

COUNCIL REGULATION (EEC) No 1249/92

of 30 April 1992

amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission, drawn up after consultation of the Administrative Commission on Social Security for Migrant Workers ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas certain amendments should be made to Regulations (EEC) No 1408/71 ⁽⁴⁾ and (EEC) No 574/72 ⁽⁵⁾; whereas some of these amendments are related to changes which the Member States have made to their legislations in respect of social security, while other amendments are of a technical nature and are intended to complete the abovementioned Regulations on the basis of the experience acquired in the implementation thereof;

Whereas the Community provisions concerning social security for migrant workers are applicable from the date of German unification, 3 October 1990, in the entire territory of Germany and consequently also in the territory of the former German Democratic Republic; whereas, accordingly, the text of Articles 94 and 95 of Regulation (EEC) No 1408/71 should be adapted, particularly by stipulating a period for the submission by persons concerned of their requests for the revision of their rights to a pension;

Whereas there are grounds for adapting Article 94 (9) of Regulation (EEC) No 1408/71 for the purpose of applying

it to unemployed workers who were receiving, in the month of November 1989, unemployment benefits under French legislation;

Whereas it is appropriate to add to Annex IIa of Regulation (EEC) No 1408/71 two items concerning Spain and France respectively;

Whereas it seems necessary to delete from heading '2. Belgium — Germany' in section B of Annex III to Regulation (EEC) No 1408/71 a reference to provisions of the General Convention of 7 December 1957 between Belgium and Germany in order to avoid any unfavourable consequences for nationals of Member States other than Germany and Belgium;

Whereas certain amendments should be made to heading 'B. Denmark' of Annex VI to Regulation (EEC) No 1408/71 to take account of amendments incorporated into Danish legislation in respect of daily allowances in the case of sickness or maternity;

Whereas point 1 (a) of heading 'C. Germany' in Annex VI to Regulation (EEC) No 1408/71 should be deleted as it is no longer of practical significance;

Whereas, following an amendment to German legislation on sickness insurance, point 3 of heading 'C. Germany' in Annex VI to Regulation (EEC) No 1408/71 should be deleted;

Whereas point 8 of heading 'C. Germany' in Annex VI to Regulation (EEC) No 1408/71 should be deleted because it is no longer of practical significance;

Whereas it is deemed necessary, following the Judgment of 7 June 1988 of the Court of Justice of the European Communities in Case No 20/85 (Roviello) ⁽⁶⁾, to delete point 15 of heading 'C. Germany' in Annex VI to Regulation (EEC) No 1408/71, as it was declared invalid by the Court of Justice;

Whereas amendments should be made to heading 'F. Greece' in Annex VI to Regulation (EEC) No 1408/71 to resolve practical difficulties resulting from certain peculiarities of the OGA scheme;

⁽¹⁾ OJ No C 219, 22. 8. 1991, p. 5.

⁽²⁾ OJ No C 280, 28. 10. 1991, p. 174.

⁽³⁾ OJ No C 49, 24. 2. 1992, p. 67.

⁽⁴⁾ OJ No L 149, 5. 7. 1971, p. 2. Regulation as last amended by Regulation (EEC) No 1248/92 (see p. 7 of this Official Journal).

⁽⁵⁾ OJ No L 74, 27. 3. 1972, p. 1. Regulation as last amended by Regulation (EEC) No 1248/92 (see p. 7 of this Official Journal).

⁽⁶⁾ [1988] ECR 2805.

Whereas, because Regulation (EEC) No 3427/89⁽¹⁾ resulted in the deletion of the words 'family allowances' from Articles 73 and 74 of Regulation (EEC) No 1408/71, they should likewise be deleted from Article 10 of Regulation (EEC) No 574/72 inasmuch as reference is made therein to the abovementioned Articles 73 and 74; whereas, because Regulation (EEC) No 3427/89 limited the suspension provided for in Article 76 of Regulation (EEC) No 1408/71, that suspension should also be limited in Article 10 of Regulation (EEC) No 574/72 inasmuch as reference is made therein to Articles 73 and 74 of Regulation (EEC) No 1408/71;

Whereas it appears advisable to adapt the wording of Article 34 of Regulation (EEC) No 574/72 to lay down, in addition to the present rules, a simplified procedure authorizing the reimbursement, on certain conditions, of the costs of health care at the rates applied by the competent institution;

Whereas it is necessary to provide for a rate of conversion for the amounts used for the calculation of indemnities for unemployed frontier workers under the terms of Article 71 (1) (a) (ii) and Article 68 of Regulation (EEC) No 1408/71; whereas it is also necessary to provide for a rate of conversion for the amounts used for the calculation of the expenses to be reimbursed in accordance with new paragraphs 4 and 5 of Article 34 of Regulation (EEC) No 574/72;

Whereas the wording of Article 118 (2) and Article 119 (2) of Regulation (EEC) No 574/72 should be adapted following German unification on 3 October 1990;

Whereas, following the deletion of Article 120 of Regulation (EEC) No 574/72 by Article 2, point 11, of Regulation (EEC) No 3427/89, the text of Article 107 (1) (b) of Regulation (EEC) No 574/72, which refers to that provision, should be adapted;

Whereas heading 'E. France' in Annex 3 to Regulation (EEC) No 574/72 should be adapted as a consequence of the amendments incorporated into the French social security scheme for self-employed persons in non-agricultural professions;

Whereas a reference to the agreement of 1 July 1990 signed by Denmark and Spain should be included in heading '13. Denmark — Spain' of Annex 5 to Regulation (EEC) No 574/72;

Whereas certain amendments should be made to heading '21. Denmark — United Kingdom' in Annex 5 to Regulation (EEC) No 574/72 to take account of the

amendments incorporated by an exchange of letters into the agreement between Denmark and the United Kingdom on the reimbursement of costs awarded under Article 69 of Regulation (EEC) No 1408/71;

Whereas it is necessary that a reference to the agreement of 25 June 1990 signed by Germany and Spain be incorporated into heading '22. Germany — Spain' of Annex 5 to Regulation (EEC) No 574/72;

Whereas it is necessary that a reference to the agreement of 25 January 1990 signed by Germany and Luxembourg be added to heading '27. Germany — Luxembourg' of Annex 5 to Regulation (EEC) No 574/72;

Whereas, following the amendments incorporated into Belgian legislation in respect of family benefits, it is necessary that amendments be made to Annex 8 to Regulation (EEC) No 574/72;

Whereas, because of the amendments incorporated in the French social security scheme for self-employed persons in non-agricultural professions, it is necessary that amendments be made to heading 'E. France' of Annex 9 to Regulation (EEC) No 574/72;

Whereas reference should be made in Annex 10 to Regulation (EEC) No 574/72 to the institutions referred to in Article 10b as incorporated in the said Regulation under Regulation (EEC) No 2195/91⁽²⁾;

Whereas amendments should be made to heading 'I. Luxembourg' of Annex 10 to Regulation (EEC) No 574/72 to take account of the change in the name of the joint centre for data processing, membership and collection of contributions of the Luxembourg social security institutions,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Article 94 shall be amended as follows:

(a) the following words: 'or in a part of the territory of that State' shall be added to paragraph 1 after the words

'in the territory of that Member State concerned';

⁽¹⁾ OJ No L 331, 16. 11. 1989, p. 1

⁽²⁾ OJ No L 206, 29. 7. 1991, p. 2

- (b) the following words: 'or in a part of the territory of that State' shall be added to paragraph 2 after the words
'in the territory of that Member State';
- (c) the following words: 'or in a part of the territory of that State' shall be added to paragraph 3 after the words
'in the territory of that Member State concerned';
- (d) the following words: 'or in a part of the territory of that State' shall be added to paragraph 4 after the words
'in the territory of that Member State concerned';
- (e) the following words: 'or in a part of the territory of that State' shall be added to paragraph 5 after the words
'in the territory of the Member State concerned';
- (f) the following sentence:
'The same provisions shall apply as regards the application of this Regulation in those territories which became a part of the Federal Republic of Germany on 3 October 1990 provided that the application referred to in paragraph 4 or 5 is submitted within two years of 1 June 1992'
shall be added to paragraph 6;
- (g) the following sentence:
'The same provisions shall apply as regards the application of this Regulation in those territories which became a part of the Federal Republic of Germany on 3 October 1990 provided that the application referred to in paragraph 4 or 5 is submitted after two years have elapsed from 000' [insert the date of the entry into force indicated in Article 3 (1) of this Regulation]
shall be added to paragraph 7;
- (h) in the first subparagraph of paragraph 9, the words:
'The family allowances received by employed persons employed in France'
shall be replaced by:
'The family allowances received by employed persons employed in France or unemployed workers receiving unemployment benefits under French legislation';

3. Annex IIa shall be amended as follows:

- (a) in 'D. SPAIN', the following shall be added:

'(c) non-contributory disablement and retirement pensions and dependent child benefits as provided for in Articles 132 (1), 136a, 137a, 138a, 154a, 155a, 156a, 167, 168 (2), 169 and 170 of the General Law on Social Security, as amended by Law No 26/90 of 20 December 1990 establishing non-contributory social security benefits.';

- (b) in 'E. FRANCE', the following point shall be added:

'(c) the special allowance (Law of 10 July 1952).';

4. in section B of Annex III, heading '2. BELGIUM — GERMANY' shall be deleted;

2. Article 95 shall be amended as follows:

- (a) the words 'or in a part of the territory of that State' shall be added to paragraph 1 after the words

'in the territory of the Member State concerned';

- (b) the words 'or in a part of the territory of that State' shall be added to paragraph 2 after the words

'in the territory of that Member State';

- (c) the words 'or in a part of the territory of that State' shall be added to paragraph 3 after the words

'in the territory of the Member State concerned';

- (d) the words 'or in a part of the territory of that State' shall be added to paragraph 4 after the words

'in the territory of the Member State concerned';

- (e) the words 'or in a part of the territory of that State' shall be added to paragraph 5 after the words

'in the territory of the Member State concerned';

- (f) the following sentence shall be added to paragraph 6:

'The same provisions shall apply as regards the application of this Regulation in those territories which became a part of the Federal Republic of Germany on 3 October 1990 provided that the application referred to in paragraph 4 or 5 is submitted within two years of 1 June 1992'.

- (g) the following sentence shall be added to paragraph 7:

'The same provisions shall apply as regards the application of this Regulation in those territories which became a part of the Federal Republic of Germany on 3 October 1990 provided that the application referred to in paragraph 4 or 5 is submitted after two years have elapsed from 1 June 1992'.

5. Annex VI shall be amended as follows:

(a) in heading 'B. DENMARK', point 6 shall be replaced by the following:

'6. In order to determine whether or not conditions for entitlement to daily allowances in the case of sickness or maternity laid down by the law of 20 December 1989 on daily allowances in the case of sickness or maternity have been satisfied, where the person concerned is no longer subject to Danish legislation during the periods of reference fixed by the abovementioned law:

(a) account shall be taken of the insurance periods and employment periods fulfilled under the legislation of a Member State other than Denmark during the abovementioned reference periods during which the person concerned was not covered by Danish legislation, as if they are periods completed under the latter legislation;

and

(b) during the periods taken into account, a self-employed person or an employed person (in cases where, for the latter, remuneration cannot serve as a basis for calculating the daily allowances) are regarded as having had an average remuneration or salary of an amount equal to that on the basis of which the cash allowances are calculated in respect of the periods completed under Danish legislation during the reference periods.';

(b) in heading 'C. GERMANY':

(i) point 1 (a) shall be deleted;

(ii) point 3 shall be deleted;

(iii) point 8 shall be deleted;

(iv) point 15 shall be deleted;

(c) in 'F. GREECE', the following point shall be added:

'3. Notwithstanding the relevant provisions applied by the OGA regulations, the periods during which benefits payable in respect of an accident at work or of an occupational disease as defined in the legislation of Member States, which makes separate provision for such risks, provided that they coincide with periods of employment in the agricultural sector in Greece, shall be regarded as periods of insurance under the legislation applied by the OGA within the meaning of Article 1 (r) of the Regulation.';

(d) in 'L. UNITED KINGDOM', point 5 shall be replaced by the following:

'5. For the purposes of applying Article 10a (2) to the provisions governing entitlement to attendance allowance, mobility allowance and disability living allowance, a period of employment, self-employment or residence completed in the territory of a Member State other than the United Kingdom shall be taken into account insofar as is necessary to satisfy conditions as to presence in the United Kingdom, prior to the day on which entitlement to the benefit in question first arises.'

Article 2

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

1. Article 10 shall be replaced by the following:

'Article 10

Rules applicable in the case of overlapping of rights to family benefits or family allowances for employed or self-employed persons

1. (a) Entitlement to benefits or family allowances due under the legislation of a Member State, according to which acquisition of the right to

those benefits or allowances is not subject to conditions of insurance, employment or self-employment, shall be suspended when, during the same period and for the same member of the family, benefits are due only in pursuance of the national legislation of another Member State or in application of Articles 73, 74, 77 or 78 of the Regulation, up to the sum of those benefits.

(b) However, where a professional or trade activity is carried out in the territory of the first Member State:

- (i) in the case of benefits due either only under national legislation of another Member State or under Articles 73 or 74 of the Regulation to the person entitled to family benefits⁽¹⁾ or to the person to whom they are to be paid, the right to family benefits due either only under national legislation of that other Member State or under these Articles shall be suspended up to the sum of family benefits provided for by the legislation of the Member State in whose territory the member of the family is residing. The cost of the benefits paid by the Member State in whose territory the member of the family is residing shall be borne by that Member State;
- (ii) in the case of benefits due either only under national legislation of another Member State or under Articles 77 or 78 of the Regulation, to the person entitled to these benefits or to the person to whom they are payable, the right to these family benefits or family allowances due either only under the national legislation of that other Member State or in application of those Articles shall be suspended; where this is the case, the person concerned shall be entitled to the family benefits or family allowances of the Member State in whose territory the children reside, the cost to be borne by that Member State, and, where appropriate, to benefits other than the family allowances referred to in Article 77 or Article 78 of the Regulation, the cost to be borne by the competent State as defined by those Articles.
2. If an employed person subject to the legislation of a Member State is entitled to family allowances by virtue of periods of insurance or employment previously completed under Greek legislation, this right shall be suspended where, during the same period and for the same member of the family, family benefits or allowances are due under the legislation of the first Member State pursuant to Articles 73 and 74 of the Regulation, up to the sum of those benefits.;
7. Annex 3 shall be amended as follows:
- (a) in 'D. SPAIN', points 1 (b) and 2 (b)
- 'Instituto Social de la Marina (Mariners' Social Institute), Madrid' shall be replaced by
- 'Direcciones provinciales del Instituto Social de la Marina (Provincial Directorates of the Mariners' Social Institute)';
- (b) 'E. FRANCE' shall be amended as follows:
- (a) in section I, B, point 1 shall be replaced by the following:
- '1. Sickness and maternity
- Caisse primaire d'assurance maladie du lieu de résidence ou de séjour (local sickness insurance fund of the place of residence or of stay)';
2. the following paragraphs shall be added to Article 34:
- '4. Notwithstanding paragraphs 1, 2 and 3, the competent institution may effect the reimbursement of expenses incurred in accordance with the rates it administers provided that it is possible to make a refund in accordance with these rates, that the expenses to be refunded do not exceed a level determined by the Administrative Commission and that the employed person or self-employed person or pensioner agrees to the application of this provision. In any case, the amount of reimbursement shall not exceed the amount of the expenses actually incurred.
5. If the legislation of the State of residence does not provide for rates of reimbursement, the competent institution may effect the reimbursement under the conditions laid down in paragraph 4 without the agreement of the person concerned being necessary.';
3. in Article 107 (1) (a), the words:
- 'penultimate sentence of Article 71 (1) (b) (ii)' shall be replaced by 'Article 71 (1) (a) (ii) and the penultimate sentence of Article 71 (1) (b) (ii)'.
4. (a) Article 107 (1) (b) shall read: 'implementing Regulation: Article 34 (1)';
- (b) in Article 107 (1) (b), '(4) and (5)' shall be added after 'Article 34 (1)';
5. Article 118 (2) 'or in a part of the territory of that State' shall be added after 'in the territory of the Member State concerned';
6. Article 119 (2) 'or in a part of the territory of that State' shall be added after 'in the territory of the Member State concerned';

(b) in section II, B, paragraph (a) shall be replaced by the following:

(a) Sickness and maternity:

Caisse générale de sécurité sociale du lieu de résidence ou de séjour (general social security fund of the place of residence or of stay).';

8. in Annex 4, heading D shall be replaced by the following:

'D. SPAIN

- | | |
|---|--|
| 1. For all schemes which are part of the social security system, with the exception of the mariners' scheme, and for all contingencies, with the exception of unemployment: | Instituto Nacional de Seguridad Social (National Institute of Social Security), Madrid |
| 2. For the special mariners' scheme and for all contingencies: | Instituto Social de la Marina (Mariners' Social Institute), Madrid |
| 3. For unemployment benefits, with the exception of mariners: | Instituto Nacional de Empleo (National Institute of Employment), Madrid'; |

9. Annex 5 shall be amended as follows:

(a) heading 13 shall be replaced by the following:

'13. DENMARK — SPAIN

Agreement of 1 July 1990 relating to the reimbursement of costs for benefits in kind in the case of sickness.';

(b) in '21. DENMARK — UNITED KINGDOM':

(i) the following words:

'as modified by an exchange of letters of 8 November 1989 and of 10 January 1990' shall be added in point 1 after '19 April 1977';

(ii) point 1 (b) shall be deleted;

(c) heading 22 shall be replaced by the following:

'22. GERMANY — SPAIN

Agreement of 25 June 1990 relating to the reimbursement of costs for benefits in kind in the case of sickness';

(d) in heading '27 GERMANY — LUXEMBOURG', the following subparagraph shall be added:

'(e) The agreement of 25 January 1990 relating to the application of Articles 20 and 22 (1) (b) and (c) of the Regulation';

10. Annex 8 shall be replaced by the following:

'ANNEX 8

GRANT OF FAMILY BENEFITS

(Article 4 (8), Article 10a (1) (d) and Article 122 of the implementing Regulation)

Article 10 a (1) (d) of the implementing Regulation is applicable to:

A. *Employed persons and self-employed persons*

- (a) with a reference period of one calendar month in dealings between:
- Belgium and Germany
 - Belgium and Spain
 - Belgium and France
 - Belgium and Greece
 - Belgium and Ireland
 - Belgium and Luxembourg
 - Belgium and Portugal
 - Belgium and the United Kingdom
 - Germany and Spain
 - Germany and France
 - Germany and Greece
 - Germany and Ireland
 - Germany and Luxembourg
 - Germany and Portugal
 - Germany and the United Kingdom
 - France and Luxembourg
 - Portugal and France
 - Portugal and Ireland
 - Portugal and Luxembourg
 - Portugal and the United Kingdom;
- (b) with a reference period of a quarter of a calendar year in dealings between:
- Denmark and Germany
 - the Netherlands and Germany, Denmark, France, Luxembourg, Portugal.

B. *Self-employed persons*

With a reference period of a quarter of a calendar year in dealings between:

- Belgium and the Netherlands.

C. *Employed persons*

With a reference period of one calendar month in dealings between:

- Belgium and the Netherlands.';

11. Annex 9 shall be amended as follows:

- (a) heading D shall be replaced by the following text:

'D. SPAIN

The annual average cost of benefits in kind is calculated by taking into consideration the benefits granted by the National Health Service of Spain.';

- (b) the second subparagraph of 'E. FRANCE' shall be deleted;

12. Annex 10 shall be amended as follows:

- (a) in point 3 of 'B. DENMARK' 'and of Article 10b of the implementing Regulation' shall be added after 'of the Regulation';
- (b) heading D shall be replaced by the following:

'D. SPAIN

1. For the purposes of applying Article 6 (1) (with the exception of the special agreement with the Instituto Social de la Marina (Mariners' Social Institute concerning mariners), Article 13 (2) and (3), Article 14 (1), (2) and (3), Article 11 (1), Article 11a, Article 12a and Article 109 of the implementing Regulation: Tesorería General de la Seguridad Social (Social Security General Fund)
 2. For the purposes of applying Article 102 (2) (except in respect of mariners and unemployment benefits), Article 110 and Article 113 (2) of the implementing Regulation: Instituto Nacional de la Seguridad Social (National Institute of Social Security), Madrid
 3. For the purposes of applying Article 38 (1), Article 70 (1), Article 85 (2) and Article 86 (2) of the implementing Regulation save in respect of mariners: Direcciones Provinciales del Instituto Nacional de la Seguridad Social (Provincial Directorates of the National Institute of Social Security)
 4. For the purposes of applying Article 6 (1) (special agreement for mariners), Article 38 (1) (in respect of mariners), Article 70 (1), Article 80 (2), Article 81, Article 82 (2), Article 85 (2), Article 86 (2) and Article 102 (2) (except for unemployment benefits) of the implementing Regulation: Direcciones Provinciales del Instituto Social de la Marina (Provincial Directorates of the Mariners' Social Institute)
 5. For the purposes of applying Article 102 (2) in respect of unemployment benefits: Instituto Nacional de Empleo (National Institute for Employment), Madrid
 6. For the purposes of applying Article 80 (2), Article 81 and Article 82 (2) of the implementing Regulation, in respect of unemployment benefits except for mariners: Direcciones Provinciales del Instituto Nacional de Empleo (Provincial Directorates of the National Institute of Employment);
- (c) in 'I. LUXEMBOURG', point 4 shall be replaced by the following:
- '4. For the purposes of applying Articles 10b and 12a of the implementing Regulation:
Centre commun de sécurité sociale (Joint Social Security Centre), Luxembourg';
- (d) in 'J. NETHERLANDS', point 1 '10b' shall be added after 'Articles 6 (1)',.

Article 3

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

2. Article 1, points 1 (a), (b), (c), (d) and (e) and points 2 (a), (b), (c), (d) and (e) and Article 2, points 5 and 6 shall be applicable from 3 October 1990.

3. Article 1, point 1 (h) shall be applicable from 16 November 1989.

4. Article 1, point 5 (a) shall be applicable from 2 April 1990.

5. Article 1, point 5 (b) (ii) shall be applicable from 1 January 1989.

6. Article 1, point 5 (b) (iv) and (c) shall be applicable from 1 July 1982.

7. Article 2, points 1 and 4 (a) shall be applicable from 15 January 1986.

8. Article 2, point 12 (a), (c) and (d) shall be applicable from 29 July 1991.

9. Article 2, point 2 shall be applicable to all applications for reimbursements for which rates are being set or which have not yet been settled on the date of entry into force of this Regulation, provided that the person concerned agrees.

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

Done at Luxembourg, 30 April 1992.

For the Council

The President

José da SILVA PENEDA
