Proposal for a Council Regulation 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

(92/C 251/03)

COM(92) 315 final

(presented by the Commission on 3 August 1992)

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 of 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 Regulation (EEC) No 1408/71 (1) and Regulation (EEC) No 574/72 (2), both as last amended by Regulation (EEC) No 1249/92 (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, by virtue of the experience gained in applying them, to define the said Regulations;

Whereas there is a need for certain amendments to be made to section G., Ireland, of Part 1 of Annex I to Regulation (EEC) No 1408/71, in order to take account of the interpretation by the Irish authorities of the term 'self-employed person';

Whereas it has become necessary to adapt section G., Ireland, of Annex VI to Regulation (EEC) No 1408/71, as a result of amendments to Irish legislation on maternity benefits;

Whereas, as a result of changes to the Netherlands rules on statutory health insurance for pensioners, for those drawing early retirement pensions and for the family members of employed and self-employed persons, there is a need to amend section J., Netherlands, of Annex VI to Regulation (EEC) No 1408/71;

Whereas it would appear necessary to clarify the application, in particular as regards equality of the sexes, of the provisions in Netherlands legislation relating to the taking into account of periods of marriage of a worker's spouse for entitlement to an old-age pension for that spouse; whereas there is a need therefore to specify the scope of the entries in section J., Netherlands, of Annex VI of Regulation (EEC) No 1408/71;

Whereas it has become necessary to specify, in section J., Netherlands, of Annex VI to Regulation (EEC) No 1408/71, the requirement that a Netherlands worker posted abroad must pay the minimum contribution for his Netherlands spouse to be able to be taken into consideration under the general old-age insurance scheme;

Whereas there is a need for certain amendments to be made to section J., Netherlands, of Annex VI to Regulation (EEC) No 1408/71 with a view to preventing the retention of a system whereby contributions continue to be levied for voluntary general old-age insurance and general widows' and orphans' insurance during a period in which the spouse of a worker has an autonomous right to an old-age pension;

Whereas there is a need for a provision apportioning the share of the costs of family benefits where such benefits are, for the same period and the same family member, due under the legislation of two Member States pursuant to Articles 73 and/or 74 of Regulation (EEC) No 1408/71;

Whereas there is a need for heading C., Germany, of Annex 2 to Regulation (EEC) No 574/72 to be amended to take account of certain reallocations of powers between certain German bodies;

Whereas it is necessary to amend certain provisions in the heading on Ireland in Annexes 2, 3 and 4 to Regulation (EEC) No 574/72 as a result of organizational changes to the Irish bodies responsible for administering the pension schemes for widows and orphans and old-age pension schemes;

Whereas, the address of one of the Netherlands bodies having changed, there is a need to update the references thereto, under the heading on the Netherlands of Annexes 2, 3 and 4 to Regulation (EEC) No 574/72, referring to this body;

Whereas, as a result of reorganization of the services responsible for the provision of cash benefits in the United

(1) OJ No L 149, 5. 7. 1971, p. 2.
(2) OJ No L 74, 27. 3. 1972, p. 1.
(3) OJ No L 136, 19. 5. 1992, p. 28.

Kingdom, there is a need to amend the heading on the United Kingdom of Annexes 3, 4 and 10 to Regulation (EEC) No 574/72;

Whereas there is a need to amend heading 7, Belgium-Italy, of Annex 5 to Regulation (EEC) No 574/72 to take account of a new agreement of the reimbursement of reciprocal claims, concluded by an exchange of letters between these two countries;

Whereas there is a need to amend heading 41., France-Italy, of Annex 5 to Regulation (EEC) No 574/72 as a result of an exchange of letters between these two countries on the procedures for settling reciprocal claims;

Whereas, as a result of the denunciation by the French authorities of the agreement between France and the United Kingdom waiving reimbursement of sickness and maternity benefits in kind for pensioners, there is a need to amend heading 45., France-United Kingdom, of Annex 5 to Regulation (EEC) No 574/72,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Point 2 of Annex I, section I, section G., Ireland, shall be replaced by the following:

   'Any person who is compulsorily or voluntarily insured pursuant to the provisions of section 17 A of the Social Welfare (Consolidation) Act, 1981 shall be considered a self-employed person within the meaning of Article 1 (a) (ii) of the Regulation.'

2. Annex VI shall be amended as follows:

   (a) Section G., Ireland:

      (i) in point 5, the word 'maternity' shall be deleted from the phrase 'with sickness, maternity and unemployment benefits';

      (ii) point 8 shall be deleted.

   (b) Section J., Netherlands:

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

      (ii) point 1 (c) shall become point 1 (b);

      (iii) the fifth indent of the new point 1 (b) shall be replaced by the following:

         — 'benefits in respect of a pension before the age of 65 under a pension scheme designed to provide old-age assistance to workers and former workers, or benefits in respect of an early retirement pension from work under a scheme for early retirement set up by the State or by or by the State or by or under an industrial agreement, or a scheme to be designated by the Sickness Fund Council.'

      (iv) the following subparagraph shall be added to point 1:

         '(c) Members of the family as referred to in Article 19 (2) who reside in the Netherlands and employed or self-employed workers and the members of their families as referred to in Article 22 (1) (b) and (3) read in conjunction with Article 22 (1) (b), and Articles 25 and 26 who are entitled to benefits under the legislation of another Member State shall not be insured under the *Algemene Wet Bijzondere Ziektekosten* (Law on General Insurance against Special Medical Expenses) (AWBZ).'

      (v) point 2 (b) shall be replaced by the following:

         '(b) Similarly, the reduction referred to in Article 13 (1) of the AOW shall not apply to calendar years or parts thereof prior to 2 August 1989 during which, between his fifteenth and sixty-fifth birthdays, the person who is or was married was not insured under the abovementioned legislation despite being resident in the territory of a Member State other than the Netherlands, if these calendar years or parts thereof coincide, on the one hand, with the periods of insurance completed by the person's spouse under that legislation provided that the couple's marriage subsisted during these periods, and, on the other, with the calendar years or parts thereof to be taken into account under subparagraph (a).

         By way of derogation from Article 7 of the AOW, this person shall be considered a pensioner.'

      (vi) point 2 (c) shall be replaced by the following:

         '(c) The reduction referred to in Article 13 (2) of the AOW shall not apply to calendar years or parts thereof prior to 1 January 1957 during which the spouse of a pensioner who fails to satisfy the conditions for having these years treated as periods of insurance resided in the Netherlands between the spouse's fifteenth and sixty-fifth birthdays or during which, despite being resident on the territory of another Member State, the spouse pursued an activity as an employed person in the Netherlands for an employer established in the Netherlands.'

(vii) point 2 (d) shall be replaced by the following:

'(d) The reduction referred to in Article 13 (2) of the AOW shall not apply to calendar years or parts thereof prior to 2 August 1989 during which, between his fifteenth and sixty-fifth birthdays, the pensioner's spouse was resident in a Member State other than the Netherlands and was not insured under the abovementioned legislation if these calendar years or parts thereof coincide, on the one hand, with the periods of insurance completed by the spouse under that legislation provided that the couple's marriage subsisted during these periods, and, on the other, with the calendar years or parts thereof to be taken into account under subparagraph (a).'

(viii) the following sentence shall be added to point 2 (g):

'(g) The authorization referred to in point 4 of (f) may not be granted to a spouse residing in the Netherlands of an employed or self-employed person to whom the provisions of Article 14 (1), Article 14a (1) or Article 17 of the Regulation apply.'

(ix) point 2 (h) shall be replaced by the following:

'(h) The provisions referred to in (a), (b), (c), (d) and (f) shall not apply either to those periods which coincide with periods which may be taken into account for calculating pension rights under the old-age insurance legislation of a Member State other than the Netherlands or to those periods during which the person concerned has drawn an old-age pension under such legislation.'

Article 2

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

1. The following paragraph shall be added to Article 10:

'3. Where family benefits are due, over the same period and for the same member of the family, under the legislation of two Member States pursuant to Articles 73 and/or 74 of the Regulation, the Member State with legislation providing for the highest levels of benefit shall pay the total amount of such benefit and be reimbursed half this sum by the other Member State up to the limit of the amount provided for in the legislation of the latter Member State.'

2. Annex 2 shall be amended as follows:

(a) Heading C., Germany:

(i) Point 2 (a) (ii) shall be replaced by the following:

'(ii) If the last contribution was paid into the pension insurance scheme for clerical staff:

— if no contribution was paid into the Seekasse (mariners' insurance fund), Hamburg, or if the last contribution was not paid to the Bundesbahnversicherungsanstalt (federal railways insurance office), Frankfurt am Main:

Bundesversicherungsanstalt für Angestellte (federal insurance office for clerical staff), Berlin.

— if a contribution was paid into the Seekasse (Rentenversicherung der Arbeiter oder der Angestellten) (mariners' insurance fund (pension insurance scheme for manual workers of clerical staff)), Hamburg:

Seekasse (mariners' insurance fund), Hamburg.

— if the last contribution was paid to the Bundesbahnversicherungsanstalt (federal railways insurance office), Frankfurt am Main:

Bundesbahnversicherungsanstalt (federal railways insurance office), Frankfurt am Main.'

(ii) Point 2 (b) (ii) shall be replaced by the following:

'(ii) If the last contribution was paid into the pension insurance scheme for clerical staff:

— if no contribution was paid into the Seekasse (mariners' insurance fund), Hamburg, or if the last contribution was not paid to the Bundesbahnversicherungsanstalt (federal railways insurance office), Frankfurt am Main:

Bundesversicherungsanstalt für Angestellte (federal insurance office for clerical staff), Berlin.

— if a contribution was paid into the Seekasse (Rentenversicherung der Arbeiter oder der Angestellten) (mariners' insurance fund (pension insurance scheme for manual workers or clerical staff)), Hamburg:

Seekasse (mariners' insurance fund), Hamburg.

— if the last contribution was paid to the Bundesbahnversicherungsanstalt (federal railways insurance office), Frankfurt am Main:

Bundesbahnversicherungsanstalt, (federal railways insurance office), Frankfurt am Main.'

(b) Heading G., Ireland:

Point 2 shall be replaced by the following:

'2. **Cash benefits**

(a) Unemployment benefits:

Department of Social Welfare, Dublin,

including the provincial offices responsible for unemployment benefits

(b) Old-age and death (pensions):

Department of Social Welfare,

Pensions Services Office,

Sligo.

(c) Family benefits:

Department of Social Welfare,

Child Benefit Section,

Oliver Plunkett Street,

Letterkenny, Co. Donegal.

(d) Other cash benefits:

Department of Social Welfare, Dublin.'

(c) Heading J., Netherlands:

(i) Subparagraph 3 (a) shall be replaced by the following:

'(a) General scheme:

Sociale Verzekeringsbank (social insurance bank),
Postbus 1100,
1180 BH Amstelveen.'

(ii) Subparagraph 5 (c) shall be replaced by the following:

'(c) In other cases:

Sociale Verzekeringsbank (social insurance bank),
Postbus 1100,
1180 BH Amstelveen.'

(iii) Subparagraph 6 (a) shall be replaced by the following:

'(a) Where the benefit is awarded from a date prior to 1 July 1967:

Sociale Verzekeringsbank (social insurance bank),
Postbus 1100,
1180 BH Amstelveen.'

3. Annex 3 shall be amended as follows:

(a) Point 2 under heading G., Ireland, shall be replaced by the following:

'2. **Cash benefits**

(a) Unemployment benefits:

Department of Social Welfare, Dublin,

including the provincial offices responsible for unemployment benefits

(b) Old-age and death (pensions):

Department of Social Welfare,
Pensions Services Office,
Sligo

(c) Family benefits:

Department of Social Welfare,
Child Benefit Section,
Oliver Plunkett Street,
Letterkenny, Co. Donegal.

(d) Other cash benefits:

Department of Social Welfare, Dublin.'

(b) Point 3 (a) under heading J., Netherlands, shall be replaced by the following:

'(a) As a general rule:

Sociale Verzekeringsbank (social insurance bank)
Postbus 1100
1180 BH Amstelveen.'

(c) Heading L., United Kingdom:

(i) Point 2 shall be replaced by the following:

'Cash benefits (except for family benefits)

Great Britain:	Newcastle Benefits Directorate, Benefits Agency, Overseas Branch, Newcastle upon Tyne NE98 1YX.
Northern Ireland:	Northern Ireland Social Security Agency, Belfast BT1 1DX.
Gibraltar:	Department of Labour and Social Security, Gibraltar.'

(ii) Point 3 shall be replaced by the following:

'Family benefits:

For the application of Articles 73 and 74 of the Regulation:

Newcastle Benefits Directorate,
Benefits Agency,
Child Benefit Centre (Washington),
Newcastle upon Tyne NE88 1AA.

Northern Ireland:	Northern Ireland Social Security Agency, Overseas Branch, Belfast BT1 1DX.
Gibraltar:	Department of Labour and Social Security, Gibraltar.'

4. Annex 4 shall be amended as follows:

(a) Point 2 under heading G., Ireland, shall be replaced by the following:

'2. **Cash benefits**

(a) Old-age and death (pensions):

Department of Social Welfare,
Pensions Services Office,
Sligo.

(b) Family benefits:

Department of Social Welfare,
Child Benefit Section,
Oliver Plunkett Street,
Letterkenny, Co. Donegal.

(c) Other cash benefits:

Department of Social Welfare,
Dublin.'

(b) Point 2 (a) under heading J., Netherlands, shall be replaced by the following:

'(a) As a general rule:

Sociale Verzekeringsbank (social insurance bank)
Postbus 1100
1180 BH Amstelveen.'

(c) Heading L., United Kingdom, shall be replaced by the following:

Great Britain:	Newcastle Benefits Directorate, Benefits Agency, Overseas Branch, Newcastle upon Tyne NE98 1YX.
Northern Ireland:	Northern Ireland Social Security Agency, Overseas Branch, Belfast BT1 1DX.
Gibraltar:	Department of Health and Social Security, Overseas Branch, Newcastle upon Tyne.'

5. Annex 5 shall be amended as follows:

(a) Subparagraph (e) of heading 7, Belgium — Italy, shall be replaced by the following:

'(e) The exchange of letters of 10 December 1991 and 10 February 1992 concerning the reimbursement of reciprocal claims under Article 93 of the implementing Regulation.'

(b) Subparagraph (b) of heading 41, France — Italy, shall be replaced by the following:

'(b) The exchange of letters of 14 May and 2 August 1991 concerning the procedures for settling reciprocal claims under Article 93 of the implementing Regulation.'

(c) Subparagraph (b) of heading 45, France — United Kingdom, shall be deleted.

(d) The present subparagraph (c) of heading 45, France — United Kingdom, shall become subparagraph (b).

6. In Annex 10, heading L., United Kingdom, shall be replaced by the following:

'1. For the purposes of applying Article 14 (c), Article 14 (d) (3), Article 17, Article 36 and Article 63 of the Regulation, and Article 6 (1), Article 8, Article 11 (1), Article 11 (a) (1), Article 12 (a), Article 13 (2) and (3), Article 14 (1), (2) and (3), Article 38 (1), Article 70 (1), Article 80 (2), Article 81, Article 82 (2), Article 91 (2), Article 102 (2), Article 109, Article 110 and Article 113 (2) of the implementing Regulation:

Great Britain:	Newcastle Benefits Directorate, Benefits Agency, Overseas Branch, Newcastle upon Tyne NE98 1YX.
Northern Ireland: (except for Articles 36 and 63 of the Regulation, Article 102 (2) and Article 113 (2) of the implementing	

Regulation for which see the heading on Great Britain)	Northern Ireland Social Security Agency, Overseas Branch, Belfast BT1 1DX.

2. For the purposes of applying Article 85 (2), Article 86 (2) and Article 89 (1) of the implementing Regulation:

Great Britain:	Newcastle Benefits Directorate, Benefits Agency, Child Benefit Centre, Newcastle upon Tyne NE88 1AA.
Northern Ireland:	Northern Ireland Social Security Agency, Overseas Branch, Belfast BT1 1DX.'

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 2 (b) (v), 2 (b) (vi) and 2 (b) (vii) shall apply from 1 April 1985.

3. Article 1, points 2 (b) (viii) and 2 (b) (ix) shall apply from 2 August 1989.

4. Article 2, point 5 (a) shall apply from 10 February 1992.

5. Article 2, point 5 (b) shall apply from 14 March 1991.

6. Article 2, point 5 (c) shall apply from 1 July 1992.

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