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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

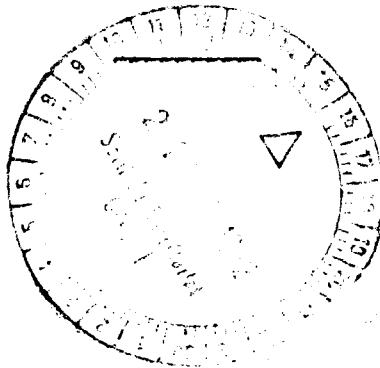
In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 771 final

Brussels, 17 December 1982

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



(submitted to the Council by the Commission)

COM(82) 771 final

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EXPLANATORY MEMORANDUM

1. Article 1 (1) of the Proposal.

Amendments to Article 61 of Regulation (EEC) N° 1408/71

(a) Amendment to paragraph 5.

Article 61 (5) of Regulation (EEC) N° 1408/71 provides that accidents at work or occupational diseases which have occurred previously shall be taken into account to assess the degree of incapacity where they have occurred under the legislation of another Member State.

The proposed amendment would have the effect that where the legislation of a Member State provides the taking into account of accidents at work or occupational diseases which have occurred subsequently, the competent institution of that Member State should also take into account subsequent accidents at work or occupational diseases when they have occurred under the legislation of another Member State.

Thus the position of the person concerned should not be worse compared to the position he would have been in if the accident had occurred within the framework of one social insurance system. This means that the institutions of Member States should not treat such cases differently in any respect from accidents occurring within their own borders

Moreover, the proposed amendment clarifies that both previous and subsequent accidents will be taken into account for the purposes of:

- (i) assessing the degree of incapacity
- (ii) establishing the claim
- (iii) determining the level of the benefit.

(b) Addition of paragraphs 6 and 7

Paragraph 6 introduces overlapping rules in order to avoid double payment in cases of successive accidents at work.

Paragraph 7 provides for the application of paragraphs 5 and 6 by analogy to the case of successive occupational diseases or successive accidents at work and occupational diseases so as that the same rules would be applicable to successive injuries however sustained.

It must be noted that the successive occupational diseases mentioned here are of different nature. The aggravation of the same occupational disease is governed by Article 60 (1) (b) of the Regulation.

2. Article 1 (2) (a) of the Proposal.

Addition of point 14 at Annex VI, Section C (Germany) of Regulation 1408/71.

The calculation of cash benefits under Articles 23 and 58 of Regulation (EEC) N° 1408/71 has presented problems for the German institutions.

Under Article 182 (4) of the Reichsversicherungsordnung (Reich Insurance Code) daily sickness benefits represent 80% of the usual remuneration ("Regellohn") which has been lost because of incapacity for work, and may not exceed the usual net remuneration that has been lost. The net remuneration in this respect, is the gross remuneration after the legal deductions (taxes and social security contributions).

Difficulties have arisen in connection with the determination of the normal net earnings in the case of frontier workers employed in Germany who are subject to the tax law of the State of residence under a convention of dual taxation.

The proposal supplementing Annex VI is intended to enable German institutions to calculate the net earnings for the

determination of cash benefits under Articles 23 and 58 of the said Regulation to frontier workers insured in that State and residing in another Member State, as if they were subject to German Tax law.

3. Article 1 (2) (b) of the Proposal.

Addition of point 4 A at Annex VI, Section J United Kingdom of Regulation 1408/71.

The entry into force on 4th July 1982 of new legislation in the United Kingdom concerning maternity benefit involves changes in the conditions to be satisfied for the award of maternity benefit. The new law provides for the abolition of the contribution conditions and the introduction of conditions of presence in the United Kingdom as a substitute for the contribution conditions.

The suggested addition to Annex VI point J, is designed to ensure that where the United Kingdom is the competent State for maternity benefits, periods of insurance, employment or residence completed in other Member States are taken into account in order to produce title to the benefit where a woman who is a worker would otherwise be unable to satisfy the presence conditions because of her having in the past been subject to the legislation of another Member State or where a woman who is not a worker was residing with her husband in another Member State during periods of insurance or employment completed by him under the legislation of that State.

4. Article 2 (1) of the Proposal.

Amendments of Article 72 of Regulation 574/72.

The proposed amendments are consequent upon the amendments suggested to Article 61 of Regulation 1408/71 and seek to lay down the procedure for implementing these amendments.

5. Article 2 (2) (a) of the Proposal.

Amendment of paragraph (1) (a) (ii) at Annex 3 Section G
(Italy) of Regulation 574/72.

Following changes in the distribution of competences between the various authorities in Italy, the competence of the Ministry of Health has been extended to include certain other categories of beneficiaries other than those who are mentioned in the Annex at this moment.

The suggested amendment seeks to reflect that change.

6. Article 2 (2) (b) of the Proposal.

Amendment of paragraph 3 at Annex 3 Section H (Netherlands)
of Regulation 574/72.

Due to an oversight the competent institution for administering the special pension scheme of the mutual fund for the miners in the Limburg hard coal mines (Algemeen Mijnwerkersfonds) had not been included in Annex 2 of Regulation 574/72.

The proposed amendment is designed to rectify this omission.

7. Article 2(3) of the Proposal.

Amendments to Annex 3 of Regulation 574/72 in respect of
Section J (United Kingdom).

The United Kingdom institution for administering the social security scheme has reorganised its handling of family allowances matters.

The amendment proposed seeks only to reflect that change.

8. Article 2 (4) of the Proposal.

Amendments to Annex 10 of Regulation 574/72 in respect of
Section J (United Kingdom).

The reason for the amendment suggested here is the same as that described at paragraph 7 of this Memorandum.

Proposal for a

COUNCIL REGULATION (EEC)

amending Regulation (EEC) 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) 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 Council Regulation (EEC) N° 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community(1), as last amended by Regulation (EEC) N° 2793/71(2)

Having regard to Council Regulation (EEC) N° 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) N° 1408/71 on the application of social security schemes to employed and self-employed persons and members of their families moving within the Community (3), as last amended by Regulation (EEC) N° 2474/82 (4)

Having regard to the proposal of the Commission drawn up after consulting the Administrative Commission on Social Security for Migrant Workers⁵,

Having regard to the opinion of the European Parliament (6);

Having regard to the opinion of the Economic and Social Committee(7)

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- (1) - O.J. N° L 149 - 5.7.1971, p. 2
 - (2) - O.J. N° L 275 - 29.9.1981, p. 1
 - (3) - O.J. N° L 74 - 27.3.1972, p. 1
 - (4) - O.J. N° L 266 - 15.9.1982, p. 1
 - (5) - O.J. N° C
 - (6) - O.J. N° C
 - (7) - O.J. N° C

Whereas the experience gained from implementing Regulations (EEC) N° 1408/71 and N° 574/72 has revealed the need to make some improvements to those Regulations;

Whereas, consequently, when the legislation of a Member State provides that accidents at work or occupational diseases which have occurred subsequently shall be taken into account in order to assess the degree of incapacity, to establish a right to benefit or to determine the amount of the benefit, they should also be taken in account when they have occurred under the legislation of another Member State; whereas double compensation for successive accidents at work should be prevented;

Whereas it is necessary to amend Regulation (EEC) N° 574/72 accordingly;

Whereas changes in the United Kingdom legislation concerning entitlement to maternity benefit have made it necessary to make provision in Annex VI to Regulation (EEC) N° 1408/71 so as to ensure that periods of insurance, employment or residence completed in other Member States are taken into account;

Whereas it is necessary to make provision in the said Annex VI enabling German Institutions to calculate the net earnings for the determination of certain cash benefits to workers insured in that State and residing in another Member State;

Whereas it is necessary to amend Annex 2 to Regulation (EEC) N° 574/72 to include the competent institution which administers the special pension scheme for miners in the Netherlands;

Whereas it is necessary to amend Annexes 3 and 10 to Regulation (EEC) No 574/72 following changes in the administration of family allowances in the United Kingdom,

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) N° 1408/71 is hereby amended as follows:

1. In Article 61:

(a) Paragraph 5 is replaced by the following:

"5. Subject to the provisions of paragraph 6, the competent institution of a Member State whose legislation expressly or by implication provides that accidents at work which have occurred previously, or subsequently, shall be taken into consideration in order to assess the degree of incapacity, to establish a right to any benefit, or to determine the amount of such benefit, shall also take into consideration accidents at work which have occurred previously, or subsequently, under the legislation of another Member State as if they had occurred under the legislation which it administers."

(b) The following paragraphs 6 and 7 are added:

"6. The provisions of paragraph 5 on the taking into account of accidents at work that have occurred subsequently shall be applied only where no compensation was due in respect of the earlier accident at work pursuant to the legislation of the Member State under which it occurred, and where no compensation is due in respect of the subsequent accident at work by virtue of the legislation of the Member State under which it occurred, account being taken of the application of paragraph 5.

7. The provisions of paragraphs 5 and 6 shall apply by analogy as regards successive occupational diseases or accidents at work followed or preceded by occupational diseases."

2. In Annex VI:

(a) In Section C, Germany, the following point 14 is added:

"14. For the granting of cash benefits pursuant to Articles 182(4), 200(2) and 561(1) of the Insurance Code (RVO) to insured persons residing in another Member State, German insurance institutions shall calculate the net earnings to be taken into account for the determination of the benefit rate payable as though they resided in the Federal Republic of Germany."

(b) In Section J, United Kingdom, the following point 4a is inserted after point 4.

"4a(1) For the purposes of entitlement to maternity grant, periods of insurance or employment completed under the legislation of another Member State shall be regarded as periods of presence in Great Britain or, as the case may be, Northern Ireland and, in such case, the provisions of Article 18 (1) of the Regulation shall apply as if the references therein to periods of residence were references to periods of presence.

Where a woman subject to United Kingdom legislation in accordance with the provisions of Title II of the Regulation does not satisfy the condition imposed by that legislation concerning presence within Great Britain or, as the case may be, Northern Ireland on the date of claim or the date of confinement, she shall be regarded as satisfying such condition if she was on the date in question in another Member State.

(2) If a woman, whose husband is or has lastly been a worker subject to United Kingdom legislation in accordance with the provisions of Title II of the Regulation, does not satisfy the conditions imposed by United Kingdom legislation in relation to maternity grant concerning:

(a) presence within Great Britain or, as the case may be, Northern Ireland on the date of claim or the date of confinement, she shall be regarded for the

purpose of satisfying such conditions as being so present if she was with her husband on the date in question in another Member State; or, in the event of the death of her husband occurring within six months before the date in question, if she was residing with him in another Member State at the time of his death;

- (b) a period of presence within Great Britain or, as the case may be, Northern Ireland, of more than 182 days in the 52 weeks immediately preceding the expected week of confinement or, as the case may be, the date of confinement, periods of insurance or employment completed by her husband under the legislation of another Member State shall, if she was residing with him throughout those periods, be regarded as periods of presence in Great Britain, or as the case may be, Northern Ireland."

Article 2

Regulation (EEC) 574/71 is hereby amended as follows:

1. Article 72 is replaced by the following:

"Implementation of Article 61 (5) of the Regulation

Article 72

Assessment of the degree of incapacity in the case of an accident at work sustained or an occupational disease diagnosed previously or subsequently.

1. In order to assess the degree of incapacity, to establish a right to any benefit, or to determine the amount of such benefit in the cases referred to in Article 61 (5) of the Regulation, a claimant shall supply the competent institution of the Member State to whose legislation he was subject at the time when the accident at work was sustained or the occupational disease was first diagnosed, with all information on previous or subsequent accidents at work sustained or occupational diseases contracted by him when he was subject to the legislation of any other Member State, whatever the degree of incapacity caused by those previous or subsequent cases.

2. In accordance with the legislation which it administers in respect of the acquisition of the right to benefit, and the determination of the amount of benefit, the competent institution shall take into account the degree of incapacity caused by those previous or subsequent cases.
3. The competent institution may apply to any other institution which was previously or subsequently competent to obtain any information which it considers necessary.

When a previous or a subsequent incapacity for work was caused by an accident sustained while the person concerned was subject to the legislation of a Member State which makes no distinction as to the origin of the incapacity for work, the competent institution in respect of the previous or subsequent incapacity for work or the body designated by the competent authority of the Member State concerned shall, at the request of the competent institution of another Member State, supply information on the degree of the previous or subsequent incapacity for work and as far as possible, any information which would make it possible to determine whether the incapacity was the result of an accident at work within the meaning of the legislation administered by the institution of the second Member State. Where such is the case, the provisions of paragraph 2 shall apply by analogy."

2. In Annex 2 :

- (a) In Section G, Italy, paragraph 1: the text of (a) (ii), is replaced by the following:

"ii) for certain categories
of civil servants, of
persons employed in the
private sector and per-
sons treated as such, for
pensioners and members of
their families : Ministero della Sanità,
(Ministry of Health), Rome"

- (b) In Section I, Netherlands, paragraph 3 is replaced by the following: 9:

"3. Old-age, death (pensions):
(a) in general : Sociale Verzekeringsbank (Social
Insurance Bank), Amsterdam
(b) for miners : Algemeen Mijnwerkersfonds (The Miners'
General Fund), Heerlen."

3. Section J, United Kingdom, of Annex 3 is amended as follows:

a) Paragraph 2 is replaced by the following:

"2. Cash benefits (except family allowances):

Great Britain: Department of Health and Social
Security
Overseas Branch
Newcastle upon Tyne
NE98 1YX

Northern Ireland: Department of Health and Social
Services
Overseas Branch
Belfast
BT4 3HH

Gibraltar: Department of Labour and Social
Security
Gibraltar"

b) The following paragraph 3 is added:

"3. Family allowances:

For the purpose of applying Articles 73 and 74 of the
Regulation:

Great Britain: Department of Health and Social
Security
Child Benefit Centre (Washington)
Newcastle upon Tyne
NE98 1AA

Northern Ireland: Department of Health and Social
Services
Overseas Branch
Belfast
BT4 3HH

Gibraltar: Department of Labour and Social
Security
Gibraltar"

4. Section J, United Kingdom, of Annex 10 is replaced by the following:

"J. UNITED KINGDOM

1. For the purposes of applying Article 11 (1), Article 11a, Article 12a, 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) and Article 110 of the implementing Regulation.

Great Britain: Department of Health and Social Security
Overseas Branch
Newcastle upon Tyne
NE98 1YX

Northern Ireland: Department of Health and Social Services
Overseas Branch
Belfast
BT4 3HH

2. For the purposes of applying Article 85 (2) and Article 86 (2) of the implementing Regulation

Great Britain: Department of Health and Social Security
Child Benefit Centre (Washington)
Newcastle upon Tyne
NE88 1AA

Northern Ireland: Department of Health and Social Services
Overseas Branch
Belfast
BT4 3HH"

Article 3

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

Article 1 (2) (b) shall apply with effect from 1 April 1982.

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

Done at Brussels, -----

For the Council

The President
