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(Acts whose publication is obligatory)

**REGULATION (EC) No 1386/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 June 2001**

amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 308 thereof,

Having regard to the proposal from the Commission ⁽¹⁾, presented after consulting the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) It is appropriate to make certain amendments to Council Regulations (EEC) No 1408/71 ⁽⁴⁾ and (EEC) No 574/72 ⁽⁵⁾. These amendments are linked to changes which Member States have made to their social security legislation.

(2) Following the notification by the French Government to the President of the Council of a declaration making Regulation (EEC) No 1408/71 applicable to the two French supplementary pension schemes ARRCO and AGIRC, it seems appropriate to facilitate the application of that Regulation to the schemes by adding new points to Annex IV Part C and Annex VI thereto, chiefly to take account of the supplementary nature of these schemes by comparison with the basic regimes, and of the fact that the benefits they grant are calculated on the basis of the number of pension points acquired, independently of the periods completed.

(3) It is appropriate to clarify that benefits under the Austrian statutory special assistance scheme are to be granted according to the provisions of Title III Chapter 3 of Regulation (EEC) 1408/71.

(4) To take account of the judgment of the Court of Justice of the European Communities of 11 June 1998 in Case C-275/96 *Kuusijärvi v. Riksförsäkringsverket* ⁽⁶⁾, section 'N. SWEDEN' of Annex VI should be amended.

(5) It is appropriate to amend Article 34(5) of Regulation (EEC) No 574/72 in order to separate it from Article 34(4) and hence no longer to refer to the reimbursement procedure subject to a ceiling where the expenses have been incurred during a stay in a Member State which does not provide for rates of reimbursement.

(6) It is necessary to amend Article 93(1) of Regulation (EEC) No 574/72 to take account of Council Regulation (EC) No 307/1999 ⁽⁷⁾, which extends Regulation (EEC) No 1408/71 to cover students.

(7) It is appropriate to amend Article 107 of Regulation (EEC) No 574/72 following the introduction of the euro on 1 January 1999.

(8) In order to attain the objective of freedom of movement for workers, it is necessary and appropriate to amend the rules relating to the coordination of national social security schemes through a Community legal instrument that is binding and directly applicable in each Member State.

(9) With the exception of Article 42, the Treaty does not provide, for the adoption of this Regulation, for powers other than those under Article 308,

⁽¹⁾ OJ C 274 E, 26.9.2000, p. 113.

⁽²⁾ OJ C 367, 20.12.2000, p. 18.

⁽³⁾ Opinion of the European Parliament of 15 February 2001 (not yet published in the Official Journal), and Decision of the Council of 14 May 2001.

⁽⁴⁾ OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 1399/1999 (OJ L 164, 30.6.1999, p. 1).

⁽⁵⁾ OJ L 74, 27.3.1972, p. 1. Regulation as last amended by Regulation (EC) No 1399/1999.

⁽⁶⁾ [1998] ECR I-3419.

⁽⁷⁾ OJ L 38, 12.2.1999, p. 1.

HAVE ADOPTED THIS REGULATION:

Article 1

Annexes IIa, IV and VI to Regulation (EEC) No 1408/71 shall be amended in accordance with the Annex to this Regulation.

Article 2

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

1. Article 34(5) shall be replaced by the following:

'5. If the legislation of the State of stay does not provide for rates of reimbursement, the competent institution may effect the reimbursement in accordance with the rates it administers, without the agreement of the person concerned being necessary. In no case shall the amount of reimbursement exceed the amount of the expenses actually incurred.'

2. Article 93(1) shall be replaced by the following:

'1. The actual amount of benefits in kind provided pursuant to Article 19(1) and (2) of the Regulation to employed and self-employed persons and to members of their families residing in the territory of the same Member State, and benefits in kind provided pursuant to Articles 21(2), 22, 22a, 22b, 25(1), (3) and (4), 26, 31, 34a or 34b of the Regulation, shall be refunded by the competent institution to the institution which provided the said benefits as shown in the accounts of that institution.'

3. Article 107 shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

'1. For the purposes of the following provisions:

(a) Regulation: Article 12(2), (3) and (4), Article 14d(1), Article 19(1)(b), last sentence, Article 22(1)(ii), last sentence, Article 25(1)(b), penultimate sentence, Article 41(1)(c) and (d), Article 46(4), Article 46a(3), Article 50, Article 52(b), last sentence, Article 55(1)(ii), last sentence, Article 70(1), first subparagraph, Article 71(1)(a)(ii) and (b)(ii), penultimate sentence;

(b) implementing Regulation: Article 34(1), (4) and (5), the rate for the conversion into a currency of amounts denominated in another currency shall be the rate calculated by the Commission and based on the monthly average, during the reference period specified in paragraph 2, of reference rates of exchange of currencies published by the European Central Bank.'

(b) Paragraph 3 shall be deleted.

Article 3

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

Article 1, as far as the changes to Section 'E. FRANCE' of Annex IV, Part C, and of Annex VI to Regulation (EEC) No 1408/71 are concerned, shall apply as from 1 January 2000.

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

Done at Luxembourg, 5 June 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

L. ENGQVIST

ANNEX

Annexes IIa, IV and VI to Regulation (EEC) No 1408/71 shall be amended as follows:

1. In Annex IIa, in section 'O. UNITED KINGDOM', paragraphs (c) and (g) shall be replaced by the following:
 - '(c) Working Families' Tax Credit (Social Security Contributions and Benefits Act 1992, section 123(1)(b), Social Security Contributions and Benefits (Northern Ireland) Act 1992, section 122(1)(b), and Tax Credits Act 1999).'
 - '(g) Disabled Person's Tax Credit (Social Security Contributions and Benefits Act 1992, section 123(1)(c), Social Security Contributions and Benefits (Northern Ireland) Act 1992, section 122(1)(c), and Tax Credits Act 1999).'
2. In Annex IV, Part C, Section 'E. FRANCE', the word 'None' shall be replaced by the following:

'All applications for pension benefits or survivor's benefits under supplementary pension schemes for employees, with the exception of applications for old-age pensions or surviving partner's pensions under the supplementary pension scheme for flying personnel employed in civil aviation.'
3. Annex VI is hereby amended as follows:
 - (a) Section 'E. FRANCE' shall be amended as follows:
 - (i) In point 3, the following subparagraph shall be added:

'The preceding conditions shall also hold good when applying to other Member States' nationals the provisions which allow a French employed worker pursuing his activity outside France voluntarily to join a French supplementary pension scheme for employed workers either directly or via his employer.'
 - (ii) Point 5 shall be replaced by the following:

'5. For the calculation of the theoretical amount referred to in Article 46(2)(a) of the Regulation, in basic or supplementary schemes in which old-age pensions are calculated on the basis of retirement points, the competent institution shall take into account, in respect of each of the years of insurance completed under the legislation of any other Member State, the number of retirement points arrived at by dividing the number of retirement points acquired under the legislation it applies by the number of years corresponding to these points.'
 - (iii) The following point shall be added:

'9. The French legislation applicable to an employed worker or a former employed worker for the purposes of applying Chapter 3 of Title III of the Regulation is deemed to apply both to the basic old-age insurance scheme(s) and to the supplementary pension scheme(s) to which the person concerned has been subject.'
 - (b) In Section 'K. AUSTRIA', the following point shall be added:

'7. Special assistance under the Special Assistance Act ("Sonderunterstützungsgesetz") of 30 November 1973 shall be considered as an old-age pension for the purposes of applying the Regulation.'
 - (c) In Section 'N. SWEDEN', point 1 shall be replaced by the following:

'1. For the application of Article 72 of the Regulation, a person's entitlement to parental benefit shall be determined by regarding insurance periods completed in another Member State as being based on the same average income as the Swedish insurance periods with which they are aggregated.'