II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation (EC) 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, Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, Regulation (EEC) No 1247/92 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 1945/93 amending Regulation (EEC) No 1247/92

(94/C 143/08)

(Text with EEA relevance)

COM(94) 135 final — 94/0111(CNS)

(Submitted by the Commission on 21 April 1994)

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the opinion of the European Parliament,

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

Whereas there is a need for certain amendments to be made to Regulations (EEC) No 1408/71 (1) and (EEC) No 574/72 (2), as last amended by Regulation (EEC) No 1945/93 (3); whereas some of these amendments relate to changes made by the Member States to their social security legislation while others are of a technical nature and are designed to refine the said Regulations;

Whereas in the case of totally unemployed persons, benefits for sickness and maternity, invalidity, old age and family benefits shall be for the account of the institution of the country of residence (Articles 25 (2), 39 (6), 45 (6) and 72a of Regulation (EEC) No 1408/71), and that this institution is also competent in the matter of the award of unemployment benefits (Article 71 of the same Regulation); whereas the abovementioned provisions of the Regulation designate the Member State competent in the matter of the benefits in question whereby reference is made to the legislation of the Member State thus designated; whereas it has been ascertained that no provision has been made for the deduction of contributions for the aforementioned benefits in those cases where the legislation of the State competent in the matter of unemployment benefits provides for this reduction; that it would seem expedient to remedy this situation by the introduction of a provision stating that the Member State of residence may deduct the contributions where this has been provided for in its own legislation, under the condition that the application of this legislation does not have any discriminatory effects in respect of nationals of other Member States and that it does not constitute a hindrance to the freedom of movement of these persons;

Whereas it would appear necessary to ensure that a family does not lose the rights to family benefits because the timelimit concerned is too short, and that for this purpose Article 86 of Regulation (EEC) No 1408/71 should be amended;

Whereas there is a need, taking account of the specific nature of the housing allowances, which are closely linked to the national territory, to specify in Article 90 of Regulation (EEC) No 1408/71 that this benefit is awarded only by the Member State of residence;

Whereas, for reasons of efficacy, it would be preferable to regroup all the transitional provisions concerning the special non-contributory benefits in a new Article 95b of Regulation (EEC) No 1408/71;

Whereas there is a need for certain amendments to be made to headings 'G. Ireland' and 'L. United Kingdom' in Annex I, Part II of Regulation (EEC) No 1408/71 for the purpose of taking account of the interpretation given by the Irish and United Kingdom authorities to the concept of 'member of the family';

Whereas it has become necessary to add to Annex IIa of Regulation (EEC) No 1408/71 under the heading 'B.

(1) OJ No L 149, 5. 7. 1971, p. 2.
(2) OJ No L 74, 27. 3. 1972, p. 1.
(3) OJ No L 181, 23. 7. 1993, p. 1.

Denmark' a flat-rate rehabilitation allowance, which constitutes a non-exportable special non-contributory benefit;

Whereas there is a need to delete the entry in Annex IIa under heading 'I. Luxembourg' the compensatory cost-of-living allowance since that allowance no longer exists in Luxembourg legislation;

Whereas, as a result of an agreement concluded between the Greek and German authorities, there is a need to complete Annex III, Part B, point 24 of Regulation (EEC) No 1408/71;

Whereas it would appear necessary to adapt heading 'F. Greece' of Annex VI to Regulation (EEC) No 1408/71 as a result of the restructuring of the social insurances and of the various amendments made to Greek legislation;

Whereas it is necessary to amend Articles 17 (2) and 30 (1) of Regulation (EEC) No 574/72 for the purpose of extending to German institutions a specific provision already provided for in respect of French institutions, taking account of the fact that this will give rise to a greater fluctuation of insured persons between the various sickness funds;

Whereas there is a need to insert a new Article 87 in Regulation (EEC) No 574/72 for the purpose of facilitating the procedure of implementing the new paragraph 2 in Article 86 of Regulation (EEC) No 1408/71 and to guarantee that the family is not obliged to reimburse family benefits erroneously awarded by an institution where the family has not received the amount of benefits due from the competent institution;

Whereas there is a need to amend Article 95 of Regulation (EEC) No 574/72 for the purpose of maintaining a state of equilibrium between the amount to be reimbursed and the real expenditure of the institutions of the Member States;

Whereas there is a need to amend the text of Article 107 (1) of Regulation (EEC) No 574/72 for the purpose of taking account of the amendments that have been made by Regulations (EEC) No 2195/91, (EEC) No 1248/92 and (EEC) No 1249/92;

Whereas, as a result of the administrative amendments made in Denmark, there is a need to adapt the heading 'B. Denmark' of Annexes 2, 3, 4, and 10 to Regulation (EEC) No 574/72;

Whereas there is a need to adapt points 13 'Denmark-Spain' and 15 'Denmark-Greece' of Annex 5 to Regulation (EEC) No 574/72 in order to take account of the agreements concluded by these Member States;

Whereas there is likewise a need to amend Annex 5 as a result of an agreement between Greece and the Netherlands pursuant to Article 36 (3) of Regulation (EEC) No 1408/71;

Whereas it is necessary to adapt the heading 'A. Belgium' of Annex 10 to Regulation (EEC) No 574/72 for the purpose of mentioning the competent institution referred to in Article 10 of the said Regulation;

Whereas, as a result of an administrative reorganization of the sickness insurance in Luxembourg, there is a need to amend the entries in Annexes 2, 3, 4, 9 and 10 to Regulation (EEC) No 574/72 under the heading 'I. Luxembourg';

Whereas, as a result of a change in the denomination of the Netherlands Labour Councils, it is necessary to adapt Annexes 2, 3 and 4 to Regulation (EEC) No 574/72 under heading 'J. the Netherlands';

Whereas there is a need to delete Article 2 of Regulation (EEC) No 1247/92 and Article 3 of Regulation (EEC) No 1945/93, the contents of which are contained in Regulation (EEC) No 1408/71; that it is consequently necessary to renumber Article 3 of Regulation (EEC) No 1247/92 and Article 4 of Regulation (EEC) No 1945/93, and to delete point 10 of the last-mentioned Article in which reference is made to the deleted provisions,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. The following Article 25a is inserted after Article 25:

   '*Article 25a*

   Contributions for the account of totally unemployed persons

   The institution of a Member State, which owes benefits in kind and in cash to the unemployed persons mentioned in Article 25 (2), which applies a legislation that provides for the deduction of contributions for the account of the unemployed persons for the purpose of insurance cover for benefits in respect of sickness and maternity shall be authorized to make these deductions in accordance with the provisions of its legislation.';

2. Article 39 is amended as follows.

   The following subparagraph shall be inserted after the first subparagraph of paragraph 6:

   'Where this institution applies a legislation by virtue of which the deduction of contributions are for the account of unemployed persons for the purpose of insurance cover for invalidity benefits, it shall be authorized to make these deductions in accordance with the provisions of its legislation.';

3. Article 45 is amended as follows:

   The following subparagraph is added after the first sentence of paragraph 6:

   'Where this institution applies a legislation by virtue of which the deduction of contributions is for the account of unemployed persons for the purpose of insurance cover for old age and death (pensions), it shall be authorized to make these deductions in accordance with the provisions of its legislation.';

4. Article 72a is amended as follows.

The following paragraph is added:

'Where that institution applies a legislation by virtue of which the deduction of contributions is for the account of unemployed persons for the purpose of insurance cover for family benefits, it shall be authorized to make these deductions in accordance with the provisions of its legislation.';

5. Article 86 is amended as follows.

The existing text becomes paragraph 1, and the following paragraph 2 is inserted:

'2. Where a claim for family benefits has been submitted in a Member State which is not competent by priority right, the date on which that first application was made shall be considered as the date on which it was submitted to the authority, institution or tribunal, provided that a new application is submitted in the Member State, which is competent by priority right. The second application shall be submitted within a period of one year after notification of the rejection of the first application.

The first sentence shall be applicable only where the person who submitted the first application is one of the potential beneficiaries.';

6. An Article 90 is inserted. It reads as follows:

'*Article 90*

Housing allowances

Housing allowances shall be granted only by virtue of the legislation of a Member State on whose territory the person concerned resides. The benefits shall be awarded by and for the account of the institution of the place of residence.';

7. An Article 95b is added. It reads as follows:

'*Article 95b*

1. Regulation (EEC) No 1247/92 shall not provide any entitlement for periods prior to 1 June 1992.

2. The periods of residence and periods of employment or of self-employment completed on the territory of a Member State before 1 June 1992 shall be taken into consideration for the determination of rights acquired under the provisions of Regulation (EEC) No 1247/92.

3. Subject to the provisions of paragraph 1, a right shall be acquired under Regulation (EEC) No 1247/92 even where it relates to a contingency that occurred before 1 June 1992.

4. All special non-contributory benefits which have not been awarded or which have been suspended by reason of the nationality or place of residence of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from 1 June 1992, provided that the rights previously determined have not given rise to a lump-sum payment.

5. The rights of persons to whom a pension was awarded prior to 1 June 1992, may, on the application of the persons concerned, be reviewed, taking account of the provisions of Regulation (EEC) No 1247/92.

6. If an application referred to in paragraph 4 or 5 is submitted within two years from 1 June 1992, the rights acquired under Regulation (EEC) No 1247/92 shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.

7. If an application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period after 1 June 1992, rights which have not been forfeited or which are not time-barred shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.

8. The application of Regulation (EEC) No 1247/92 may not result in the withdrawal of benefits, which were awarded before 1 June 1992 by the competent institutions of the Member States under Title III of Regulation (EEC) No 1408/71 to which Article 10 of that Regulation is applicable.

9. The application of Regulation (EEC) No 1247/92 may not result in the rejection of an application for a special non-contributory benefit awarded as a supplement to a pension, which was submitted by the person concerned who had satisfied the conditions for the award of this benefit before 1 June 1992, even where the person concerned resides on the territory of a Member State other than the competent Member State, provided that the application for the benefit is submitted within a period of five years starting from 1 June 1992.

10. Notwithstanding the provisions of paragraph 1, any special non-contributory benefit, granted as a supplement to a pension, which has not been awarded or which has been suspended by reason of the residence of the person concerned on the territory of a Member State other than the competent Member State shall, on the application of the person concerned, be awarded or resumed with effect from 1 June 1992, in the first case from the date on which the benefit should have been awarded, and in the second case on the date of suspension of the benefit.

11. Where the special non-contributory benefits referred to in Article 4 (2a) can be awarded during one and the same period for one and the same person under Article 10a by the competent institution of the Member State on whose territory

where the person concerned resides and under paragraphs 1 to 10 of this Article by the competent institution of another Member State, the amount that arises from the cumulation of these benefits may not exceed the amount of the highest special benefit to which the person concerned would be entitled in application of one of the legislations in question.

12. The procedures for the application of the preceding paragraph, notably the application of the clauses in respect of reduction, suspension or withdrawal of these benefits, provided for by the legislation of one or more Member States and the award of supplementary differentials, shall be determined by common accord by the Member States in question or by their competent authorities or by a decision of the Administrative Commission.';

8. In Annex I, Part II, the heading 'G. IRELAND' is replaced by the following text:

'G. IRELAND:

In order to determine the right to benefits in kind for sickness and maternity in application of the Regulation, the term "member of the family" shall mean any person considered as being a dependant of an employed person or of a self-employed person for the application of the Health Acts of 1947 to 1970.';

9. In Annex I, Part II, the heading 'L. UNITED KINGDOM' is replaced by the following text:

'L. UNITED KINGDOM:

For the purpose of determining entitlement to benefits in kind, the term "member of the family" means:

1. as regards the legislation of either Great Britain or Northern Ireland,

(1) a spouse, provided that:

(a) the worker is:

(i) residing with the spouse; or

(ii) contributing to the maintenance of the spouse; and

(b) the spouse does not:

(i) have earnings as a worker; or

(ii) receive a social security benefit or pension based on the spouse's own insurance;

(2) a person having care of a child, provided that:

(a) the worker is:

(i) living together with the person as though husband and wife; or

(ii) contributing to the maintenance of the person; and

(b) the person does not:

(i) have earnings as a worker; or

(ii) receive a social security benefit or pension based on that person's own insurance;

(3) a child in respect of whom the worker is, or could be, paid child benefit.

2. as regards the legislation of Gibraltar, any person regarded as a dependant within the meaning of the 1987 (Medical (Group Practice Scheme) Ordinance, 1987)';

10. Annex IIa is amended as follows:

(a) in heading 'B. DENMARK', there is a need to insert the following provision: 'The flat-rate rehabilitation benefit awarded under the Law on Social Welfare for the maintenance of persons receiving rehabilitation treatment';

(b) in heading 'I. LUXEMBOURG', point '(a) Compensatory cost-of-living allowance (Law of 13 June 1975)' is deleted. Points (b) and (c) then become respectively points (a) and (b);

11. In Annex III, Part B, point 24, the word 'None' is replaced by the following text:

'24. GERMANY — GREECE

Protocol of 7 October 1991 in conjunction with the Agreement of 6 July 1984 between the Government of the German Democratic Republic and the Government of the Hellenic Republic on the settlement of problems relating to pensions.';

12. Annex VI is amended as follows:

(a) in heading 'F. GREECE', point 3 is deleted. Point 4 then becomes point 3. The following two points are added:

'4. Where the rules of the Greek auxiliary pension fund make provision for the recognition of compulsory insurance periods completed with the Greek principal insurance institutions in the pension branch, these rules shall also apply to compulsory insurance periods completed under the legislation of any other Member State which is relevant to the scope of this Regulation.

5. (a) Employed persons who were compulsorily affiliated until 31 December 1992 to a pension insurance scheme of a Member State other than Greece and who are compulsorily subject to Greek social insurance for the first time after 1 January 1993, shall be regarded as "old insured persons" in accordance with the provisions of Part IV of Law No 2084/92 relating to contributions (Articles 44 to 46).

(b) The provisions of Part IV of Law No 2084/92 relating to the acquisition of the right to a pension and to the calculation of benefits (Articles 47 to 51) shall be applicable to employed persons who were subject to compulsory pension insurance in a Member State other than Greece until 31 December 1992 and were then subject to Greek compulsory social pension insurance for the first time after 1 January 1993, provided that aggregation of insurance periods completed in other Member States is necessary for the acquisition of the right to benefits under Greek legislation.'

Article 2

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

1. The second sentence of paragraph 2 of Article 17 and the last sentence of paragraph 1 of Article 30 are replaced by the following text:

'However, where the said certified statement has been issued by a German or French institution, it shall be valid only for a period of one year following the date on which it was issued and must be renewed every year.';

2. After Article 86, an Article 87 is inserted, the text of which is as follows:

'*Article 87*

Implementation of Article 86 (2) of the Regulation

Where, during a given period, the family benefits have been awarded by one institution whereas they should have been awarded by another institution, the two Member States in question may agree on special procedures for the payment of these benefits. The right to family benefits due in the competent Member State under its legislation and, where appropriate, under Articles 73 or 74 of the Regulation, shall be honoured to the amount paid by the incompetent institution for the same period and for the same member of the family.';

3. Article 95 is amended as follows.

After paragraph 4, the following paragraph 4a is added:

'4a. For the implementation of this Article, the two spouses, each of whom receives an old-age pension under the legislation of a Member State and who live under the same roof on the territory of another Member State, shall be considered as one pensioner. This provision shall not apply where, up to the date on which the abovementioned pension was awarded, both spouses had been entitled to benefits in their capacity as employed persons.';

4. Paragraph 1 of Article 107 is replaced by the following text:

'1. For the implementation of the following provisions:

(a) Regulation: Article 12 (2), (3) and (4), Article 14d (1), Article 19 (1) (b), third sentence, Article 22 (1) point (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), points (a) (ii) and (b) (ii), penultimate sentence;

(b) implementing Regulation: Article 34 (1), (4) and (5):

the rate of conversion into a national currency of amounts expressed in another national currency shall be the rate calculated by the Commission of the rates of exchange of these currencies which have been notified to the Commission for the implementation of the European Monetary System.';

5. Annex 2 is amended as follows:

(a) in heading 'B. DENMARK',

(i) in point 2a, 'Socialministeriet (Ministry of Social Affairs), København' are replaced by 'Direktoratet for Social Sikring og Bistand (National Office for Social Security and Welfare), København';

(ii) in point 3a, the words 'Socialministeriet (Ministry for Social Affairs), København' are replaced by the words 'Direktoratet for Social Sikring og Bistand (National Office for Social Security and Welfare), København';

(b) points 1 and 6 of heading 'I. LUXEMBOURG' should read as follows:

'1. Sickness and maternity

(a) Benefits in kind:	Caisse de maladie compétente et/ou union des caisses de maladie (competent sickness fund and/or the sickness funds' association)
(b) Cash benefits:	Caisse de maladie compétente (the competent sickness fund)

6. Death grants

For the purpose of implementing Article 66 of the Regulation:	Union des caisse de maladie (the sickness funds' association), Luxembourg.';

(c) in point 5 (a) and (b) of heading 'J. NETHERLANDS', the words 'Raad van Arbeid' are replaced in each case by the words 'districtskantoor van de Sociale Verzekeringsbank' (the local office of the Social Insurance Bank);

6. Annex 3 is amended as follows:

(a) in heading 'B. DENMARK', point 'I. Institutions of the place of residence', (b) and (c) (i), the words 'Socialministeriet (Ministry of Social Affairs), København' are replaced by the words 'Direktoratet for Social Sikring og Bistand (National Office for Social Security and Welfare), København';

(b) in heading 'I. LUXEMBOURG', point 'I. Sickness and maternity' is amended at follows:

the text appearing in the column to the right of paragraph (a) is replaced by 'caisse de maladie des ouvriers et/ou union des caisses de maladie (the sickness fund for manual workers and/or the sickness funds' association)'

the text appearing in the column to the right of paragraph (b) is replaced by 'caisse de maladie compétente, selon la législation luxembourgeoise, pour la pension partielle luxembourgeoise et/ou union des caisses de maladie (the sickness fund which, under Luxembourg legislation, is competent for the Luxembourg partial pension and/or the sickness fund association)';

(c) in heading 'J. THE NETHERLANDS', point 3 (c), the words 'Bureau voor Duitse Zaken van de Vereniging van Raden van Arbeid, Nijmegen' is replaced by 'Bureau voor Duitse zaken (Department of German Affairs) Nijmegen'

in point 5, the words 'Raad van Arbeid' are replaced by the words 'districtskantoor van de Sociale Verzekeringsbank (local office of the social insurance bank)';

7. Annex 4 shall be amended as follows:

(a) in heading 'B. DENMARK', in points 1, 2, 3 and 5, the words 'Socialministeriet (Ministry of Social Affairs), København' is replaced by the following words 'Direktoratet for Social Sikring og Bistand (National Office for Social Security and Welfare), København';

(b) in heading 'I. LUXEMBOURG', points 1 and 6 are amended as follows:

'1. Sickness and maternity:	Union des caisses de maladie, (sickness funds' association), Luxembourg.
6. Death grants:	
(a) For the purposes of applying Article 66 of the Regulation:	Union des caisses de maladie (sickness funds' association), Luxembourg.
(b) In other cases:	Institutions referred to in 1 or 3, depending upon which branch of insurance is responsible for the payment of benefit';

(c) in heading 'J. THE NETHERLANDS', in point 2 (c), the words 'Bureau voor Duitse zaken van de Vereniging van Raden van Arbeid, Nijmegen' are replaced by 'Bureau voor Duitse zaken (Department of German Affairs), Nijmegen';

8. Annex 5 is amended as follows:

(a) in point '13. DENMARK-SPAIN', the text is replaced by the following text:

'Agreement of 1 July 1990 on the partial reciprocal waiving of reimbursement provided for in Articles 36 (3) and Article 63 (3) of the Regulation and the reciprocal waiving of reimbursement provided for in Article 105 (2) of the implementing Regulation. (Partial waiving of reimbursement in respect of benefits in kind for sickness, maternity, accidents at work and occu-

pational diseases and waiving of reimbursement in respect of administrative checks and medical examinations).';

(b) in point '15. DENMARK-GREECE', the text should be replaced by the following text:

'Agreement of 8 May 1986 on the partial reciprocal waiving of reimbursement provided for in Article 36 (3) and Article 63 (3) of the Regulation and the reciprocal waiving of reimbursement provided for in Article 105 (2) of the implementing Regulation. (Partial waiving of reimbursement in respect of benefits in kind for sickness, maternity, accidents at work and occupational diseases and waiving of reimbursement in respect of administrative checks and medical examinations).';

(c) in point 49, 'GREECE-THE NETHERLANDS', the word 'None' shall be replaced by the following text:

'The exchange of Letters of 8 September 1992 and 30 June 1993 concerning the methods of reimbursement between the institutions.';

9. Annex 9 is amended as follows:

in heading 'I. LUXEMBOURG', the text reads as follows:

'All sickness funds and the sickness funds' association shall be taken into consideration when calculating the annual average cost of benefits in kind.';

10. Annex 10 is amended as follows:

(a) in heading 'A. BELGIUM', the following point shall be added:

'1. For the application of Article 10b of the implementing Regulation:

Employed persons:	The insurance institution with which the employed person was insured
Self-employed persons:	Institut national d'assurances sociales pour travailleurs indépendants, (National Social Insurance Institute for the Self-employed), Brussels'

the present point 1 becomes point 2, etc;

(b) in heading 'B. DENMARK',

(i) the words 'Socialministeriet (Ministry of Social Affairs), København' in points 1, 2 and 3 are replaced by the words 'Direktoratet for Social Sikring og Bistand (National Office for Social Security and Welfare), København.';

(ii) subparagraph (b) in point 7 is replaced by the following text:

'(b) Cash benefits under Title III, Chapter 1 of the Regulation and benefits under Title III, Chapters 2, 3, 7 and 8 of the Regulation: Direktoratet for Social Sikring og Bistand (National Office for Social Security and Welfare), København';

(c) in heading 'I. LUXEMBOURG', there is a need to replace points 8 and 9 of the text appearing in the column to the right of subparagraph (a) sickness, maternity, by the words 'Union des caisses de maladie (sickness funds' association), Luxembourg.'

Article 3

Article 2 of Regulation (EEC) No 1247/92 is deleted. Article 3 then becomes Article 2.

Article 4

Article 3 of Regulation (EEC) No 1945/93 is deleted. Article 4 then becomes Article 3. It is amended as follows:

Point 10 is deleted.

Article 5

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

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