person concerned pursued a self-employed activity under the latter legislation, application of this provision would become extremely difficult because the concept of normal wage or salary makes little sense in self-employed activities. Consequently the unemployment benefits of an employed person who earlier pursued a self-employed activity in another Member State and whose right to benefits is acquired only if the insurance periods he completed under the scheme of another Member State specifically for self-employed persons is taken into account, would be calculated exclusively on the basis of the amount of wage or salary received for the last professional or trade activity he pursued, even if that activity lasted less than four weeks.

Point 34

This addition to Articles 69 and 70 is designed to extend the application of these Articles to self-employed persons. Since the application of these provisions does not have any financial consequences for Member States other than the insuring country, it is deemed appropriate to comply with the views of Parliament and the Economic and Social Committee, even though, as matters stand at present, only self-employed persons established in Denmark will benefit from this extension.

Point 47

This final provision is meant to avoid that agreements concluded between Member States on reimbursement or waiving reimbursement of benefits are applied automatically where the scope of EEC Regulation No 1408/71 is more restricted.

B. Amendments to the proposal for a Council Regulation concerning the adaptation of the Annexes to Regulation (EEC) No 1408/71

The amendments to the Commission's proposal should improve the layout and form of the Annexes, supplement them on the basis of additional information received by the Commission after the proposal had been drafted, and make the necessary changes in the wording of the Annexes in connection with the amendments of the scope of the Regulation as to the persons covered.

1. Form and layout

Article 1

In order to shorten the present Annex V to EEC Regulation No 1408/71, which might become too long if the new texts necessitated by the extension of the Regulation to self-employed persons were added, it is proposed to introduce a new Annex I bringing together the provisions of the Regulation that relate to the persons covered. These comprise :

- (a) provisions to be added pursuant to Article 1(a)(ii) of the Regulation as it appears in the amended proposal concerning the adaptation of the operative part of the Regulation, i.e. the provisions distinguishing employed or self-employed persons from other insured persons within the framework of schemes covering all residents or certain categories of residents, where such distinction is not connected with the way in which these schemes are administered or financed ;
- (b) provisions to be added in pursuance of Article 1(f), second sentence, of the Regulation as it appears in the abovementioned proposal, i.e. the provisions designed to identify members of the family covered by a scheme for sickness benefits in kind covering all residents (public or national health service).

The provisions thereby inserted in this new Annex are those existing at present or those that the original proposal was meant to include in the present Annex V to the Regulation. Some of these,

however, have not been taken over because the new definition of employed persons, and more particularly Article 1 (a)(iii), first indent, of the Regulation, has rendered them irrelevant. The provisions meant are those in Section B. Denmark, second paragraph, and in Section E. Ireland, second paragraph.

Article 2

It is proposed that an addition be made to this Annex by listing the following :

- (a) the benefits to be regarded as contributory benefits under Article 1(a)b, second sentence, of the Regulation as it appears in the amended proposal concerning the adaptation of the body of the Regulation. It is recalled that with regard to the granting of benefits non-employed insured persons are treated as employed or self-employed only for the award of contributory benefits. This poses a problem to Denmark where the basic scheme is financed by the State and is therefore completely non-contributory. This is why the benefits provided by the Danish pension scheme are deemed to be contributory benefits so that, for the purposes of the Regulation, non-employed insured persons can be treated as employed and self-employed persons ;
- (b) the special schemes for self-employed persons excluded from the scope of the Regulation pursuant to Article 1(j), fourth subparagraph, as it appears in the abovementioned proposal. In contrast to the original proposal, it is now proposed that these schemes should be listed in the new Annex II in order to present the information more clearly to readers and users.

2. Additions to Annex VI (formerly Annex V)

Article 4(3)(b)

It is proposed to add to section C. Germany two provisions designed to enable farmers and craftsmen who have pursued their activity in Germany and in another Member State to fulfil the conditions required by the German legislation to qualify for certain specific advantages by taking account of insurance periods completed in the other Member State.

Article 4(4)(a)

The provisions of section D. France, first paragraph, concerning the qualifying conditions for the allowance for elderly employed persons also cover the corresponding benefits provided for self-employed persons.

Article 4(4)(c)

Paragraph 4 of section D. France has been amended so as to include postnatal allowances in the list of family benefits and to delete the compensatory allowance for scheduled taxes which no longer exists.

Article 4(4)(d)

A provision has been added to section D. France for calculating the theoretical amount of old-age pensions due by the schemes for self-employed persons in which the amount of such pensions is calculated on the basis of "retirement points".

3. Changes in wording

The other changes to the original proposal adapt the text of Annex VI (formerly Annex V) to take account of the fact that the concept of "worker" has been abandoned, of the extension to non-employed insured persons and of replacing "period of professional or trade activity" by "périod of self-employed activity".

AMENDMENTS TO BE MADE TO 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, HERE IN AFTER REFERRED TO AS "THE PROPOSAL"

1. The recitals of the proposal shall be amended as follows:-

The following recitals shall be added after the last recital:-

"Whereas, moreover, due to the extension of social security schemes set up in favour of employed or self-employed persons to other categories of insured persons, on the one hand, and the existence of social security schemes which apply without distinction to all residents, on the other hand, the social security institutions have to differentiate - which is difficult on the administrative level between persons insured with them to determine to whom Regulation (EEC) No. 1408/71 shall apply;

Whereas, in order to facilitate the implementation of the above mentioned Regulation, it is appropriate to reduce the number of cases where such differentiation is necessary; whereas to attain this objective, it is appropriate to extend, to a certain degree, this Regulation to cover persons who are under national legislation covered, in respect of certain risks, in the same way as employed and self-employed persons; whereas some insured persons who no longer pursue a professional or trade activity are already deemed to be workers for the purpose of that Regulation; whereas it is therefore appropriate also to adapt Regulation (EEC) No. 1408/71 along such lines."

2. In Article 1(1)(a) of the proposal, the new text of Article 1(a) of Regulation (EEC) No. 1408/71 shall be replaced by the following:-

"(a)(i) "employed person" and "self-employed person" mean any person insured within the framework of a social security scheme:-

- set up in favour of employed persons or self-employed persons,
or
 - which is administered or financed in such a way that he can be identified as an employed person or a self-employed person;
- (ii) if a person is insured with a social security scheme to which these criteria do not apply, "employed person" and "self-employed person" shall, for each Member State concerned, have the meaning given them in Annex I;
- (iii) 'employed person' and 'self-employed person' shall not cover persons insured voluntarily or on an optional continuing basis except:-
- where, for one or more of the branches referred to in Article 4(1), there is only a voluntary insurance scheme or where the compulsory insurance scheme lays down an upper earnings limit;
 - where the person concerned had previously been compulsorily insured against the same risk in the framework of a scheme set up in favour of employed persons of that Member State."

3. Article 1(1)(b) of the proposal shall be replaced by the following:-

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

- '(a) a any person other than an employed or a self-employed person insured with a social security scheme referred to in Article 4(2) shall be treated as an employed person or a self-employed person solely for the purpose of entitlement, in accordance with this Regulation, to
- (i) sickness and maternity benefits;
 - (ii) contributory invalidity, old-age and death (pensions and allowances) benefits, and
 - (iii) benefits for the dependent children of pensioners and for orphans;
- such a person shall hereinafter be referred to as a "person treated as such";

(a)b for the purposes of applying paragraphs (a) and (a)a, persons covered by a scheme under which only benefits are awarded the granting of which is not subject to conditions of insurance or of a professional or trade activity having been pursued shall be deemed to be compulsorily insured under that scheme. If there is in a Member State only one scheme of that type, the benefits concerned shall be deemed to be contributory benefits for the purposes of applying paragraph (a)a(ii) to the extent laid down in Annex II;

(a)c 'insured person' means an employed person, a self-employed person or a person treated as such'."

4. In Article 1(1)(c) of the proposal, the text in Article 1(b) of Regulation (EEC) No 1408/71 shall be amended as follows:-

In line 1, read "any employed or self-employed person" instead of "any worker".

5. Also:-

5.1. Article 1(c) of Regulation (EEC) No 1408/71 shall be amended as follows:-

In line 1, read "any employed person" instead of "any worker".

5.2. Article 1(f) of Regulation (EEC) No 1408/71 shall be replaced by the following:-

"(f) 'member of the family' means any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided or, in the cases referred to in Article 22(1)(a) and Article 31, by the legislation of the Member State in whose territory such person resides; where, however, the said legislations regard as a member of the family or a member of the household only a person living under the same roof as the employed person, this condition shall be considered satisfied if the person in question is mainly dependent on that person. Where a Member State's legislation on sickness or maternity benefits in kind provides only for benefits the award of which is not subject to conditions of insurance or of a professional or trade activity

having been pursued, 'member of the family' shall have the meaning given it in Annex I."

5.3 Article 1(g) of Regulation (EEC) No 1408/71 shall be amended as follows:-

In line 6 and 8, read "deceased" instead of "deceased worker".

6. Article 1(1)(d) of the proposal shall be replaced by the following:-

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

the following new subparagraph shall be inserted after the third subparagraph:-

'This term also excludes, in so far as they are specified in Annex II, 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, irrespective of whether or not the Authorities decided to make them compulsory or extend their scope.'

7. Article 1(1)(e) of the proposal shall be replaced by the following:-

"(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 or of self-employment'."

8. In Article 1(1)(f) of the proposal, the new text of Article 1(s) of Regulation No 1408/71 shall be replaced by the following:-

"(s) 'periods of employment' and 'periods of self-employment' means periods of employment or periods of self-employment 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 self-employment."

9. Also:-

9.1. Article 1(u) of Regulation (EEC) No 1408/71 shall be amended as follows:-

In the last line, read "Annex II" instead of "Annex I."

9.2. Article 2 of Regulation (EEC) No. 1408/71 shall be amended as follows:-

(a) In the first line of paragraph (1), read "to employed or self-employed persons and to persons treated as such" instead of "to workers".

(b) In lines 2 and 4 of paragraph (2), read "employed or self-employed persons and of persons treated as such" instead of "workers".

9.3. Article 3(3) of Regulation (EEC) No. 1408/71 shall be amended as follows:-

In line 1, read "III" instead of "II".

9.4. Article 7(2) of Regulation (EEC) No. 1408/71 shall be amended as follows:-

In the last line, read "Annex III" instead of "Annex II".

9.5. Article 9(1) of Regulation (EEC) No. 1408/71 shall be replaced by the following:-

"1. The legislative provisions of any Member State which make admission to voluntary or optional continued insurance conditional upon residence in the territory of that State shall not apply to persons who are resident in the territory of another Member State, provided that at some time in their past working life they were subject to the legislation of the first State as employed or as self-employed persons, or to persons who had been admitted to voluntary or optional continued insurance against invalidity, old age or death (pensions) while resident in the territory of that State."

9.6. Article 10(2) of Regulation (EEC) No. 1408/71 shall be amended as follows:-

In line 6 read 'as an employed or self-employed person' instead of 'as a worker'.

10. Article 1(2) of the proposal shall be replaced by the following:-

"2. Article 13 shall be replaced by the following:-

Article 13 - General rules.

1. A person to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.
2. Subject to the provisions of Articles 14 to 17:
 - (a) a person employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State;
 - (b) a person who is self-employed in the territory of a Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State;
 - (c) a person employed on board a vessel flying the flag of a Member State shall be subject to the legislation of that State;
 - (d) a person who does not pursue any professional or trade activity shall be subject to the legislation of the Member State in whose territory he resides;
 - (e) civil servants and persons treated as such shall be subject to the legislation of the Member State to which the administration employing them is subject;
 - (f) a person called up or recalled for service in the armed forces of a Member State shall be subject to the legislation of that State; if entitlement under that legislation is subject to the completion of insurance periods before entry into or release from such service, insurance periods completed under the legislation of any other Member State shall be taken into account, to the extent necessary, as if they were insurance periods completed under the legislation of the first State. An employed or a self-employed person called up or recalled for service in the armed forces shall retain the status of employed or self-employed person."

11. Article 1(3) of the proposal shall be replaced by the following:-

"3. Article 14 shall be replaced by the following:-

Article 14 - Special rules which apply to employed persons other than seamen.

1. Article 13(2)(a) shall apply subject to the following exceptions or circumstances:

- (a) (i) A person employed in the territory of a Member State by an undertaking to which he is normally attached who is posted by that undertaking to the territory of another Member State to perform work there for that undertaking shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed twelve months and that he is not sent to replace another worker who has completed his term of posting;
- (ii) if the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds twelve months, the legislation of the first State shall continue to apply until the completion of such work, provided that the competent authority of the State in whose territory the worker is posted or the body designated by that authority gives its consent; such consent must be requested before the end of the initial twelve month period. Such consent cannot, however, be given for a period exceeding twelve months;

2. A person who is normally employed in the territory of two or more Member States shall be subject to the legislation of the Member State determined as follows:-

- (a) a person employed as a member of travelling or flying personnel and who is working for an undertaking which, for hire or reward or on its own account, operates international transport services for passengers or goods by rail, road, air or inland waterway and has its registered office or place of business in the territory of a Member State, shall be subject to the legislation of the latter State, with the following restrictions:

- (i) where the said undertaking has a branch or permanent representation in the territory of a Member State other than that in which it has its registered office or place of business, a person employed by such branch or agency shall be subject to the legislation of the Member State in whose territory such branch or permanent representation is situated;
 - (ii) where a person is employed principally in the territory of the Member State in which he resides, he shall be subject to the legislation of that State, even if the undertaking which employs him has no registered office or place of business or branch or permanent representation in that territory;
- (b) A person other than one referred to in (a) shall be subject:-
- (i) to the legislation of the Member State in whose territory he resides, if he pursues his activity partly in that territory or if he is attached to several undertakings or several employers who have their registered offices or places of business in the territory of different Member States;
 - (ii) to the legislation of the Member State in whose territory is situated the registered office or place of business of the undertaking or individual employing him, if he does not reside in the territory of any of the Member States where he is pursuing his activity;
- (c) a person who is employed in the territory of one Member State by an undertaking which has its registered office or place of business in the territory of another Member State and which straddles the common frontier of these States shall be subject to the legislation of the Member State in whose territory the undertaking has its registered office or place of business.

Article 14a - Special rules which apply to self-employed persons other than seamen.

1. (a) A person who is normally self-employed in the territory of a Member State and who provides services in the territory of another Member State shall remain subject to the legislation of the first Member State, provided that the anticipated duration that provision of services does not exceed twelve months;

- (b) if the duration of the service to be provided extends beyond the duration originally anticipated owing to unforeseeable circumstances, and exceeds twelve months, the legislation of the first State shall continue to apply until the completion of such service, provided that the competent authority of the State in whose territory the person is providing the service or the body designated by that authority gives its consent; such consent must be requested before the end of the initial twelve month period. Such consent cannot, however, be given for a period exceeding twelve months;
2. A person who is normally self-employed in the territory of two or more Member States shall be subject to the legislation of the Member State in whose territory he resides if he pursues his activity partly in that territory; failing this, he shall be subject to the legislation of the Member State in whose territory he pursues his principal activity. The criteria to determine the principal activity shall be laid down in the Regulation referred to in Article 97.
 3. A person who is self-employed in an undertaking or a farm 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 that undertaking or farm has its registered office or place of business.
 4. If the legislation to which a person ought to be subject in accordance with paragraphs 2 and 3 does not permit that person to be insured, even on a voluntary basis, with an old-age insurance scheme, the person concerned shall be subject to the legislation of the other Member State irrespective of the provisions of the abovementioned paragraphs; where the legislation of two or more Member States would thus apply to him, he would be subject to the legislation determined by common agreement between those States or their competent authorities.

Article 14b - Special rules which apply to seamen.

Article 13(2)(c) shall apply subject to the following exceptions and circumstances:-

1. A person employed by an undertaking to which he is normally attached, either in the territory of a Member State or on board a vessel flying the flag of a Member State, who is posted by that undertaking on board a vessel flying the flag of another Member State to perform work there for that undertaking shall, subject to the condition provided in Article 14(1), continue to be subject to the legislation of the first Member State ;
2. A person who is normally self-employed either in the territory of a Member State or on board a vessel flying the flag of a Member State and who is performing work on his own account on board a vessel flying the flag of another Member State shall, subject to the conditions provided in Article 14a(1), continue to be subject to the legislation of the first Member State ;
3. A person who, while not being habitually employed at sea, is employed in the territorial waters or in a port of a Member State and who is performing work on a vessel flying the flag of another Member State in those territorial waters or in that port but is not a member of the crew, shall be subject to the legislation of the first State.
4. A person employed on board a vessel flying the flag of a Member State and remunerated for such employment by an undertaking or a person whose registered office or place of business is in the territory of another Member State shall be subject to the legislation of the latter State if he is resident in the territory of that State ; the undertaking or person paying the remuneration shall be considered as the employer for the purposes of the said legislation.

Article 14c - Special rules which apply to persons who are simultaneously employed in the territory of one Member State and self-employed in the territory of another Member State.

A person who is simultaneously employed in the territory of one Member State and self-employed in the territory of another Member State shall be subject to the legislation of the Member State in whose territory he resides if he pursues one of his activities in that State ; failing this, he shall be subject to the legislation of the Member State in whose territory he pursues his principal activity. The criteria to determine the principal activity shall be laid down in the Regulation referred to in Article 97.

Article 14d - Miscellaneous provisions.

1. The person referred to in Articles 14(2), 14a(2), (3) and (4) and 14c shall, for the purpose of applying the legislation determined in accordance with those provisions, be treated as if he were pursuing all of his professional or trade activity or activities in the territory of the Member State concerned.
2. The legislative provisions of a Member State under which a pensioner who is pursuing a professional or trade activity is not subject to compulsory insurance in respect of such activity shall also apply to a pensioner whose pension was acquired under the legislation of another Member State unless the person concerned expressly requests to be compulsorily insured by applying to the institution designated by the competent authority of the first Member State, which is specified in Annex 10 to the Regulation referred to in Article 97.
12. Article 1(4) of the proposal shall be deleted.
13. Article 15 of Regulation (EEC) No 1408/71 shall be amended as follows:-
 - 13.1. In line 1 of paragraph 1, read "Articles 13 to 14d" instead of "Articles 13 and 14".
 - 13.2. The following clause is to be appended to Article 15(3):-

"or in so far as the person concerned is unlikely to receive benefits pursuant to the legislation of the Member State where he was compulsorily insured owing to the means-testing to which the award of such benefit is subject."
14. Article 17 of Regulation (EEC) No. 1408/71 shall be replaced by the following:-

"Article 17 - Exceptions to the provisions of Articles 13 to 16.

Two or more Member States or the competent authorities of those States may, by common agreement, provide for exceptions to the provisions of Articles 13 to 16 in the interest of certain categories of employed or self-employed persons or certain of those persons."

15. In addition, Articles 18 to 22 of Regulation (EEC) No 1408/71 shall be amended as follows:
 - 15.1. In the fifth line of Article 18(2), the words "worker concerned" shall be replaced by the words "person concerned".
 - 15.2. In the first line of Article 19(1) and in the eighth line of Article 19(2), second subparagraph, the word "worker" shall be replaced by the words "insured person".
 - 15.3. In the fifth line of Article 20, the word "worker" shall be replaced by the words "person concerned".
 - 15.4. In the first line of Article 21(1), the second line of Article 21(2) second subparagraph and the first line of Article 21(4), the word "worker" shall be replaced by the words "insured person".
 - 15.5. In the first line of Article 22(1), the words "a worker" shall be replaced by the words "an insured person".
 - 15.6. In the second line of Article 22(3), the words "of a worker's" shall be replaced by "of an insured person's".
 - 15.7. In the third line of Article 22(3) second sentence and the fourth line of Article 22(3)(a), the word "worker" shall be replaced by the words "insured person".
16. Note: Article 1(5) of the proposal is not being amended.
17. Furthermore, Articles 18 to 33 of Regulation (EEC) No 1408/71 shall be amended as follows:
 - 17.1. In the first line of Article 24(1), the words "a worker" shall be replaced by the words "an insured person".
 - 17.2. In the sixth line of Article 24(1), the words "said worker" shall be replaced by the words "said insured person".
 - 17.3. In the first line of Article 25(1), the words "an unemployed person" shall be replaced by the words "an unemployed person who was formerly employed or self-employed".

- 17.4. In the first line of Article 25(2), the words "who was formerly employed" shall be added after the words "A totally unemployed person".
- 17.5. In the first line of Article 26(1), the words "a worker" shall be replaced by the words "an insured person".
18. Article 1(6) of the proposal shall be amended as follows:-
- "6. Article 34 shall be replaced by the following text:
1. For the purposes of Articles 28, 28a, 29 and 31, a pensioner 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.
 2. The provisions of Articles 27 to 33 shall not apply to a pensioner or to members of his family who are entitled to benefits under the legislation of a Member State as a result of pursuing an occupational activity. In such a case, the person concerned shall be considered as an insured person or as a member of an insured person's family for the purposes of this Chapter."
19. Article 1(7) of the proposal shall be amended as follows:-
- 19.1. In paragraph 7(a), the new text of Article 35(1) of Regulation (EEC) No 1408/71 shall be amended as follows:
- In the twelfth line, the words "of workers" shall be replaced by the words "of employed persons".
- 19.2. The following provision shall be added after paragraph 7(c):-
- "(d) In the new paragraph 3, third line, the words "to workers" shall be replaced by the words "to insured persons".
20. The title of section 1 of Chapter 2 of Title III and Article 37 of Regulation (EEC) No 1408/71 shall be amended as follows:
- 20.1. In the title of section 1, the word "workers" shall be replaced by the words "insured persons".

20.2. In Article 37:

- (a) in the first line of paragraph 1, the words "a worker" shall be replaced by the words "an insured person";
- (b) in the first line of paragraph 2, the words "Annex III" shall be replaced by the words "Annex IV".

21. Article 1(8)(b) of the proposal shall be amended as follows:

The following sentence shall be added to the new paragraph 3 of Regulation (EEC) No 1408/71:

"If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate, in so far as they have been completed under a scheme other than the abovementioned corresponding scheme and provided that the person concerned has also been insured under the general schemes or, failing this, under the scheme applicable to manual or clerical workers, as appropriate."

22. Note: Article 1(9) of the proposal is not being amended.

23. The title of section 2 of Chapter 2 of Title III and Articles 40 and 41 of Regulation (EEC) No 1408/71 shall be amended as follows:

23.1. In the title of section 2, the word "workers" shall be replaced by the words "insured persons".

23.2. In Article 40:

- (a) in the first line of paragraph 1, the words "a worker" shall be replaced by the words "insured persons";
- (b) in paragraph 2, the reference to "Annex III" shall be replaced by the words "Annex IV."
 - in the third line,
 - in the last line of the first subparagraph,
 - in the last line of the second subparagraph;

- (c) in paragraph 3(a)
 - in the second line, the words "Annex III" shall be replaced by "Annex IV",
 - in the fifth line, the words "where a worker" shall be replaced by the words "where an insured person";
- (d) in the last line of paragraph 4, the words "Annex IV" shall be replaced by the words "Annex V".

23.3. In Article 41:

- (a) in the second line of paragraph 1, the words "a worker" shall be replaced by the words "an insured person";
- (b) in the last line of paragraph 1(d)(iii), the words "Annex III" shall be replaced by the words "Annex IV";
- (c) in the second line of paragraph 2, the words "a worker" shall be replaced by the words "an insured person".

24. Article 44 of Regulation (EEC) No 1408/71 shall be amended as follows:

24.1. In the title, the words "a worker" shall be replaced by the words "an insured person".

24.2. In the first line of paragraph 1, the words "of a worker" shall be replaced by the words "of an insured person".

25. In the title of Article 45, the words "a worker" shall be replaced by the words "an insured person".

26. Article 1(10) of the proposal shall be amended as follows:

26.1. In paragraph 10(b) the following sentence shall be added to the new paragraph 3 of Regulation (EEC) No 1408/71:

"If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate, in so far as they have been completed under a scheme other than the above-mentioned corresponding scheme and provided that the person concerned has also been

insured under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate".

26.2. The text of paragraph 10(c) shall be replaced by the following text:

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

In the third and sixth lines, the word "worker" shall be replaced by the words "employed person".

26.3. The text of paragraph 10(d) shall be replaced by the following text:

"(d) Article 45 shall be supplemented by the following new paragraphs".

5. The provisions of paragraph 4 shall apply to self-employed persons in order to determine whether the conditions for entitlement to survivors' benefits have been satisfied.

6. Where the legislation of a Member State which makes the granting of invalidity benefits conditional upon a person 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 self-employed person 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."

27. Article 46 of Regulation (EEC) No 1408/71 shall be amended as follows:

27.1. In the first line of paragraph 1, the words "a worker" shall be replaced by the words "an insured person".

27.2. In the first line of paragraph 2, the words "a worker" shall be replaced by the words "an insured person".

27.3. In the sixth line of paragraph 2(a), the word "worker" shall be replaced by the words "insured person".

28. Note: Article 1(11) of the proposal is not being amended.
29. Articles 52 to 55 of Regulation (EEC) No 1408/71 shall be amended as follows:
- 29.1. In the first line of Article 52, the words "a worker" shall be replaced by the words "an employed or self-employed person".
- 29.2. In the last line of Article 53, the word "worker" shall be replaced by "person concerned".
- 29.3. In the first lines of paragraph 1 and 2 of Article 54, the words "a worker" shall be replaced by the words "an employed or self-employed person".
- 29.4. In the first line of Article 55, the words "a worker" shall be replaced by the words "an employed or self-employed person".

30. Note: Article 1(12) of the proposal is not being amended.

31. Articles 60 to 62 of Regulation (EEC) No 1408/71 shall be amended as follows:

31.1. The text of Article 60 shall be replaced by the following:

"Article 60

1. In the event of aggravation of an occupational disease for which an employed or self-employed person has received or is receiving benefit under the legislation of a Member State, the following rules shall apply:
- (a) if the person concerned has not, while in receipt of benefits, been engaged in an occupational activity under the legislation of another Member State likely to cause or aggravate the disease in question, the competent institution of the first Member State shall be bound to meet the cost of the benefits under the legislation which it administers taking into account the aggravation;

(b) if the person concerned, while in receipt of benefits, has pursued such an activity under the legislation of another Member State, the competent institution of the first State shall be bound to meet the cost of the benefits under the legislation which it administers without taking into account the aggravation. The competent institution of the second Member State shall grant a supplement to the person concerned, the amount of which shall be determined according to the legislation which it administers and shall be equal to the difference between the amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the legislation which it administers if the disease in question had occurred under the legislation of that State;

(c) if in cases covered by subparagraph (b) an employed or self-employed person suffering from sclerogenic pneumoconiosis or from a disease determined under Article 57(4) is not entitled to benefits under the legislation of the second State, the competent institution of the first State shall be bound to provide benefits under the legislation which it administers, taking into account the aggravation. The institution of the second State shall, however, meet the cost of the difference between the amount of cash benefits, including pensions, due from the competent institution of the first State, taking into account the aggravation and the amount of the corresponding benefits which were due prior to the aggravation.

31.2. In the third line of Article 61(1), the words "a worker" shall be replaced by the words "the person concerned".

31.3. In Article 62(1):

(a) in the third line, the word "workers" shall be replaced by the words "employed or self-employed persons";

(b) in the sixth and eighth lines, the word "workers" shall be replaced by the words "employed persons".

32. In the first line of Article 65(1), the words "when a worker" shall be replaced by the words "when an insured person".

33. In Article 1(13) of the proposal, the new text of Article 68(1) of Regulation (EEC) No 1408/71 shall be amended as follows:

In the fourteenth line, the word "activity" shall be replaced by the words "employed activity".

34. The text of Article 1(14) and (15) of the proposal shall be amended as follows:

"14. In the first line of Article 69(1), the words "A worker" shall be replaced by the words "An employed or self-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 or self-employed person".

35. The text of Article 1(16) of the proposal shall be replaced by the following text:

"16. In Article 71:

(a) in the first line of paragraph 1, the words "an unemployed person" shall be replaced by the words "an unemployed person who was formerly employed";

(b) in the first line of paragraph 1(b)(i) and in the first line of paragraph 1(b)(ii), the words "a worker" shall be replaced by the words "an employed person";

(c) in the eleventh line of paragraph 1(b)(ii), the words "such worker" shall be replaced by the words "such employed person".

36. The text of Article 1(17) of the proposal shall be replaced by the following text:

"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 self-employment"."

37. In the title of section 2, the word "workers" shall be replaced by the words "employed or self-employed persons".

38. The text of Article 1(18) of the proposal shall be replaced by the following:

"18. Article 73 shall be amended as follows:

(a) the title shall be replaced by the following text: "employed or self-employed persons";

(b) in the first line of paragraph 1 and in the first line of paragraph 2, the words "a worker" shall be replaced by the words "an employed or self-employed person";

(c) the text of paragraph 3 shall be replaced by the following:

'3. However, an employed or self-employed person who is subject to French legislation by virtue of the provisions of Article 14(1) or Article 14a(1) shall be entitled to the family benefits set out in Annex VI 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'.

39. Articles 75 to 79 of Regulation (EEC) No 1408/71 shall be amended as follows:

39.1. In Article 75:

(a) in the fourth line of paragraph 1(a), the words "the worker" shall be replaced the words "the employed or self-employed person";

(b) in the second line of paragraph 2(b), the words "to the worker" shall be replaced by the words "to the employed or self-employed person".

39.2. In Article 78:

(a) in the first lines of paragraphs 2(a) and 2(b), the words "deceased worker" shall be replaced by the words "deceased insured person";

(b) in the third line of paragraph 2(b)(ii), the words "deceased worker" shall be replaced by the words "deceased insured person".

39.3. In Article 79(1):

(a) in the sixth line, the words "deceased worker" shall be replaced by the words "deceased insured person";

(b) in the fourth line of paragraph 1(a), the words "self-employment" shall be inserted between the word "employment" and the words "or residence".

39.4. In the ninth line of Article 79(2), the words "the worker" shall be replaced by the words "the pensioner or deceased person".

39.5. In the last line of Article 79(3), the words "of a worker" shall be replaced by the words "of an employed or self-employed person".

40. Article 1(19) of the proposal is deleted.

41. In Article 89 of Regulation (EEC) No 1408/71, the reference to Annex V is replaced by a reference to Annex VI.

42. Note: Article 1(20) of the proposal is not being amended.

43. In the sixth line of Article 93(2) of Regulation (EEC) No 1408/71, the words "or of their employees" shall be replaced by the words "or of the persons employed by them".

In the third line of the first subparagraph of Article 93(2), the words "or his employees" shall be replaced by the words "or the persons employed by him".

44. Note: Article 1(21) of the proposal is not being amended.

45. In Article 1(22) of the proposal, the new Article 94a shall be amended as follows:

45.1. The following words shall be added to the end of the title: "and persons treated as such".

45.2. In paragraph 2, the words "of professional or trade activity" shall be replaced by the words "of self-employment".

46. In Article 2 of the proposal, the new 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 and to other insured persons treated as such."

47. After Article 2 of the proposal, the following new Article 3 shall be added:

"3. Unless the Member States concerned decide otherwise, the agreements concluded pursuant to Article 36(3), Article 63(3) and Article 70(3) of Regulation (EEC) No 1408/71, prior to the entry into force of this Regulation, shall not apply to the persons to whom the scope of Regulation (EEC) No 1408/71 has been extended by virtue of this Regulation."

48. The corrigenda to the Danish, German and Dutch versions of the proposal are deleted.

49. Article 3 of the proposal shall become Article 4.

AMENDMENTS TO 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, hereinafter termed "the proposal"

1. The text of the recitals to the proposal shall read :

"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, and also to persons treated as such, necessitate the adaptation of certain Annexes to the abovementioned Regulation ;

Whereas in particular it is necessary to clarify, in accordance with the new definition of the expressions "employed person" and "self-employed person" introduced in Regulation (EEC) No 1408/71, what these terms mean when the person concerned is insured under a social security scheme which applies indiscriminately to all residents or to some categories of residents ;

Whereas Regulation (EEC) No 1408/71 lays down, for this purpose, that a new Annex I should be added to the existing Annexes ; that this Annex should also define what is meant by the expression "member of the family" when all persons protected by a scheme for sickness and maternity benefits in kind have personal entitlement to such benefit ;

Whereas the new Annex II must be supplemented, on the one hand, by a reference to non-contributory invalidity, old-age and death benefits which are to be considered as contributory benefits for the application of the Regulation to persons treated as employed or self-employed who are subject to the legislation of a Member State in which there is no contributory scheme and, on the other hand, by a reference to the special schemes for self-employed persons to which the aforementioned Regulation does not apply ;

Whereas legislation applicable to self-employed persons in which the amount of invalidity benefit is independent of the length of insurance or residence periods must be mentioned in the new Annex IV, pursuant to Article 37 (2) of Regulation (EEC) No 1408/71 ;

Whereas it is appropriate to adapt some specific implementing rules of the legislation of some Member States listed in the new Annex VI, with a view to applying them to self-employed persons".

2. Before Article 1 of the proposal the following new Articles 1 and 2 shall be inserted :

"Article 1

1. The Annexes to Regulation (EEC) No 1408/71 shall be supplemented by the following new Annex I :

Annex I - Persons covered by the Regulation

I. Employed persons and/or self-employed persons

(Article 1(a)(ii) of the Regulation)

A. Belgium

Does not apply

B. Denmark

1. 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)(ii) of the Regulation.

2. Any person who, pursuant to the Law on daily cash benefits in the event of sickness and maternity is entitled to such benefits on the basis of earned income other than a wage or salary shall be considered as a self-employed person within the meaning of Article 1(a)(ii) of the Regulation.

C. Germany

If the competent institution for granting family benefits is a German institution, in accordance with Title III, Chapter 7 of the Regulation, then within the meaning of Article 1(a)(ii) of the said Regulation :

(a) "employed person" means 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 ;

(b)"self-employed person" means any person pursuing a self-employed activity who is bound :

- to join, or pay contributions in respect of, an old-age insurance within a scheme for self-employed persons, or
- to join a scheme within the framework of compulsorily pension insurance.

D. France

Does not apply.

E. Ireland

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)(ii) of the Regulation.
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)(ii) 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."

F. Italy

Does not apply.

G. Luxembourg

Does not apply.

H. Netherlands

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)(ii) of the Regulation.

I. United Kingdom

Any person required to pay contributions respectively as an employed person or as a self-employed person pursuant to the Social Security Act (1975) and the Social Security Northern Ireland Act (1975) shall be considered an employed person or a self-employed person within the meaning of Article 1(a)(ii) of the Regulation.

II. Members of the family

(Article 1(f), second sentence, of the Regulation)

A. Belgium

Does not apply.

B. Denmark

For the purpose of determining entitlement to benefits in kind pursuant to Article 22(1)(a) and Article 31 of the Regulation, "member of the family" means any person regarded as a member of the family under the Law on the Public Health Service.

C. Germany

Does not apply.

D. France

Does not apply.

E. Ireland

For the purpose of determining entitlement to benefits in kind pursuant to Article 22(1)(a) and Article 31 of the Regulation, "member of the family" means any person regarded as a dependant of the worker for the purposes of the Health Acts 1947-1970.

F. Italy

Does not apply.

G. Luxembourg

Does not apply.

H. Netherlands

Does not apply.

I. United Kingdom

For the purpose of determining entitlement to benefits in kind pursuant to Article 22(1)(a) and Article 31 of the Regulation, "member of the family" means any person regarded as a dependant within the meaning of the United Kingdom National Insurance Act or the United Kingdom legislation on accidents at work.

2. Annexes I, II, III, IV and V to the Regulation shall become respectively Annexes II, III, IV, V and VI.

Article 2

The new Annex II shall be amended as follows :

1. The title shall be replaced by the following text :
Annex II - Matters covered by the Regulation.
2. The sub-title shall be preceded by the figure I.
3. The Annex shall be supplemented by the following provisions :
 - II. Benefit to be considered as contributory benefit pursuant to Article 1 (a)b, second sentence.

A. Denmark

The benefits laid down by the Law on old-age pensions, by the Law on invalidity pensions and by the Law on widow's pensions and allowances.

B. Other Member States

Does not apply.

III. Special schemes for self-employed persons which are excluded from the scope of the Regulation pursuant to Article 1 (j), fourth paragraph.

A. Germany

Insurance and welfare institutions for doctors, dentists, veterinary surgeons, dispensing chemists, barristers and counsel, patent agents, notaries public, auditors, tax consultants and advisers, sea pilots and architects, institutions set up pursuant to legislation of the Länder, and other insurance and welfare institutions, in particular welfare bodies (Fürsorgeeinrichtungen) and the system for extended fee-sharing (erweiterte Honorarverteilung).

B. France

1. Self-employed persons outside the agricultural sphere :

(a) the supplementary old-age insurance schemes and the invalidity and death insurance schemes for self-employed persons, such as are mentioned in Articles L 658, L 659, L 663-11, L 663-12, L 682 and L 683-1 of the Social Security Code ;

(b) the additional benefits referred to in Article 9 of Law No 66509 of 12 July 1966.

2. Self-employed persons in agriculture :

The types of insurance set out in Articles 1049 and 1234.19 of the Rural Code, concerning, on the one hand, sickness, maternity and old-age and, on the other, accidents at work and occupational diseases of self-employed persons in agriculture.

C. Other Member States

Does not apply."

3. The former Article 1 of the proposal becomes Article 3 and should be amended as follows :

On the first line, "Annex III" should be replaced by "Annex IV".

4. The former Article 2 of the proposal becomes Article 4 and should be replaced by the following text :

"Article 4

The new Annex VI to Regulation (EEC) No 1408/71 shall be amended as follows :

1. Heading A. Belgium :

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

1. 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) paragraph 4 shall be amended as follows :

On the penultimate line, the word "worker" shall be replaced by the words "employed or self-employed person";

- (c) after paragraph 4 the following paragraph shall be added :

5. For the purpose 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. Heading B. Denmark :

- (a) Paragraphs 1 and 2 shall be deleted and paragraphs 3 to 9 shall be re-numbered accordingly;

(b) the text of the new paragraph 1 shall be replaced by the following text :

1. Periods of insurance, employment or self-employment completed in a Member State other than Denmark shall be taken into account for admission to membership of an approved unemployment insurance fund as if they were periods of employment or self-employment completed in Denmark.

(c) the text of the new paragraph 2 shall be replaced by the following text :

2. When residing or staying in Denmark, insured persons, pension claimants and pensioners, together with the members of their families referred to in Articles 19, 22(1) and (3), 25(1) and (3), 26(1) and in Articles 28a, 29 and 31 of the Regulation shall receive benefits in kind under the same terms as those laid down by Danish legislation for persons who under the Law on the Public Health Service are insured in class 1, where the cost of the said benefits shall be borne by the institution of a Member State other than Denmark.

(d) in the new paragraph 3, fifth line, the word "workers" shall be replaced by the words "insured persons";

(e) in the new paragraph 4, third line, the word "worker" shall be replaced by the word "insured";

(f) the text of the new paragraph 6 shall be replaced by the following text :

6(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 shall apply 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.

(g) Paragraph 10 shall be deleted and paragraph 11 shall become paragraph 8.

3. Heading C. Germany :

(a) paragraph 6 shall be deleted and paragraphs 7, 8 and 9 shall become paragraphs 6, 7 and 8;

(b) after paragraph 8 the following new paragraphs 9, 10 and 11 shall be added :

9. In the case of self-employed persons the award of unemployment assistance shall be conditional on the person concerned having, before reporting himself unemployed, worked for at least a year mainly as a self-employed person in the territory of the Federal Republic of Germany, and has not simply left that work temporarily.

10. Periods of insurance completed under the legislation of another Member State, under a special old-age insurance scheme for farmers or, if no such scheme exists, as farmers under the general scheme shall be taken into account to satisfy the conditions of minimum length of insurance required for the person to be subject to contribution within the meaning of Article 27 of the Law on old age insurance for farmers, always providing that :

(a) the declaration on which the obligation to pay contributions is based shall have been lodged within the prescribed time, and

(b) before lodging the declaration, the person concerned shall have been last subject to contribution under the old-age insurance scheme for farmers in the territory of the Federal Republic of Germany.

11. Periods of compulsory insurance completed under the legislation of another Member State, under a special scheme for craftsmen or, if no such scheme exists, as craftsmen under a special scheme for self-employed persons or under the general scheme, are counted towards the completion of the 216 months of compulsory insurance required to establish the right to voluntary withdrawal from the pension insurance scheme for craftsmen.

4. Heading D. France :

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

1(a) The allowance for elderly employed persons, together with the allowance for elderly self-employed persons, and the agricultural old-age allowance shall be granted, under the conditions laid down for French workers by French legislation, to all workers who are nationals of other Member States and who, at the time of making their claim, are resident in French territory.

(b) The same shall apply to refugees and stateless persons.

(c) The provisions of the Regulations shall not affect the provisions of French legislation under which only periods of work as employed persons or periods treated as such or, as appropriate, periods of work as self-employed persons in the territories of the European Departments and the Overseas Departments (Guadeloupe, Guiana, Martinique and Réunion) of the French Republic shall be taken into consideration for acquisition of the right to the allowance for elderly employed persons.

(b) in paragraph 3, first sub-paragraph, third line, and second sub-paragraph, first line, the word "worker" shall be replaced by the words "employed or self-employed person";

(c) paragraph 4 shall be replaced by the following text :

4. Within the meaning of Article 73(3) of the Regulation, the expression "family benefits" shall include :

- (a) prenatal allowances provided for in Article L 516 of the Social Security Code;
 - (b) postnatal allowances provided for in Article L 519 of the Social Security Code;
 - (c) the family allowances provided for in Articles L 524 and L 531 of the Social Security Code;
 - (d) the family supplement provided for in Article L 533 of the Social Security Code;
- (d) after paragraph 4, the following new paragraph 5 shall be added :
5. In the calculation of the theoretical amount referred to in Article 46(2)(a) of the Regulation, in schemes where the old-age pensions are calculated on the basis of retirement points, the competent institution shall take into consideration, for each of the insurance years completed under the legislation of any other Member State, a number of retirement points equal to the quotient of the number of retirement points acquired under the legislation that institution administers by the number of years corresponding to those points.

5. Heading E. Ireland :

- (a) paragraphs 1 and 2 shall be omitted; paragraphs 3, 3a and 4 shall become paragraphs 1, 2 and 3;
- (b) in the new paragraph 1, first line, the word "workers" shall be replaced by the words "insured persons";
- (c) in the new paragraph 2,
 - in the first sub-paragraph, second line, the word "worker" shall be replaced by the words "insured person";
 - in the second sub-paragraph, third line, the word "worker" shall be replaced by the words "insured person";
 - in the third sub-paragraph, second line, the word "worker" shall be replaced by the words "insured person";
- (d) in the new paragraph 3, first line, the words "a worker" shall be replaced by the words "an employed person";
- (e) paragraph 5 shall be omitted; paragraphs 6, 7, 8 and 9 shall become paragraphs 4, 5, 6 and 7;

- (f) the new paragraph 5 shall be amended as follows :
- on the eighth line the word "worker" shall be replaced by the words "employed persons";
 - on the 11th line, the word "worker" shall be replaced by the words "employed person";
 - on the 12th line, the words "as a worker" shall be replaced by the words "as an employed person";
- (g) in the new paragraph 6, second line, the word "worker" shall be replaced by the words "insured person";
- (h) in the new paragraph 7, first line, the word "worker" shall be replaced by the words "employed or self-employed person".

6. Heading G. Luxembourg :

In paragraph 2, fourth line, the word "workers" shall be replaced by the words "insured persons".

7. Heading H. Netherlands :

- (a) in paragraph 3(a), second line, the word "worker" shall be replaced by the term "insured person";
- (b) in paragraph 5 :
- in the title, the words "to employed persons" shall be inserted after the word "application";
 - sub-paragraph (a), first line, the words "Article 46(2)" shall be replaced by the words "the application of Article 46(2) to employed persons".

8. Heading I. United Kingdom :

- (a) paragraph 1 shall be omitted; paragraphs 2 to 11 shall be re-numbered accordingly;
- (b) new paragraphs 4 and 5 shall be replaced by the following text :
4. Where, in accordance with the provisions of Title II of the Regulation, a person is subject to United Kingdom legislation, he or she shall be treated, for purposes of acquiring the right to family allowances :

- (a) As if his or her place of birth or that of his or her children or dependants were situated in the territory of the United Kingdom, if that place of birth is situated in the territory of another Member State, and
 - (b) where he or she is an employed or self-employed person, as if that person had been in United Kingdom territory, prior to the date of his or her application for benefit, in any period of insurance, employment or self-employment completed in the territory or under the legislation of another Member State.
5. Any worker subject to United Kingdom legislation in accordance with the provisions of Title II of the Regulation shall be treated, for the purposes of entitlement to the attendance allowance :
- (a) as if his place of birth were within the territory of the United Kingdom, if his place of birth is within the territory of another Member State, and
 - (b) in the case of an employed or self-employed person, as if he had been normally resident in the United Kingdom and had been there during any period of insurance, employment or self-employment that he may have completed within the territory or under the legislation of another Member State.
- (c) in the new paragraph 6, the word "worker" shall be replaced by the words "employed person";
 - (d) in the new paragraph 10 :
 - on line 12, the word "worker" shall be replaced by the words "employed person";
 - on line 16, the word "worker" shall be replaced by the words "employed person";
 - on lines 17-18, the words "a worker" shall be replaced by the words "an employed person".
 - (e) paragraph 12 shall be omitted; succeeding paragraphs shall be re-numbered accordingly;

(f) in the new paragraph 13, fourth line, the word "worker" shall be replaced by the words "employed or self-employed person";

(g) in the new paragraph 15(1) :

- sub-paragraph (a), third line, the word "worker" shall be replaced by the words "employed person";

- after sub-paragraph (a), the following new sub-paragraph shall be inserted :

(b) for every week of insurance, self-employment or residence as a self-employed person, the person concerned shall be treated as having paid a class 2 contribution as a self-employed person;

- sub-paragraph (b) shall become (c). On the fourth line, the word "employment" shall be replaced by the words "employment, self-employment";

(h) in the new paragraph 16, second line, the word "worker" shall be replaced by the words "employed or self-employed person."

5. The former Article 3 of the proposal shall become Article 5.

NOTE ON THE FINANCIAL CONSEQUENCES

1. Budget heading concerned

Article 300 (Administrative Commission on Social Security for Migrant Workers).

2. Legal basis

- Proposal for a Council Regulation concerning the adaptation of Council Regulation (EEC) No 1408/71 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. Extension of the Community Regulations on social security for migrant workers to all insured persons moving within the Community.
- Articles 2, 7, 51 and 235 of the EEC Treaty.
- Council Resolution of 21 January 1974 concerning a social action programme (OJ No C 13 of 12 February 1974).

3. Objective

Extension of the Community Regulations, currently applicable to employed persons only, to all persons insured in the Member States in order to guarantee to these persons :

- (i) equality of treatment under the social security legislation of the Member States;
- (ii) aggregation of periods of insurance, employment or residence for acquiring, retaining or recovering the right to social security benefits;
- (iii) payment of social security benefits regardless of the Member State in which the person concerned is staying.

4. Reason for this measure

- (a) see 2. Legal basis;
- (b) Opinion of the European Parliament of 10 May 1978 (OJ No C 131 of 5 June 1978, page 45).

5. Financial consequences

The action proposed will be permanent, starting in 1979.

At present the Regulations apply only to employed persons, three million of whom have recourse to these Community Regulations every year, involving money transfers of the order of Bfrs 15 000 million per year.

After the Regulations will have been extended to self-employed and non-employed insured persons they will cover virtually the whole population of the Community and the number of people actually benefiting from the provisions is bound to grow substantially.

(a) Budgetary implications and multi-annual forecast

The appropriations authorized under Article 300 for 1978 amount to 645 000 **EUA**.

The appropriations requested for 1979 amount to 750 000 **EUA**.

The appropriations requested, taking account of the aforementioned extension, are as follows, at constant prices :

For 1980 : 900 000 **EUA**
For 1981 : 1 350 000 **EUA**
For 1982 : 1 800 000 **EUA**.

Breakdown of appropriations requested (for guidance only)

| | <u>1979</u> | <u>1980</u> | <u>1981</u> | <u>1982</u> |
|--|----------------|----------------------|----------------------|----------------------|
| | <u>EUA</u> | <u>EUA</u> | <u>EUA</u> | <u>EUA</u> |
| - Meetings of the Administrative Commission, Audit Board, Advisory Committee and Working Parties | 125 000 | 170 000 | 220 000 | 250 000 |
| - Forms | 35 000 | 80 000 ¹ | 40 000 | 60 000 |
| - Updating supplements to the Practical Handbook of Social Security | 37 000 | 100 000 ² | - | 40 000 ⁴ |
| - Reprinting of guides (out of print) | 125 000 | - | 300 000 ³ | 300 000 ³ |
| - Publication of reports 1978-79 | - | 30 000 | - | 40 000 ⁶ |
| - ILO technical assistance | 32 000 | 35 000 | 40 000 | 50 000 |
| - Experts' fees | 15 000 | 20 000 | 25 000 | 30 000 |
| - Translations made outside | 375 000 | 450 000 | 700 000 | 1 000 000 |
| - Staff exchanges | - | 10 000 ⁵ | 15 000 | 20 000 |
| - Miscellaneous | 6 000 | 5 000 | 10 000 | 10 000 |
| TOTAL | 750 000 | 900 000 | 1 350 000 | 1 800 000 |

1. Building up stocks of new forms.
2. Complete review of Handbook.
3. Preparation and publication of new guides, spread over two years.
4. First updating supplement to new Handbook.
5. Item resumed at German request.
6. Report 1980-81.

(b) Reasons for increases in appropriations requested

- For 1980 : drawing up of forms to enable insured persons to exercise their rights, and compilation of documents providing information to social security institutions in the Member States.
- For 1981 : information for the insured (Guides), increase in the volume of translation work relating to claims for benefit, insured persons' appeals, etc.
- For 1982 : increase in administrative work.

(c) Additional staff required

The additional staff complement required is two grade A officials, one grade B official and one grade C official.

Reasons for additional staff complement

The introduction of the new Regulations and the increase in the number of beneficiaries will entail a corresponding increase in the workload of the department, comprising :

1. a complete overhaul of the implementing text (EEC Regulation No 574/72) and the Decisions of the Administrative Commission, the Forms needed for implementing the Regulations, the Guides and the Handbook designed for the information of users;
2. increase in the problems of interpreting or applying the Regulations to be considered by the Administrative Commission, because of the fact that the extended Regulations will give rise to new situations that will have to be settled : preparation of new Decisions of the Administrative Commission; increase in the number of requests for preliminary rulings to the Court of Justice, involving more preparatory work for the department;
3. drafting of more new amendments to Regulations Nos 1408/71 and 574/72;
4. extended application of the financial provisions of the Regulations (transfers and refunds among Member States);

5. need to deal with more appeals lodged by the insured;
6. general increase in administrative workload.

In addition to the material preparation of meetings of the Administrative Commission, the Advisory Committee, the Audit Board and their Working Parties, for which the Department provides secretarial services and in which it represents the Commission (the number of these meetings will also increase), the duties listed above involve problem analysis and problem solving requiring legal or actuarial training plus a good grasp of the social security law of the Member States and the Regulations of the Community.

The rise in the number of beneficiaries will also lead to an increase in the number of translations of claims for benefit, appeals, medical reports etc. which are carried out by staff in the Directorate-General for Personnel and Administration. The staff complement of the Translation Section seconded to the Directorate-General for Employment and Social Affairs would consequently also have to be reviewed.
