

## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EEC) No 1660/85  
of 13 June 1985**

**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 consulting the Administrative Commission on Social Security for Migrant Workers <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas certain amendments should be made to Regulations (EEC) No 1408/71 <sup>(4)</sup> and (EEC) No 574/72 <sup>(5)</sup>, each of which was last amended by Regulation (EEC) No 2001/83 <sup>(6)</sup>; whereas some of these amendments result from changes which have occurred in Member States' social security legislation, other amendments being of a technical nature and prompted by the experience gained from their implementation;

Whereas changes in the Danish legislation concerning social pensions make it necessary to amend existing entries in Annex VI to Regulation (EEC) No 1408/71;

Whereas it is necessary to make provision in the said Annex VI for the waiving of the condition of residence in Denmark for the acquisition of the right to pension in respect of employed or self-employed persons or their survivors residing in a Member State other than Denmark and for ensuring the taking into account, under certain conditions, of periods of employment or self-employment completed in Denmark by an employed or self-employed person for the purposes of calculating the surviving spouse's pension;

Whereas it is necessary to make provision in the said Annex VI enabling German institutions to reimburse contributions in respect of pension insurance paid by Greek teachers insured simultaneously in Germany and Greece;

Whereas new legislation in Greece concerning voluntary insurance schemes requires provision to be made in the said Annex VI incorporating the special procedure for applying this legislation and its conditions of eligibility to nationals of Member States other than Greece;

Whereas provisions in the said Annex VI concerning United Kingdom legislation, which permits wives or former wives to substitute periods of insurance completed by their husbands or former husbands in two or more Member States for their own insurance record where this is more favourable, require amendment to take account of the extension of this concession in certain cases to former husbands in respect of the insurance periods of their former wives, and to correct certain inadequacies in the wording of the existing text;

Whereas the interaction between United Kingdom legislation concerning the calculation of old-age pensions and the provisions of Regulation (EEC) No 1408/71 concerning the aggregation of periods of

<sup>(1)</sup> OJ No C 47, 19. 2. 1985, p. 8.

<sup>(2)</sup> OJ No C 141, 10. 6. 1985.

<sup>(3)</sup> Opinion delivered on 27 May 1985 (not yet published in the Official Journal).

<sup>(4)</sup> OJ No L 149, 5. 7. 1971, p. 2.

<sup>(5)</sup> OJ No L 74, 27. 3. 1972, p. 1.

<sup>(6)</sup> OJ No L 230, 22. 8. 1983, p. 6.

insurance, employment or residence completed in other Member States where, after 6 April 1975, those periods were completed in a Member State other than the United Kingdom, produces, in conjunction with the special procedure included in the said Annex VI, anomalous and inequitable results ;

Whereas it is necessary therefore to make an additional provision in the said Annex VI to the existing special procedure for applying the said legislation so as to correct the effects referred to ;

Whereas the instances in which a person should be subject simultaneously to the legislation of two Member States, as an exception to the general rule, should be as limited in number and scope as possible ;

Whereas the wording of point 6 in Annex VII, which lists the instances in which these exceptions are to be permitted, concerning self-employment in Greece, is unnecessarily widely drawn and should be more specific to reflect the fact that the only scheme to which self-employed persons are to be compulsorily affiliated in Greece, whilst subject to a scheme for employed persons in another Member State, is a pension insurance scheme ;

Whereas point 6 of Annex VII should be amended accordingly ;

Whereas the experience gained from implementing Regulations (EEC) No 1408/71 and (EEC) No 574/72 has revealed the need to improve the provisions dealing with the overlapping of family benefits or family allowances in Regulation (EEC) No 574/72 ;

Whereas the rule in Article 10 of Regulation (EEC) No 574/72, which provides that the right to family benefits arises under the legislation of the Member State in

the territory of which the children reside, takes effect solely where the person who exercises the professional or trade activity in the Member State of residence activating the transfer of priority is the spouse of the employed or formerly employed person, whether that spouse is himself or herself entitled to the benefit or not ;

Whereas those provisions have been seen to operate unfairly in circumstances in which the person entitled to the benefit and exercising the professional or trade activity was not or was no longer the spouse of the employed or formerly employed person ; whereas these provisions should therefore be amended so as to correct this anomaly ;

Whereas it is necessary to introduce some textual amendments to Annexes 2, 3 and 4 to Regulation (EEC) No 574/72 as a result of the aforementioned changes in Danish legislation ;

Whereas it is necessary to amend Annex 9 to Regulation (EEC) No 574/72 to take account of the extension of Regulations (EEC) No 1408/71 and (EEC) No 574/72 to self-employed persons for the calculation of the average annual cost of benefits in kind ;

Whereas it is necessary to correct Annex 10 to Regulation (EEC) No 574/72 following changes in competence as regards the payment of pension supplements for dependent children of pensioners in Germany ;

Whereas it is necessary to make provision, in the said Annex 10, for the relevant optional continued insurance scheme in Greece if the conditions for joining more than one such scheme are met,

HAS ADOPTED THIS REGULATION :

#### *Article 1*

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

1. Annex VI :

(a) In Section B. DENMARK :

(i) Point 3 is replaced by the following :

'3. (a) The provisions of Danish legislation on social pensions that stipulate that the right to pension is subject to the claimant being resident in Denmark are not applicable to employed or self-employed persons or their survivors who reside in the territory of a Member State other than Denmark.

- (b) For the purpose of calculating the pension, periods of employment or self-employment completed in Denmark by a frontier worker or a seasonal worker are regarded as periods of residence completed in Denmark by the surviving spouse in so far as the surviving spouse was, during these periods, linked to the frontier worker or seasonal worker by marriage without separation from bed and board or *de facto* separation on grounds of incompatibility, and provided that during these periods the spouse resided in the territory of another Member State.
- (c) For the purpose of calculating the pension, periods of employment or self-employment completed in Denmark before 1 January 1984 by an employed or self-employed person other than a frontier worker or seasonal worker shall be regarded as periods of residence completed in Denmark by the surviving spouse, in so far as the surviving spouse was, during these periods, linked to the employed or self-employed person by marriage without separation from bed and board or *de facto* separation on grounds of incompatibility, and provided that during these periods the spouse resided in the territory of another Member State.
- (d) Periods to be taken into account under the terms of (b) and (c) shall not be taken into consideration if they coincide with the periods taken into account for the calculation of the pension due to the person concerned under the legislation on compulsory insurance of another Member State or with the periods during which the person concerned received a pension under such legislation.

These periods shall, however, be taken into consideration if the annual amount of the said pension is less than half the basic amount of the social pension.' ;

(ii) Point 4 is deleted ;

(iii) In point 8, 'Invalidity, old-age and widows' pensions' is replaced by the words 'Invalidity pensions, early pensions, old-age pensions and widows' pensions.' ;

(iv) Points 5 to 10 are renumbered accordingly.

(b) In Section C. GERMANY, the following point is added :

'16. Greek teachers with civil service status who by virtue of their employment in German schools have paid compulsory contributions to German statutory pension insurance in addition to contributions to the Greek special scheme for civil servants and who ceased to be covered by German compulsory insurance after 31 December 1978 shall on application receive a contribution refund in respect of these compulsory contributions in accordance with Article 1303 of the insurance code (RVO) or Article 82 of the clerical staff insurance law (AVG). Claims for contribution refunds should be made within one year of the date of entry into force of this provision. The person concerned may also exercise his entitlement within two years of the date upon which he ceased to be subject to compulsory insurance.

Article 1303 (7) of the social insurance code (RVO) and Article 82 (7) of the clerical staff insurance law (AVG) shall apply only in respect of periods for which compulsory contributions under German pension insurance were paid in addition to contributions to the Greek special scheme for civil servants and in respect of periods equivalent to periods of insurance immediately following periods in which such compulsory contributions had been paid.' ;

(c) In Section E. GREECE, the following point 3 is added :

3. Law No 1469/84 concerning voluntary affiliation to the pension insurance scheme for Greek nationals and foreign nationals of Greek origin, is applicable to nationals of other Member States, stateless persons and refugees residing in the territory of a Member State in accordance with the second subparagraph.

Subject to the other conditions of this law being met, contributions may be made :

- (a) where the person concerned is domiciled or resides in the territory of a Member State and has at some time in the past been compulsorily affiliated to the Greek pension insurance scheme ; or
- (b) regardless of the place of domicile or residence, where the person concerned has either previously resided in Greece for 10 years, whether consecutive or not, or has previously been subject to Greek legislation whether compulsorily or voluntarily for a period of 1 500 days.'

(d) in Section J. UNITED KINGDOM :

(i) Point 2 is replaced by the following :

'2. Where, in accordance with United Kingdom legislation, a person may be entitled to a retirement pension if :

- (a) the contributions of a former spouse are taken into account as if they were that person's own contributions ; or
- (b) the relevant contribution conditions are satisfied by that person's spouse or former spouse,

then provided, in each case, that the spouse or former spouse is or was an employed or self-employed person who had been subject to the legislation of two or more Member States, the provisions of Chapter 3 of title III of the Regulation shall apply in order to determine entitlement under United Kingdom legislation. In this case, references in the said Chapter 3 to "periods of insurance" shall be construed as references to periods of insurance completed by :

- (i) a spouse or former spouse, where a claim is made by a married woman, a man who is widowed or a person whose marriage has terminated otherwise than by the death of the spouse, or
- (ii) a former spouse, where a claim is made by a widow, who was not in receipt of a survivor's benefit immediately before reaching pensionable age or who is only in receipt of an age-related widow's pension calculated pursuant to Article 46 (2) of the Regulation.'

(ii) In point 13, the following paragraph is inserted after paragraph 1 :

'2. For the purposes of Article 46 (2) (b) of the Regulation, where :

- (a) in any income tax year starting on or after 6 April 1975, an employed person had completed periods of insurance, employment or residence exclusively in a Member State other than the United Kingdom, and the application of paragraph 1 (a) (i) results in that year being counted as a qualifying year within the meaning of United Kingdom legislation for the purposes of Article 46 (2) (a) of the Regulation, he shall be deemed to have been insured for 52 weeks in that year in that other Member State ;

- (b) any income tax year starting on or after 6 April 1975 does not count as a qualifying year within the meaning of United Kingdom legislation for the purposes of Article 46 (2) (a) of the Regulation, any periods of insurance, employment or residence completed in that year shall be disregarded.’

and paragraph 2 shall become paragraph 3.

2. Annex VII:

Point 6 is replaced by the following:

‘6. For the pension insurance scheme for self-employed persons:

where he is self-employed in Greece and gainfully employed in any other Member State.’

*Article 2*

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

1. In Article 10, paragraph 1 is hereby replaced by the following:

‘1. (a) Entitlement to family 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 pursuant to Articles 73, 74, 77 or 78 of the Regulation.

(b) Where, however, a professional or trade activity is exercised or pursued in the territory of the said Member State by:

(i) in the case of benefits due pursuant to Articles 73 or 74 of the Regulation, the person entitled to the family benefits or family allowances, or the person to whom they are paid; then the right to family benefits or family allowances due pursuant to those articles shall be suspended and only those family benefits or family allowances of the Member State in whose territory the member of the family is residing shall be paid, the cost to be borne by that Member State.

(ii) in the case of benefits due pursuant to Articles 77 or 78 of the Regulation, the person entitled to those benefits or the person to whom they are paid, then the right to these family benefits or family allowances due pursuant to these Articles under the legislation of another Member State 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 Articles 77 or 78 of the Regulation, the cost to be borne by the competent State as defined by those Articles.’;

2. Annex 2, Section B. DENMARK is hereby amended as follows:

(a) the text of paragraph 1 (b) (i), in the left-hand column, shall be replaced by the following:

‘(i) Benefits granted under the legislation on social pensions’.

(b) the text of paragraph 1 (c) (i), in the left-hand column, shall be replaced by the following:

‘(i) Pensions granted under the legislation on social pensions.’;

3. Annex 3, Section B. DENMARK, is hereby amended as follows:

the text of paragraph 1 (c) (i), in the left-hand column, shall be replaced by the following:

‘(i) Pensions granted under the legislation on social pensions.’;

4. Annex 4, Section B. DENMARK, is hereby amended as follows :  
 in part I, the text of paragraph 2, in the left-hand column, is replaced by the following :  
 '2. Pensions and benefits provided under the legislation on social pensions'.
5. Annex 9 is hereby amended as follows :  
 (a) in Section A. BELGIUM, the following text is added :  
 'However, for the purposes of applying Articles 94 and 95 of the implementing Regulation to cases in which Article 35 (2) of the Regulation applies, the scheme for compulsory health care insurance for self-employed persons shall be taken into consideration when calculating the average annual cost of benefits in kind.' ;  
 (b) in Section D. FRANCE, the following text is added :  
 'However, for the purposes of Articles 94 and 95 of the implementing Regulation in cases where Article 35 (2) of the Regulation applies, the sickness and maternity insurance scheme for self-employed persons in non-agricultural occupations shall be taken into consideration when calculating the average annual cost of benefits in kind.' ;
6. Annex 10 is hereby amended as follows :  
 (a) In Section C. GERMANY, the text in paragraph 7 (a), in the left-hand column, is replaced by the following :  
 '(a) Family allowances paid pursuant to Articles 77 and 78 of the Regulation : ' ;  
 (b) In Section E. GREECE, the following paragraph 1 is inserted :  
 '1. For the purposes of applying Article 6 (1) of the implementing Regulation : Ίδρυμα Κοινωνικών Ασφαλίσεων (ΙΚΑ), Αθήνα  
(Social Insurance Institute, Athens)  
 and paragraphs 1 to 10 are renumbered accordingly.

### *Article 3*

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.
2. Article 1, except for paragraphs (1) (c) and (d) and Article 2 (2), (3) and (4) shall apply with effect from 1 January 1984.
3. Article 1 (1) (c) shall apply with effect from 1 January 1985.
4. Article 2 (5) shall apply with effect from 1 July 1982.

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

Done at Luxembourg, 13 June 1985.

*For the Council*  
*The President*  
 G. DE MICHELIS