

Official Journal

of the European Communities

ISSN 0378-6978

L 335

Volume 38

30 December 1995

English edition

Legislation

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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 3095/95
of 22 December 1995**

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 fixing 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

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 ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

1. Whereas there is a need for certain amendments to be made to Regulations (EEC) No 1408/71 ⁽⁴⁾ and (EEC) No 574/72 ⁽⁴⁾; 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;
2. Whereas, in order to facilitate temporary residence and access to treatment with the authorization of the competent institution in European Union territory, the benefit of Article 22 (1) (a) and (c) should be extended to all nationals of Member States who are insured under the legislation of a

Member State and to the members of their families residing with them, even if they are neither employed nor self-employed;

3. Whereas in so far as the totally unemployed person referred to in Article 71 (1) (i) (ii) or (b) (ii) is entitled to benefits for sickness and maternity and to family benefits provided by the competent institution of the Member State in whose territory he resides, as well as to credits for periods of total unemployment conferring entitlement as regards invalidity and old age provided by the said institution, in accordance with the legislation applied by that State (Articles 25 (2), 39 (6), 45 (6) and 72a of Regulation (EEC) No 1408/71) it follows that the Member State of residence should be able to deduct the contributions for these benefits where necessary, and consequently provisions should be introduced to enable the State to make such deductions if its own legislation so provides;
4. Whereas it would appear necessary to ensure that a family does not lose rights to family benefits because the time limit for claims is too short, and for this purpose Article 86 of Regulation (EEC) No 1408/71 should be amended;
5. Whereas, for reasons of efficacy, it would be preferable to group together all the transitional provisions concerning special non-contributory benefits in a new Article 95b of Regulation (EEC) No 1408/71;
6. Whereas certain amendments should be made to headings 'G. IRELAND' and 'O. UNITED KINGDOM' in Annex I, part II to Regulation

⁽¹⁾ OJ No C 143, 26. 5. 1994, p. 7.

⁽²⁾ OJ No C 166, 3. 7. 1995, p. 24.

⁽³⁾ OJ No C 393, 31. 12. 1994, p. 75.

⁽⁴⁾ OJ No L 149, 5. 7. 1971, p. 2. Regulation as last amended by the 1994 Act of Accession.

⁽⁵⁾ OJ No L 74, 27. 3. 1972, p. 1. Regulation as last amended by the 1994 Act of Accession.

- (EEC) No 1408/71 to take account of the interpretation given by the Irish and United Kingdom authorities to the concept of 'member of the family';
7. Whereas it is necessary to add to Annex IIa to Regulation (EEC) No 1408/71 under the heading 'B. DENMARK' a flat-rate rehabilitation allowance, which constitutes a non-exportable special non-contributory benefit;
 8. Whereas it is necessary to delete the 'entry compensatory cost-of-living allowance' in Annex IIa under heading 'I. LUXEMBOURG' since that allowance no longer exists in Luxembourg legislation;
 9. Whereas, as a result of an agreement concluded between the Greek and German authorities, an addition should be made to Annex III, Part B, point 30 to Regulation (EEC) No 1408/71;
 10. 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 social insurance and of various amendments made to Greek legislation;
 11. Whereas in view of the possibility for insured persons to change more frequently from one sickness insurance institution to another, it is necessary to amend Articles 17 (2) and 30 (1) of Regulation (EEC) No 574/72 for the purpose of extending to German, Italian and Portuguese institutions a specific provision already provided for in respect of French institutions;
 12. Whereas Article 95 of Regulation (EEC) No 574/72 should be amended to bring a little closer the fixed amount to be reimbursed and the amount of the actual expenditure incurred by the institutions of the Member States; whereas provision should be made for a transitional period for relations with the French Republic in view of the administrative difficulties which might be encountered by that State;
 13. Whereas the wording of Article 107 (1) of Regulation (EEC) No 574/72 should be amended to take account of the amendments that have been made by Regulations (EEC) No 2195/91 ⁽¹⁾, (EEC) No 1248/92 ⁽²⁾ and (EEC) No 1249/92 ⁽³⁾;
 14. Whereas following administrative changes in Denmark, heading 'B. DENMARK' of Annexes 2, 3, 4 and 10 to Regulation (EEC) No 574/72 should be adjusted accordingly;
 15. Whereas points '13. DENMARK — SPAIN' and '15. DENMARK — GREECE' of Annex 5 to Regulation (EEC) No 574/72 should be adjusted to take account of the agreements concluded by these Member States;
 16. Whereas the said Annex 5 should also be amended as a result of agreements between the Netherlands and Greece and between the Netherlands and the United Kingdom pursuant to Article 36 (3) of Regulation (EEC) No 1408/71;
 17. 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 10b of the said Regulation;
 18. Whereas, as a result of administrative reorganization of sickness insurance in Luxembourg, the entries in Annexes 2, 3, 4, 9 and 10 to Regulation (EEC) No 574/72 under the heading 'I. LUXEMBOURG' should be amended;
 19. 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';
 20. Whereas Article 2 of Regulation (EEC) No 1247/92 and Article 3 of Regulation (EEC) No 1945/93 should be deleted as the content thereof is contained in Regulation (EEC) No 1408/71 itself; whereas in Article 4 of Regulation (EEC) No 1945/93, it is consequently necessary to delete point 10 in which reference is made to the deleted provisions,
- HAS ADOPTED THIS REGULATION:
- Article 1*
- Regulation (EEC) No 1408/71 is hereby amended as follows:
1. the following Article shall be added after Article 22:
- 'Article 22a*

Special rules for certain categories of persons

Notwithstanding Article 2 of this Regulation, Article 22 (1) (a) and (c) shall also apply to persons who

⁽¹⁾ OJ No L 206, 29. 7. 1991, p. 2.

⁽²⁾ OJ No L 136, 19. 5. 1992, p. 7.

⁽³⁾ OJ No L 136, 19. 5. 1992, p. 28.

are nationals of a Member State and are insured under the legislation of a Member State and to the members of their families residing with them.';

2. the following Article shall be inserted after Article 25:

'Article 25a

Contributions payable by wholly unemployed persons

The institution which is responsible for granting benefits in kind and cash benefits to the unemployed persons referred to in Article 25 (2) and which belongs to a Member State whose legislation provides for deduction of contributions payable by unemployed persons to cover sickness and maternity benefits shall be authorized to make such deductions in accordance with the provisions of its legislation.';

3. in Article 39, the following subparagraph shall be inserted after the first subparagraph of paragraph 6:

'Where that institution applies legislation providing for deduction of contributions payable by unemployed persons to cover invalidity benefits, it shall be authorized to make such deductions in accordance with the provisions of its legislation.';

4. in Article 45, the following subparagraph shall be added after the first subparagraph of paragraph 6:

'Where that institution applies legislation providing for deduction of contributions payable by unemployed persons to cover old age pensions and death, it shall be authorized to make such deductions in accordance with the provisions of its legislation.';

5. Article 72a shall be supplemented by the following paragraph:

'Where that institution applies legislation providing for deduction of contributions payable by unemployed persons to cover family benefits, it shall be authorized to make such deductions in accordance with the provisions of its legislation.';

6. in Article 86 the existing text shall become paragraph 1 and the following paragraph shall be added:

'2. Where a person entitled to do so under the legislation of a Member State has submitted to that

State a claim for family benefits even though that State 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 competent authority, institution or tribunal, provided that a new application is submitted in the Member State which is competent by priority right by a person entitled to do so under the legislation of that State. The second application must be submitted within a period of one year after notification of the rejection of the first application or the cessation of payment of benefits in the first Member State.';

7. the following Article shall be added after Article 95a:

'Article 95b

Transitional provisions for application of Regulation (EEC) No 1247/92

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 paragraph 1, a right shall be acquired pursuant to 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 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 pursuant to 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 Article 1 of Regulation (EEC) No 1247/92 may not result in the withdrawal of benefits which are 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 the latter Regulation is applicable.

9. The application of Article 1 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 special non-contributory benefits as referred to in Article 4 (2a) of Regulation (EEC) No 1408/71 may, during the same period and for the same person, be granted pursuant to Article 10a of that Regulation by the competent institution of the Member State in the territory of which that person is resident and pursuant to paragraphs 1 to 10 of this Article by the competent institution of another Member State, the person concerned may only aggregate those benefits up to the limit of the highest amount of the special benefit he could claim under one of the legislations in question.

12. The detailed rules of application of paragraph 11, and in particular the application, with regard to the benefits referred to in that paragraph, of the clauses for reduction, suspension or abolition provided for under the legislation of one or more Member States and the allocation of the differential additional amounts shall be set by decision of the Administrative Commission on Social Security for Migrant Workers and, where appropriate, by common accord of the Member States concerned or their competent authorities.';

8. in Annex I, Part II, the heading 'G. IRELAND' shall be replaced by the following:

'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 'O. UNITED KINGDOM' shall be replaced by the following:

'O. 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 Great Britain and Northern Ireland:

(1) a spouse, provided that:

(a) that person, whether employed or self-employed, or another person entitled under the Regulation, 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 an employed or self-employed person or income as a person entitled under the Regulation; 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 employed or self-employed person or person entitled under the Regulation 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 an employed or self-employed worker or income as a person entitled under the Regulation; or

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

(3) a child in respect of whom that person, the employed or self-employed person, or another person entitled under the Regulation is or could be paid child benefit.

2. As regards the legislation of Gibraltar:

any person regarded as a dependent within the meaning of the Group Practice Scheme Ordinance, 1973.;

10. Annex IIa shall be amended as follows:

(a) the heading 'B. DENMARK' shall be replaced by the following:

'B. DENMARK

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) shall be deleted and points (b) and (c) become respectively points (a) and (b);

11. In Annex III, Part A, the heading '30. GERMANY — GREECE' shall be supplemented by the following:

'(c) 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. in Annex III, Part B, the heading '30. GERMANY — GREECE' shall be supplemented by the following:

'30. 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.;

13. Annex VI shall be amended as follows:

(a) in heading 'C. GERMANY', point 2 (c) shall be replaced by the following:

'(c) For the purpose of taking into account German pension periods for the pension insurance of mine workers only German legislation shall apply.;

(b) in heading 'F. GREECE', point 1 shall be deleted and the following two points shall be added:

'5. Where the rules of the Greek auxiliary pension funds ("επικουρικά ταμεία") make provision for the recognition of compulsory old age pension insurance periods completed with statutory Greek insurance institutions ("κύριας ασφάλισης") these rules shall also apply to compulsory pension insurance periods in the pension branch completed under the legislation of any other Member State falling within the scope of the Regulation.

6. 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 subject to compulsory Greek social insurance (base statutory scheme) for the first time after 1 January 1993, shall be regarded as "formerly insured persons" in accordance with the provisions of Law No 2084/92.;

Article 2

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

1. the second sentence of Article 17 (2) and the last sentence of Article 30 (1) shall be replaced by the following:

'However, where the said certified statement has been issued by a German, French, Italian or Portuguese 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. Article 95 shall be replaced by the following text:

'Article 95

Refund of benefits in kind provided under sickness and maternity insurance to pensioners and to members of their families who are not resident in a Member State under whose legislation they receive a pension and are entitled to benefits.

1. The amount of the benefits in kind provided pursuant to Articles 28 (1) and 28a of the Regulation shall be refunded by the competent institutions to the institutions which provided the said benefits, on the basis of a lump sum which is as close as possible to the actual expenditure incurred.

2. The lump sum shall be determined by multiplying the annual average per capita cost by the average annual number of pensioners and members of their families to be taken into account and by reducing the resultant amount by 20 %.

3. The factors necessary for the calculation of the said lump sum shall be determined according to the following rules:

(a) the average annual per capita cost shall be obtained for each Member State, by dividing the annual costs of the total benefits in kind provided by the institutions of that Member State to all pensioners whose pensions are payable under the legislation of that Member State, under the social security schemes to be taken into consideration and to members of their families, by the average annual number of pensioners and members of their families; the social security schemes to be taken into consideration for that purpose are specified in Annex 9;

(b) in dealings between the institutions of two Member States, the average annual number of pensioners and members of their families to be taken into account shall be equal to the average annual number of pensioners and members of their families referred to in Article 28 (2) of the Regulation who, whilst residing in the territory of one of the Member States, are entitled to benefits in kind chargeable to the institution of the other Member State.

4. The number of pensioners and members of their families to be taken into account in accordance with paragraph 3 (b) shall be determined by means of a list kept for that purpose by the institution of the place of residence, based upon documentary evidence supplied by the competent institution of the rights of the persons concerned. In the event of any dispute, the observations of the institutions involved shall be submitted to the Audit Board provided for in Article 101 (3) of the implementing Regulation.

5. The Administrative Commission shall lay down the methods and procedures for determining the calculation factors referred to in paragraphs 3 and 4.

6. Two or more Member States or the competent authorities of those Member States may, after receiving the opinion of the Administrative Commission, agree to introduce other methods of assessing the amounts to be refunded.;

3. Article 107 (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 of conversion into a national currency of amounts expressed in another national currency shall be the rate calculated by the Commission based on the monthly average during the reference period defined in paragraph 2 of the rates of exchange of these currencies which have been notified to the Commission for the implementation of the European monetary system.;

4. Annex 2 shall be amended as follows:

(a) in heading ‘B. Denmark’, points 2 (a) and 3 (a), the text in the right-hand column shall be replaced by the following:

‘Direktoratet for Social Sikring of Bistand (National Office for Social Security and Welfare), København.;

(b) in heading ‘I. LUXEMBOURG’:

(i) point 1 shall be replaced by the following:

‘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);

(ii) point 6 shall be replaced by the following:

‘6. Death grants

For the purpose of implementing Article 66 of the Regulation:

Union des caisses de maladie (the sickness funds’ association), Luxembourg.;

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

5. Annex 3 shall be amended as follows:

- (a) in heading 'B. DENMARK', Section I, points (b) and (c) (i), the text in the right-hand column shall be replaced by the following:

'Direktoratet for Social Sikring og Bistand (National Office for Social Security and Welfare), København.';

- (b) in heading 'I. LUXEMBOURG', point 1, the text in the right-hand column shall be replaced by the following:

'Caisse de maladie des ouvriers et/ou union des caisses de maladie (the sickness fund for manual workers and/or the sickness fund association).

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) the heading 'J. THE NETHERLANDS' shall be amended as follows:

- (i) in point 3 (c), the text in the right-hand column shall be replaced by the following:

'Bureau voor Duitse zaken (Department of German Affairs), Nijmegen';

- (ii) in point 5, in the right-hand column, 'Raad van Arbeid' shall be replaced by 'districtskantoor van de Sociale Verzekeringsbank (local office of the social insurance bank';

6. Annex 4 shall be amended as follows:

- (a) in heading 'B. DENMARK', in points 1, 2, 3, and 5, the text in the right-hand column shall be replaced by the following:

'Direktoratet for Social Sikring og Bistand (National Office for Social Security and Welfare), København.';

- (b) in heading 'I. LUXEMBOURG':

- (i) point 1 shall be replaced by the following:

'1. Sickness and maternity: Union des caisses de maladie (sickness funds' association), Luxembourg.';

- (ii) point 6 shall be replaced by the following:

'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 text in the right-hand column shall be replaced by the following:

'Bureau voor Duitse zaken (Department of German Affairs), Nijmegen';

7. Annex 5 shall be amended as follows:

- (a) point 16 'DENMARK — SPAIN' shall be replaced by the following:

'16. DENMARK — SPAIN

Agreement of 1 July 1990 on the partial reciprocal waiving of reimbursement provided for in Articles 36 (3) and 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).';

- (b) point 18 'DENMARK — GREECE' shall be replaced by the following:

'18. DENMARK — GREECE

Agreement of 8 May 1986 on the partial reciprocal waiving of reimbursement provided for in Articles 36 (3) and 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) point 62 'GREECE — THE NETHERLANDS' shall be replaced by the following:

'62. GREECE — THE NETHERLANDS

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

- (d) in point 93 'THE NETHERLANDS — UNITED KINGDOM', (d) shall be replaced by the following:

'(d) The exchange of letters of 25 April and 26 May 1986 concerning Article 36 (3) of the Regulation (reimbursement or waiver of reimbursement of expenditure for benefits in kind), as amended.';

8. in Annex 9, the heading 'I. LUXEMBOURG', shall be replaced by the following:

'I. LUXEMBOURG

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

9. Annex 10 shall be amended as follows:

- (a) in heading 'A. BELGIUM' the following point shall be added before point 1:

'For the purposes of applying 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';

(b) in heading 'B. DENMARK':

(i) in points 1,2 and 3, the text in the right-hand column shall be replaced by the following:

'Direktoratet for Social Sikring og Bistand (National Office for Social Security and Welfare), København.';

(ii) point 7 (b) shall be replaced by the following:

'(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', points 8 (a) and 9 (a), the text in the right-hand column shall be replaced by the following:

'Union des caisses de maladie (sickness funds' association), Luxembourg'.

Article 3

In Regulation (EEC) No 1247/92 Article 2 shall be deleted.

Article 4

Regulation (EEC) No 1945/93 shall be amended as follows:

1. Article 3 is deleted;
2. In Article 4, point 10 shall be deleted.

Article 5

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

2. Article 2 (2) shall apply as from 1 January 1998.

However, in relations with the French Republic, Article 2 (2) shall apply as from 1 January 2002.

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

Done at Brussels, 22 December 1995.

For the Council

The President

L. ATIENZA SERNA

COUNCIL REGULATION (EC) No 3096/95

of 22 December 1995

amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to member 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 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, submitted following consultation of the Administrative Commission on Social Security for Migrant Workers ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

1. Whereas it is necessary to introduce certain amendments to Regulations (EEC) No 1408/71 ⁽⁴⁾ and EEC No 574/72 ⁽⁵⁾; whereas some of these amendments are linked to changes introduced by Member States to their social security legislation, with others being technical in nature and intended to complete the said Regulations;
2. Whereas it is necessary, given the fact that the nature of and the conditions for granting special adoption allowances are similar to those for childbirth allowances, to supplement Article 1 (u) (i) of Regulation (EEC) No 1408/71 in order to enable reference to be made to these in Section II of Annex II;
3. Whereas it appears necessary to enable seconded employed persons employed on the territory of several Member States or employed on the territory of a Member State in an undertaking having its registered place of business in another Member State and operating across their shared frontier; self-employed workers in similar situations; seamen in comparable situations and persons benefiting from a derogation to the provisions of Articles 13

to 16 of Regulation (EEC) No 1408/71 by agreement between competent authorities, including civil servants and persons treated as such; and to members of their families accompanying them, to benefit from the provisions of Article 22 (1) (a) of Regulation (EEC) No 1408/71 for any situation in which benefits are required, provided that the stay is for occupational purposes;

4. Whereas it is necessary, for reasons of simplification and unification of the administrative regulations, to delete Article 32 of Regulation (EEC) No 1408/71;
5. Whereas Article 49 (1) (b) permits payment of benefit taking account only of periods completed under legislations conferring entitlement, when these periods suffice for calculating benefits by applying the legislations whose conditions are satisfied; whereas however taking account of periods completed under legislations whose conditions of entitlement are not satisfied may result in higher levels of benefit in certain situations, to be determined, under the legislations for which the conditions are satisfied; whereas it therefore appears useful to supplement Article 49 (1) (b) (i) and (ii) in order to permit such periods to be taken into account when it results in the person concerned receiving a higher level of benefit;
6. Whereas it is necessary to amend the heading 'B. DENMARK' of Annex I.II to Regulation (EEC) No 1408/71 in order to specify the current definition of the expression 'members of the family';
7. Whereas, in the light of the amendment to be introduced to Article 1 (u) (i) of Regulation (EEC) No 1408/71, the title of Section II of Annex II must be amended accordingly; whereas the headings 'A. BELGIUM' and 'E. FRANCE' of this Annex should be supplemented to take account respectively of the adoption premium and adoption allowance which have been introduced in the legislation of these Member States in relation to family benefits;

⁽¹⁾ OJ No C 260, 5. 10. 1995, p. 13.

⁽²⁾ OJ No C 339, 18. 12. 1995.

⁽³⁾ Opinion delivered on 23 November 1995 (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 149, 5. 7. 1971, p. 2. Regulation as last amended by the 1994 Article of Accession.

⁽⁵⁾ OJ No L 74, 27. 3. 1972, p. 1. Regulation as last amended by the 1994 Article of Accession.

8. Whereas it is necessary to add to Annex IIa to Regulation (EEC) No 1408/71, under the heading 'B. DENMARK', the accommodation allowance for retired persons, and under the heading 'O. UNITED KINGDOM', the income-based allowances for jobseekers, which constitute special non-contributory benefit within the meaning of paragraph 2a of Article 4 of Regulation (EEC) No 1408/71;
 9. Whereas it would appear advantageous to specify in Annex III A and B, heading '35. GERMANY — AUSTRIA', (e) to Regulation (EEC) No 1408/71, that the temporary application of the provisions of the bilateral agreement between Germany and Austria also remain valid in the event of a transformation of a pension;
 10. Whereas it has become necessary, following the judgments of the Court of Justice delivered in Case 87/76 (Bozzone) and Joined Cases 82 and 103/86 (Laborero e Sabato), to make certain amendments to the Annexes to Regulations (EEC) No 1408/71 and (EEC) No 574/72 to take account of the fact that the Belgian Overseas Social Insurance System falls within the scope of the said Regulations;
 11. Whereas the heading 'O. UNITED KINGDOM' of Annex IV C to Regulation (EEC) No 1408/71 should be amended to enable the competent United Kingdom authorities to renounce the pro rata calculation of the pension when this calculation does not give a result financially more favourable to the beneficiary;
 12. Whereas, following changes in German legislation on this subject, it is necessary to adapt accordingly the heading 'C. GERMANY' of Annex VI to Regulation (EEC) No 1408/71;
 13. Whereas it is also necessary to delete points 1 and 2 and insert a new point under the heading 'L. PORTUGAL' of Annex VI to Regulation (EEC) No 1408/71 in order that active or retired civil servants and members of their family may receive sickness and/or maternity benefits in kind in the event of immediate need during the course of a stay in the territory of another Member State or when travelling there to receive care appropriate to their state of health with the prior authorization of the competent Portuguese institutions;
 14. Whereas, following the agreements concluded between Belgium and Luxembourg, point 1 of Annex VII to Regulation (EEC) No 1408/71 should be adjusted accordingly;
 15. Whereas it is necessary to insert a new Article 19a in Regulation (EEC) No 574/72 in order to permit the administrative and financial implementation of the provision of benefits in kind in the event of a stay in the competent State of members of the family residing in a Member State other than that in which the employed or self-employed person resides;
 16. Whereas, following an administrative reorganization in Austria, it is necessary to adapt accordingly the heading 'K. AUSTRIA' in Annexes 1, 2, 3, 4 and 10 to Regulation (EEC) No 574/72;
 17. Whereas items '4. BELGIUM — FRANCE', '23. DENMARK — AUSTRIA', '41. FRANCE — ITALY', '82. ITALY — UNITED KINGDOM', '84. LUXEMBOURG — AUSTRIA', '95. AUSTRIA — FINLAND' and '97. AUSTRIA — UNITED KINGDOM' of Annex 5 to Regulation (EEC) No 574/72 must be adapted to take account of agreements concluded by these Member States,
- HAS ADOPTED THIS REGULATION:
- Article 1*
- Regulation (EEC) No 1408/71 shall be amended as follows:
1. Article 1 (u) (i) is replaced by the following text:

'(i) the term "family benefits" means all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4 (1) (h), excluding the special childbirth or adoption allowances referred to in Annex II;'
 2. after Article 22a the following Article is inserted:

'Article 22 b

Employment in a Member State other than the competent State — Stay in the State of employment

The employed or self-employed person referred to in Article 13 (2) (d), 14, 14a, 14b, 14c (a) or 17, and members of the family accompanying him, shall benefit from the provisions of Article 22 (1) (a) for any condition requiring benefits during a stay in the

territory of the Member State in which the worker is employed or whose flag the vessel aboard which the worker is employed is flying.';

3. Article 32 is deleted;
4. In Article 36 (1), 'without prejudice to the provisions of Article 32' is deleted;
5. Article 49 (1) (b) is amended as follows:

- (a) in (i) after 'of Article 46 (2)' the following is added:

'unless taking account of the said periods makes it possible to determine a higher amount of benefit;'

- (b) point (ii) is replaced by the following text:

'(ii) if the person concerned satisfies the conditions of one legislation only without having recourse to periods of insurance or residence completed under the legislations whose conditions are not satisfied, the amount of the benefit due shall, in accordance with Article 46 (1) (a) (i), be calculated only in accordance with the provisions of the legislation whose conditions are satisfied, taking account of the periods completed under that legislation only, unless taking account of the periods completed under the legislations whose conditions are not satisfied makes it possible, in accordance with Article 46 (1) (a) (ii), to determine a higher amount of benefit.';

6. In Annex I.II, the heading 'B. DENMARK' is replaced by the following:

'B. DENMARK

For the purpose of determining a right to sickness or maternity benefits in kind existing pursuant to Articles 22 (1) (a) and 31 of the Regulation, the expression "member of the family" shall mean:

1. the spouse of an employed person, a self-employed person or other entitled person under the terms of the Regulation, in so far as they are not themselves entitled persons under the terms of the Regulation; or
2. a child under 18 years of age in the care of someone who is an entitled person under the terms of the Regulation.';

7. in Annex II, Section II is amended as follows:

- (a) the title is replaced by the following:

'II. Special childbirth or adoption allowances excluded from the scope of the Regulation under the terms of Article 1 (u) (i)';

- (b) the heading 'A. BELGIUM' is replaced by the following:

'A. BELGIUM

- (a) Childbirth allowance
- (b) Adoption premium.';

- (c) the heading 'E. FRANCE' is replaced by the following:

'E. FRANCE

- (a) Allowance for young children up to the age of three months
- (b) Adoption allowance.';

8. Annex IIa is amended as follows:

- (a) the heading 'B. DENMARK' is replaced by the following:

'B. DENMARK

Accommodation expenses for pensioners (Law on individual accommodation assistance, consolidated by Law No 204 of 29 March 1995.';

- (b) the heading 'O. UNITED KINGDOM' is supplemented by the following:

'(h) Income-based allowances for jobseekers (Jobseekers Act 1995, 28 June 1995, Sections I (2) (d) (ii) and 3, and Jobseekers (Northern Ireland) Order 1995, 18 October 1995, Articles 3 (2) (d) (ii) and 5).';

9. in Annex III, Part A is amended as follows:

- (a) point 8 is replaced by the following:

'8. BELGIUM — LUXEMBOURG

Articles 2 and 4 of the Agreement of 27 October 1971 (Overseas social insurance).';

- (b) point 9 is replaced by the following:

'9. BELGIUM — NETHERLANDS

Articles 2 and 4 of the Agreement of 4 February 1969 (Overseas occupation).';

- (c) point 11 is replaced by the following:

‘11. BELGIUM — PORTUGAL

Articles 1 and 5 of the Convention of 13 January 1965 (Social insurance for employees in the Belgian Congo and Rwanda-Urundi), in the wording contained in the Agreement concluded by an exchange of letters dated 18 June 1982.’;

- (d) In point ‘35. GERMANY — AUSTRIA’, (e) (i) and (ii) are replaced by the following:

‘(i) the benefit has already been paid or is payable on 1 January 1994;

(ii) the beneficiary has established his habitual residence in Austria before 1 January 1994 and the payment of pensions due under the pension and accident insurance begins prior to 31 December 1994;

this shall also apply to periods during which another pension, including a survivor’s pension was collected, replacing the initial one, where the periods of collection follow each other without interruption.’;

10. Annex III, part B, is amended as follows:

- (a) point 8 is replaced by the following text:

‘8. BELGIUM — LUXEMBOURG

Articles 2 and 4 of the Agreement of 27 October 1971 (overseas social security)’;

- (b) point 9 is replaced by the following text:

‘9. BELGIUM — NETHERLANDS

Articles 2 and 4 of the Agreement of 4 February 1969 (Overseas occupation)’;

- (c) point 10 is replaced by the following text:

‘10. BELGIUM — PORTUGAL

Articles 1 and 5 of the Convention of 13 January 1965 (social security for employees of the Belgian Congo and Rwanda-Urundi) in the wording that appears in the Agreement concluded by exchange of letters dated 18 June 1982.’;

- (d) in point ‘35. GERMANY — AUSTRIA’, (e) (i) and (ii) are replaced by the following text:

‘(i) the benefit has already been paid or is payable on 1 January 1994;

(ii) the beneficiary has established his habitual residence in Austria before 1 January 1994 and the payment of pensions due under the pension and accident insurance begins prior to 31 December 1994;

this shall also apply to periods during which another pension, including a survivor’s pension was collected, replacing the initial one, when the periods of collection follow each other without interruption.’;

11. in Annex IV, Part A, the text of the heading ‘A. BELGIUM’ is replaced by the following text:

‘A. BELGIUM

(a) Legislation relating to the general invalidity scheme, the special invalidity scheme for miners and the special scheme for merchant navy mariners.

(b) Legislation on insurance for self-employed persons against incapacity to work.

(c) Legislation relating to invalidity in the overseas social insurance scheme and the invalidity scheme for former employees of the Belgian Congo and Rwanda-Urundi.’;

12. in Annex IV C, the text of the heading ‘O. UNITED KINGDOM’ is replaced by the following text:

‘O. UNITED KINGDOM

All applications for retirement and widow’s pension determined pursuant to the provisions of Title III, Chapter 3 of the Regulation, with the exception of those for which:

(a) during a tax year beginning on or after 6 April 1975:

(i) the party concerned had completed periods of insurance, employment or residence under the legislation of the United Kingdom and of another Member State; and

(ii) one (or more) of the tax years referred to in (i) was not considered a qualifying year within the meaning of the legislation of the United Kingdom;

(b) the periods of insurance completed under the legislation in force in the United Kingdom for the periods prior to 5 July 1948 would be taken into account for the purposes of Article 46 (2) of the Regulation by application of the periods of insurance, employment or residence under the legislation of another Member State.’;

13. in Annex V the table under the heading ‘BELGIUM’ is replaced by the following table:

BELGIUM

Member States	Schemes administered by Member States' institutions who have taken a decision recognizing the degree of invalidity	Schemes administered by Belgian institutions on which the decision is binding in cases of concordance				
		General scheme	Miners' scheme		Mariners' scheme	Ossom
			General invalidity	Occupational invalidity		
FRANCE	1. General scheme — Group III (constant attendance) — Group II — Group I	Concordance	Concordance	Concordance	Concordance	No concordance
	2. Agricultural scheme: — Total, general invalidity — Two-thirds general invalidity — Constant attendance	Concordance	Concordance	Concordance	Concordance	No concordance
	3. Miners' scheme: — Partial, general invalidity — Constant attendance — Occupational invalidity	Concordance No concordance	Concordance No concordance	Concordance No concordance	Concordance No concordance	No concordance No concordance
	4. Mariners' scheme: — General invalidity — Constant attendance — Occupational invalidity	Concordance No concordance	Concordance No concordance	Concordance No concordance	Concordance No concordance	No concordance No concordance
ITALY	1. General scheme: — Invalidity — manual workers — Invalidity — clerical staff	No concordance	Concordance	Concordance	Concordance	No concordance
	2. Mariners' scheme: — Unfitness for seafaring	No concordance	No concordance	No concordance	No concordance	No concordance
LUXEMBOURG	Workers' invalidity — manual workers Invalidity — clerical staff	Concordance	Concordance	Concordance	Concordance	No concordance

14. Annex VI is amended as follows:

(a) the heading 'C. GERMANY' is amended as follows:

(i) paragraphs 1 to 8 are replaced by the following text:

'1. The provisions of Article 10 of the Regulation are without prejudice to the provisions under which accidents (and occupational diseases) occurring outside the territory of the Federal Republic of Germany, and periods completed outside that territory, do not give grounds for benefits, or do so only subject to certain conditions, when the persons concerned are resident outside the territory of the Federal Republic of Germany.

2. (a) The standard period for allocation (pauschale Anrechnungszeit) shall be determined exclusively with reference to German periods.

(b) For the purpose of taking into account German pension periods for miners' pension insurance, only German legislation shall apply.

(c) For the purpose of taking into account German substitute periods (Ersatzzeiten), only German legislation shall apply.

3. If application of the Regulation or later regulations on social security places an exceptional burden on certain sickness insurance institutions, that shall be compensated for in full or in part. The Federal Association of Local General Funds, as liaison body (sickness insurance), shall take decisions regarding such compensation by common agreement with the other central federations of sickness funds. The resources necessary to implement the compensation shall be provided by taxes levied on all the sickness insurance institutions in proportion to the average number of members over the previous years, with the exception of retired members.

4. Article 7 of Book VI of the Social Code shall apply to nationals of the other Member States and to stateless persons and refugees residing in the territory of other Member States, according to the following rules.

If the general conditions are fulfilled, voluntary contributions may be paid to the German pension insurance scheme:

(a) if the person concerned is domiciled or resident in the territory of the Federal Republic of Germany;

(b) if the party concerned is domiciled or resident in the territory of another Member State and has at some point previously contributed, either compulsorily or voluntarily, to the German pension insurance scheme;

(c) if the party concerned is a national of another Member State, is domiciled or resident in the territory of a third Member State, has contributed for at least 60 months to the German pension insurance scheme or was eligible for voluntary insurance pursuant to Article 232 of Book VI of the Social Code, and is not compulsorily or voluntarily insured under the legislation of another Member State.;

(ii) paragraph 12 is replaced by the following text:

'12. Periods of compulsory insurance completed under the legislation of another Member State, either under a special scheme for craftsmen, or, if no such scheme exists, under a special scheme for self-employed persons or under the general scheme, shall be taken into account to justify the existence of the 18 years of compulsory contributions required for exemption from compulsory affiliation to pension insurance for self-employed craftsmen.;

(iii) paragraphs 15 and 16 are replaced by the following text:

'15. Greek teachers who have civil servant status and who, by the fact that they have taught in German schools, have contributed to the compulsory

German pension insurance scheme as well as to the special Greek civil servant scheme and who ceased to be covered by compulsory German insurance after 31 December 1978 may, on request, have the compulsory contributions reimbursed in accordance with Article 210 of Book VI of the Social Code. Applications for reimbursement of contributions are to be introduced during the course of the year following the date of entry into force of this provision. The party concerned may also pursue his claim within the six calendar months following the date on which he ceased to be subject to compulsory insurance.

Article 210 (6) of Book VI of the Social Code shall only apply with regard to the periods during which compulsory contributions to the pension insurance scheme were paid in addition to contributions to the special Greek civil servant scheme and with regard to the allocation periods immediately following the periods during which these compulsory contributions were paid.';

(iv) After paragraph 19, the following text is inserted:

'20. Where the provisions of German pension law in force on 31 December 1991 apply, the provisions of Annex VI shall also apply in the version thereof in force on 31 December 1991.';

(b) the text under the heading 'L. PORTUGAL' is replaced by the following text:

'L. PORTUGAL

Serving or retired civil servants, and members of their families, covered by a special health care scheme, may receive sickness and maternity benefits in kind in the event of immediate need during a stay in the territory of another Member State or when travelling there to receive care appropriate to their state of health with the prior authorization of the competent Portuguese institution, in accordance with the procedures laid down in Article 22 (1) (a) and (c), the second sentence of paragraph 2 and paragraph 3 and in Article 31 (a) of Regulation (EEC) No 1408/71, under the same conditions as employed and self-employed persons covered by the general social security scheme.';

15. In Annex VII, item 1 is amended as follows:

'1. Where he is self-employed in Belgium and gainfully employed in any other Member State.'

Article 2

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

1. the following text is inserted after Article 19:

'Application of the second indent of Article 21 (2) of the Regulation

Article 19a

Benefits in kind in the event of a stay in the competent State — Members of the family resident in the Member State other than that in which the employed or self-employed person resides

1. In order to receive benefits in kind under the terms of Article 21 of the Regulation, members of the family shall present to the institution at the place of stay a certificate stating that they are entitled to the said benefits. This certificate, which shall be provided by the institution of the place of residence of the members of the family, if possible prior to their leaving the territory of the Member State on which they reside, shall, in particular, indicate where appropriate the maximum period for granting benefits in kind, as laid down by the legislation of that Member State. If the members of the family do not present the said certificate, the institution at the place of stay shall contact the institution of the place of residence in order to obtain it.

2. The provisions of Article 17 (6) (7) and (9) of the implementing Regulation shall apply by analogy. In this case, the institution of the place of residence of the members of the family shall be considered the competent institution.’;

2. In the text under the heading ‘K. AUSTRIA’, in Annex 1, item 2 is replaced by the following text:

‘2. Bundesminister für Jugend und Familie (Federal Minister for Youth and the Family), Vienna.’;

3. Annex 2 is amended as follows:

(a) Heading ‘A. BELGIUM’ is amended as follows:

(i) in 1 (a) (ii), ‘Sailing under the Belgian flag’ is deleted and the following text is added:

‘(iii) for persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels

(iv) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels’;

(ii) in 1 (b), ‘Sailing under the Belgian flag’ is deleted;

(iii) in 2 (c), ‘Sailing under the Belgian flag’ is deleted and the following text is added:

‘(d) invalidity of persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels

(e) invalidity of former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels’;

(iv) the text of 3 is replaced by the following text:

‘3. Old-age, death (pensions)

(a) general scheme (manual workers, clerical staff, miners and mariners): National Pension Office, Brussels

(b) non-salaried persons scheme: National Social Insurance Institute for Self-Employed persons, Brussels

(c) overseas social insurance scheme: Overseas Social Insurance Office, Brussels

(d) scheme for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels;

(v) in 4 the following text is added:

‘(e) scheme for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels’;

(vi) item 5 is replaced by the following text:

‘5. Occupational diseases

(a) as a general rule: Occupational Diseases Fund, Brussels

(b) scheme for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels’;

(vii) in 6 (a) (ii), ‘Sailing under the Belgian flag’ is deleted and the following text is added:

‘(iii) for persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels

(iv) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels’;

(viii) in 6 (b) the following text is added:

‘(iii) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels’;

(ix) 6 (c) is replaced by the following text:

'(c) Occupational diseases

- | | |
|---|---|
| (i) as a general rule: | Occupational Accidents Fund,
Brussels |
| (ii) for former employees of the
Belgian Congo and
Rwanda-Urundi: | Overseas Social Insurance Office,
Brussels'; |

(x) the text of 8 is replaced by the following text:

'8. Family benefits

- | | |
|---|---|
| (a) employed persons scheme: | National Family Allowances
Office for Employed Persons,
Brussels |
| (b) self-employed persons'
scheme: | National Social Insurance
Institute for Self-Employed
persons, Brussels |
| (c) scheme for former employees
of the Belgian Congo and
Rwanda-Urundi: | Overseas Social Insurance Office,
Brussels'; |

(b) the text under the heading 'K. AUSTRIA' is amended as follows:

(i) the provision under 2 is preceded by the letter (a) and the following subparagraph (b) is added:

'(b) for application of Article 45 (6) of the Regulation, if no contribution period has been completed under Austrian legislation:

Pensionsversicherungsanstalt der Angestellten (Employed Persons' Pension Insurance Institution), Vienna';

(ii) in 3 (a) and (b), 'Arbeitsamt (Employment Office)' is replaced by 'Regionale Geschäftsstellen des Arbeitsmarktservice (Local Office of the Labour Market Service)';

4. Annex 3 is amended as follows:

(a) Heading 'A. BELGIUM' is amended as follows:

(i) I. 1 (a) is replaced by the following:

'(a) For the purpose of applying Articles 17, 18, 22, 25, 28, 29, 30 and 32 of the implementing Regulation:

- | | |
|---|---|
| (i) in general: | the insurance bodies |
| (ii) for persons covered by the
overseas social insurance
scheme: | Overseas Social Insurance Office,
Brussels |

- (iii) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels';
- (ii) in I. 1 (b), 'Sailing under the Belgian flag' is deleted and the following text is added:
- '(iii) for persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels
- (iv) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels';
- (iii) in I. 2. (c), 'Sailing under the Belgian flag' is deleted and the following text is added:
- '(d) invalidity of persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels
- (e) invalidity of former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels';
- (iv) 3 is replaced by the following text:

'3. Old-age, death (pensions)

- (a) general scheme (manual workers, clerical staff, miners and mariners): National Pension Office, Brussels
- (b) non-salaried persons scheme: National Social Insurance Institute for Self-Employed persons, Brussels
- (c) overseas social insurance scheme: Overseas Social Insurance Office, Brussels

(d) scheme for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels';

(v) in I. 4, after 'the insurance bodies' a new line is added containing the words 'Overseas Social Insurance Office, Brussels';

(vi) in I. 5, after 'Occupational Diseases Fund, Brussels' a new line is added containing the words 'Overseas Social Insurance Office, Brussels';

(vii) I. 6 is replaced by the following text:

'6. Death grants

(i) in general: The insurance bodies, together with the National Sickness and Invalidity Insurance Institute, Brussels

(ii) for persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels

(iii) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels';

(viii) I. 8 is replaced by the following text:

'8. Family benefits

(a) employed persons: National Family Allowances Office for Employed Persons, Brussels

(b) self-employed persons: National Social Insurance Institute for Self-Employed persons, Brussels

(c) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels';

(ix) II is replaced by the following text:

‘II. INSTITUTIONS OF THE PLACE OF STAY

- | | |
|----------------------------------|--|
| 1. Sickness, maternity: | National Sickness and Invalidity Insurance Institute, Brussels, through the insurance bodies; Overseas Social Insurance Office, Brussels |
| 2. Accidents at work: | National Sickness and Invalidity Insurance Institute, Brussels, through the insurance bodies; Overseas Social Insurance Office, Brussels |
| 3. Occupational diseases: | Occupational Diseases Fund, Brussels; Overseas Social Insurance Office, Brussels’; |

(b) In heading ‘K. AUSTRIA’, items 4 and 5 (b), ‘Arbeitsamt (Employment Office)’ are replaced by ‘Regionale Geschäftsstelle des Arbeitsmarktservice (Local Office of the Labour Market Service)’;

5. Annex 4 is amended as follows:

(a) heading ‘A. BELGIUM’ is amended as follows:

(i) in 1 (b), ‘Sailing under the Belgian flag’ is deleted and the following text is added:

‘(c) for persons covered by the Overseas Social Insurance Office, overseas social insurance scheme: Brussels

- (d) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels;
- (ii) in 2 (c), 'Sailing under the Belgian flag' is deleted and the following text is added:
- '(d) invalidity of persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels
- (e) invalidity of former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels'
- (iii) 3 is replaced by the following text:

3. Old-age, death (pensions)

- (a) For the purposes of applying Articles 41 to 43 and 45 to 50 of the implementing Regulation:
- (i) for manual workers, clerical staff, miners and seafarers: National Pension Office, Brussels
- (ii) for self-employed persons: National Social Insurance Institute for Self Employed persons, Brussels
- (iii) for persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels
- (iv) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels
- (b) For the purposes of applying Articles 45 (paying institution), 53 (1), 110 and 111 (1) and (2) of the implementing Regulation:
- (i) for manual workers, clerical staff, miners, seafarers and self-employed persons: National Pension Office, Brussels

- (ii) for persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels';
- (iii) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels
- (iv) in 4 (a), after 'Accidents at Work Fund, Brussels', 'Overseas Social Insurance Office, Brussels' is added in a new line;
- (v) in 4 (b), after 'Ministry of Social Welfare', 'Overseas Social Insurance Office, Brussels' is added in a new line;
- (vi) in 5 (b), after 'Sailing under the Belgian flag' is deleted and the following text is added:
 - '(c) for persons covered by the overseas social insurance scheme: Overseas Social Insurance Office, Brussels;
 - (d) for former employees of the Belgian Congo and Belgian Rwanda: Overseas Social Insurance Office, Brussels';
- (vii) 7 is replaced by the following text:

'7. Family benefits

- (a) for employed persons: National Family Allowances Office for Employed Persons, Brussels
- (b) for self-employed persons: National Social Insurance Institute for Self-Employed Persons, Brussels
- (c) for former employees of the Belgian Congo and Rwanda-Urundi: Overseas Social Insurance Office, Brussels';

(b) the heading 'K. AUSTRIA' is amended as follows:

- (i) in 2 (a), 'Landesarbeitsamt Salzburg (Provincial Employment Office Salzburg), Salzburg' is replaced by 'Landesgeschäftsstelle Salzburg des Arbeitsmarktservice (Regional Office of the Labour Market Service Salzburg), Salzburg';
- (ii) in 2 (b), 'Landesarbeitsamt Wien (Provincial Employment Office Vienna), Wien.' is replaced by 'Landesgeschäftsstelle Wien des Arbeitsmarktservice (Regional Office of the Labour Market Service, Vienna), Wien';
- (iii) in 3 (a), 'Bundesministerium für Umwelt, Jugend und Familie (Federal Ministry of the Environment, Youth and the Family)' is replaced by 'Bundesministerium für Jugend und Familie (Federal Ministry of Youth and the Family)';
- (iv) 3 (b) is replaced by the following text:

'(b) Karenzurlaubsgeld (special maternity allowance):

- (i) relations with Germany:

Landesgeschäftsstelle Salzburg des Arbeitsmarktservice (Salzburg regional office of the Labour Market Service), Salzburg.

- (ii) in all other cases:

Landesgeschäftsstelle Wien des Arbeitsmarktservice (Vienna regional office of the Labour Market Service), Wien.';

6. Annex 5 is amended as follows:

(a) in '4. BELGIUM-FRANCE', the following item is added:

- '(i) The exchange of letters of 21 November 1994 and 8 February 1995 concerning the procedures for the settlement of reciprocal claims pursuant to Articles 93, 94, 95 and 96 of the implementing Regulation';

(b) in '8. BELGIUM-LUXEMBOURG' items (a), (b) and (f) are deleted;

(c) in '23. DENMARK-AUSTRIA', 'none' is replaced by the following text:

'Agreement of 13 February 1995 concerning the reimbursement of expenditure in the field of social security';

(d) in '53. FRANCE-ITALY', the following item is added:

- '(c) The supplementary exchange of letters of 22 March and 15 April 1994 concerning the procedures for the settlement of reciprocal debts under the terms of Articles 93, 94, 95 and 96 of the implementing Regulation';

(e) in '82. ITALY-UNITED KINGDOM', 'none' is replaced by the following text:

'The exchange of letters of 1 and 16 February 1995 concerning Articles 36 (3) and 63 (3) of the Regulation (reimbursement or waiving of reimbursement of expenditure for benefits in kind) and Article 105 (2) of the implementing Regulation (waiving of reimbursement of the costs of administrative checks and medical examinations)';

(f) in '84. LUXEMBOURG-AUSTRIA', 'none' is replaced by the following text:

'Agreement of 22 June 1995 on the reimbursement of expenditure in the field of social security';

(g) in '95. AUSTRIA-FINLAND', 'none' is replaced by the following text:

'Agreement of 23 June 1994 on the reimbursement of expenditure in the field of social security';

(h) in '97. AUSTRIA-UNITED KINGDOM', the following item is added:

'(c) Agreement of 30 November 1994 concerning the reimbursement of expenditure for social security benefits';

7. Annex 10 is amended as follows:

(a) heading 'A. BELGIUM' is amended as follows:

(i) in 2, 'Sailing under the Belgian flag' is deleted;

(ii) 6 (a) is replaced by the following text:

'(a) sickness, maternity, and accidents at work:

- | | |
|--|--|
| (i) in general: | National Sickness and Invalidity Insurance Institute, Brussels |
| (ii) for persons covered by the overseas social insurance scheme: | Overseas Social Insurance Office, Brussels; |
| (iii) for former employees of the Belgian Congo and Rwanda-Urundi: | Overseas Social Insurance Office, Brussels'; |

(b) in 'J. NETHERLANDS', in item 1, 'Sociale verzekeringsraad (Social Security Council), Zoetermeer' is replaced by 'Sociale verzekeringsbank (Social Security Bank), Amstelveen';

(c) heading 'K. AUSTRIA' is amended as follows:

(i) 1 is deleted;

(ii) in 2, 'Bundesminister für Umwelt, Jugend und Familie (Federal Ministry for the Environment, Youth and the Family)' is replaced by 'Bundesminister für Jugend und Familie (Federal Minister for Youth and the Family)';

(iii) after 2, the following is added:

'3. For the application of Article 14d (3) of the Regulation: the competent institution';

(iv) in 5 and 6, 'Arbeitsamt (Employment Office)' is replaced by 'Regionale Geschäftsstelle des Arbeitsmarktservice (Regional Office of the Labour Market Service)';

(v) in 7 (b), 'Landesarbeitsamt Wien (Provincial Employment Office Vienna)' is replaced by 'Landesgeschäftsstelle Wien des Arbeitsmarktservice (Regional Office of the Labour Market Service Vienna)'.

Article 3

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

As regards old age benefits and survivor's benefits Article 1 (5) shall apply with effect from 1 June 1992.

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

Done at Brussels, 22 December 1995.

For the Council

The President

L. ATIENZA SERNA

COUNCIL DIRECTIVE 95/63/EC

of 5 December 1995

amending Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

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

Acting in accordance with the procedure laid down in Article 189c ⁽³⁾,

Whereas Article 118a of the Treaty provides that the Council shall adopt by means of directives, minimum requirements for encouraging improvements, especially in the working environment, as regards the health and safety of workers;

Whereas, pursuant to the said Article, such Directives must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

Whereas compliance with the minimum requirements designed to guarantee a better standard of safety and health in the use of work equipment is essential to ensure the safety and health of workers;

Whereas, therefore, Member States must take measures to facilitate implementation of the provisions of this Directive by undertakings, in particular small and medium-sized undertakings; whereas such measures may include training and information activities adapted to the specific requirements of the various sectors of the economy;

Whereas provisions adopted pursuant to Article 118a of the Treaty do not prevent each Member State from establishing and maintaining more stringent protective measures, compatible with this Treaty, governing conditions of work;

Whereas Article 9 (1) of Directive 89/655/EEC ⁽⁴⁾ provides for the addition to the Annex of the supplementary minimum requirements applicable to work equipment referred to in point 3 of the Annex, in accordance with the procedure provided for in Article 118a of the Treaty;

Whereas this Directive must confine itself to defining the objectives to be achieved and the principles to be respected leaving Member States free to decide how national legislation will be complied with and improved upon;

Whereas the Member States shall, after consultation with both sides of industry, and with due allowance for national legislation and/or practice, establish procedures whereby a level of safety may be attained corresponding to the objectives indicated by Annex II to this Directive;

Whereas this Directive constitutes a practical element in realizing the social dimension of the internal market,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/655/EEC is hereby amended as follows:

1. Article 4 shall be amended as follows:

(a) in paragraph 1 (a) (ii) and (b), 'in the Annex' shall be replaced by 'in Annex I';

(b) the following point is inserted in paragraph 1:

⁽¹⁾ OJ No C 104, 12. 4. 1994, p. 4; and OJ No C 246, 22. 9. 1995, p. 3.

⁽²⁾ OJ No C 397, 31. 12. 1994, p. 13.

⁽³⁾ Opinion of the European Parliament of 17 February 1995 (OJ No C 56, 6. 3. 1995, p. 175), Council common position of 24 July 1995 (OJ No C 281, 25. 10. 1995, p. 41) and Decision of the European Parliament of 17 November 1995 (OJ No C 323, 4. 12. 1995).

⁽⁴⁾ OJ No L 393, 30. 12. 1989, p. 13.

'(c) without prejudice to point (a) (i), and notwithstanding point (a) (ii) and point (b), specific work equipment subject to the requirements of point 3 of Annex I, which, if already provided to workers in the undertaking and/or establishment by 5 December 1998, complies with the minimum requirements laid down in Annex I, no later than four years after that date';

(c) the following paragraph shall be added:

'3. Member States shall, after consultation with both sides of industry, and with due allowance for national legislation and/or practice, establish procedures whereby a level of safety may be attained corresponding to the objectives indicated by the provisions of Annex II.'

2. The following Article shall be inserted:

'Article 4a

Inspection of work equipment

1. The employer shall ensure that where the safety of work equipment depends on the installation conditions, it shall be subject to an initial inspection (after installation and before first being put into service) and an inspection after assembly at a new site or in a new location by competent persons within the meaning of national laws and/or practices, to ensure that the work equipment has been installed correctly and is operating properly.

2. The employer shall ensure that work equipment exposed to conditions causing deterioration which is liable to result in dangerous situations is subject to:

- periodic inspections and, where appropriate, testing by competent persons within the meaning of national laws and/or practices,
- special inspections by competent persons within the meaning of national laws and/or practices each time that exceptional circumstances which are liable to jeopardize the safety of the work equipment have occurred, such as modification work, accidents, natural phenomena or prolonged periods of inactivity,

to ensure that health and safety conditions are maintained and that the deterioration can be detected and remedied in good time.

3. The results of inspections must be recorded and kept at the disposal of the authorities concerned. They must be kept for a suitable period of time.

When work equipment is used outside the undertaking it must be accompanied by physical evidence that the last inspection has been carried out.

4. Member States shall determine the conditions under which such inspections are made.';

3. the following Article shall be inserted:

'Article 5a

Ergonomics and occupational health

The working posture and position of workers while using work equipment and ergonomic principles must be taken fully into account by the employer when applying minimum health and safety requirements.';

4. the following subparagraph shall be added at the end of Article 6 (2):

'Workers must be made aware of dangers relevant to them, work equipment present in the work area or site, and any changes affecting them, in as much as they affect work equipment situated in their immediate work area or site, even if they do not use such equipment directly.';

5. in Article 8, 'the Annex' is replaced by 'the Annexes';

6. Article 9 shall be amended as follows:

- in the title to the Article, 'of the Annex' shall be replaced by 'of the Annexes',
- in paragraph 1, 'the Annex' where it appears twice in the text shall be replaced by 'Annex I',
- in paragraph 2, 'the Annex' shall be replaced by 'the Annexes';

7. the Annex, which becomes Annex I, shall be amended in conformity with Annex I to this Directive;

8. an Annex II shall be added, the text of which is set out in Annex II to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 5 December 1995. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they have already adopted or which they adopt in the field governed by this Directive.

3. The Commission shall periodically present a report on the implementation of this Directive to the European Parliament, the Council and the Economic and Social Committee.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 5 December 1995.

For the Council

The President

J. A. GRÍÑÁN

ANNEX I

The Annex (which becomes Annex I) to Directive 89/655/EEC is amended as follows:

1. the following paragraph shall be added to the general comment:

'The following minimum requirements, in as much as they apply to work equipment in use, do not necessarily call for the same measures as the essential requirements concerning new work equipment.'

2. in point 2.1, the last paragraph is replaced by the following text:

'Control systems must be safe and must be chosen making due allowance for the failures, faults and constraints to be expected in the planned circumstances of use.'

3. Point 3 is replaced by the following text:

3. Additional minimum requirements applicable to specific types of work equipment

3.1. *Minimum requirements for mobile work equipment, whether or not self-propelled*

- 3.1.1. Work equipment with ride-on workers must be fitted out in such a way as to reduce the risks for workers during the journey.

Those risks must include the risks of contact with or trapping by wheels or tracks.

- 3.1.2. Where an inadvertent seizure of the drive unit between an item of mobile work equipment and its accessories and/or anything towed might create a specific risk, such work equipment must be equipped or adapted to prevent blockages of the drive units.

Where such seizure cannot be avoided, every possible measure must be taken to avoid any adverse effects on workers.

- 3.1.3. Where drive shafts for the transmission of energy between mobile items of work equipment can become soiled or damaged by trailing on the ground, facilities must be available for fixing them.

- 3.1.4. Mobile work equipment with ride-on workers must be designed to restrict, under actual conditions of use, the risks arising from work equipment rollover:

- either by a protection structure to ensure that the equipment does not tilt by more than a quarter turn, or
- a structure giving sufficient clearance around the ride-on workers if the tilting movement can continue beyond a quarter turn, or
- by some other device of equivalent effect.

These protection structures may be an integral part of the work equipment.

These protection structures are not required when the work equipment is stabilized during operation or where the design makes roll over impossible.

Where there is a risk of a ride-on worker being crushed between parts of the work equipment and the ground, should the equipment roll over, a restraining system for the ride-on workers must be installed.

- 3.1.5. Fork-lift trucks carrying one or more workers must be adapted or equipped to limit the risk of the fork-lift truck overturning, e. g.:

- by the installation of an enclosure for the driver, or
- by a structure preventing the fork-lift truck from overturning, or
- by a structure ensuring that, if the fork-lift truck overturns, sufficient clearance remains between the ground and certain parts of the fork-lift truck for the workers carried, or
- by a structure restraining the workers on the driving seat so as to prevent them from being crushed by parts of the fork-lift truck which overturns.

3.1.6. Self-propelled work equipment which may, in motion, engender risks for persons must fulfil the following conditions:

- (a) the equipment must have facilities for preventing unauthorized start-up;
- (b) it must have appropriate facilities for minimizing the consequences of a collision where there is more than one item of track-mounted work equipment in motion at the same time;
- (c) there must be a device for braking and stopping equipment. Where safety constraints so require, emergency facilities operated by readily accessible controls or automatic systems must be available for braking and stopping equipment in the event of failure of the main facility;
- (d) where the driver's direct field of vision is inadequate to ensure safety, adequate auxiliary devices must be installed to improve visibility;
- (e) work equipment designed for use at night or in dark places must be equipped with lighting appropriate to the work to be carried out and must ensure sufficient safety for workers;
- (f) work equipment which constitutes a fire hazard, either on its own or in respect of whatever it is towing and/or carrying and which is liable to endanger workers, must be equipped with appropriate fire-fighting appliances where such appliances are not available sufficiently nearby at the place of use;
- (g) remote-controlled work equipment must stop automatically once it leaves the control range;
- (h) remote-controlled work equipment which may in normal conditions engender a crushing or impact hazard must have facilities to guard against this risk, unless other appropriate devices are present to control the impact risk.

3.2. *Minimum requirements for work equipment for lifting loads*

3.2.1. When work equipment for lifting loads is installed permanently, its strength and stability during use must be assured, having regard, in particular, to the loads to be lifted and the stress induced at the mounting or fixing point of the structures.

3.2.2. Machinery for lifting loads must be clearly marked to indicate its nominal load, and where appropriate a load plate giving the nominal load for each configuration of the machinery.

Accessories for lifting must be marked in such a way that it is possible to identify the characteristics essential for safe use.

Work equipment which is not designed for lifting persons but which might be so used in error must be appropriately and clearly marked to this effect.

3.2.3. Permanently installed work equipment must be installed in such a way as to reduce the risk of the load:

- (a) striking workers;
- (b) drifting dangerously or falling freely;
- (c) being released unintentionally.

3.2.4. Work equipment for lifting or moving workers must be such as to:

- (a) prevent the risk of the car falling, where one exists, by suitable devices;
- (b) prevent the risk of the user himself falling from the car, where one exists;
- (c) prevent the risk of the user being crushed, trapped or struck, in particular through inadvertent contact with objects;
- (d) ensure that persons trapped in the car in the event of an incident are not exposed to danger and can be freed.

If, for reasons inherent in the site and height differences, the risks referred to in point (a) cannot be avoided by any safety measures, an enhanced safety coefficient suspension rope must be installed and checked every working day.'

ANNEX II

ANNEX II

PROVISIONS CONCERNING THE USE OF WORK EQUIPMENT REFERRED TO IN
ARTICLE 4 (3)

0. General comment

The obligations laid down in this Annex apply having regard to the provisions of this Directive and where the corresponding risk exists for the work equipment in question.

1. General provisions for all work equipment

- 1.1. Work equipment must be installed, located and used in such a way as to reduce risks to users of the work equipment and for other workers, for example by ensuring that there is sufficient space between the moving parts of work equipment and fixed or moving parts in its environment and that all forms of energy and substances used or produced can be supplied and/or removed in a safe manner.
- 1.2. Work equipment must be erected or dismantled under safe conditions, in particular observing any instructions which may have been furnished by the manufacturer.
- 1.3. Work equipment which may be struck by lightning while being used must be protected by devices or appropriate means against the effects of lightning.

2. Provisions concerning the use of mobile equipment, whether or not self-propelled

- 2.1. Self-propelled work equipment shall be driven only by workers who have been appropriately trained in the safe driving of such equipment.
- 2.2. If work equipment is moving around in a work area, appropriate traffic rules must be drawn up and followed.
- 2.3. Organizational measures must be taken to prevent workers on foot coming within the area of operation of self-propelled work equipment.

If work can be done properly only if workers on foot are present, appropriate measures must be taken to prevent them from being injured by the equipment.
- 2.4. The transport of workers on mechanically driven mobile work equipment is authorized only where safe facilities are provided to this effect. If work must be carried out during the journey, speeds must be adjusted as necessary.
- 2.5. Mobile work equipment with a combustion engine may not be used in working areas unless sufficient quantities of air presenting no health or safety risk to workers can be guaranteed.

3. Provisions concerning the use of work equipment for lifting loads

3.1. General considerations

- 3.1.1. Work equipment which is mobile or can be dismantled and which is designed for lifting loads must be used in such a way as to ensure the stability of the work equipment during use under all foreseeable conditions, taking into account the nature of the ground.

- 3.1.2. Persons may be lifted only by means of work equipment and accessories provided for this purpose.

Without prejudice to Article 5 of Directive 89/391/EEC, exceptionally, work equipment which is not specifically designed for the purpose of lifting persons may be used to this effect, provided appropriate action has been taken to ensure safety in accordance with national legislation and/or practice laying down appropriate supervision.

While workers are on work equipment designed for lifting loads the control position must be manned at all times. Persons being lifted must have reliable means of communication. In the event of danger, there must be reliable means of evacuating them.

- 3.1.3. Unless required for the effective operation of the work, measures must be taken to ensure that workers are not present under suspended loads.

Loads may not be moved above unprotected workplaces usually occupied by workers.

Where that is the case, if work cannot be carried out properly any other way, appropriate procedures must be laid down and applied.

- 3.1.4. Lifting accessories must be selected as a function of the loads to be handled, gripping points, attachment tackle and the atmospheric conditions having regard to the mode and configuration of slinging. Lifting accessory tackle must be clearly marked so that users are aware of its characteristics where such tackle is not dismantled after use.

- 3.1.5. Lifting accessories must be stored in a way that ensures that they will not be damaged or degraded.

3.2. *Work equipment for lifting non-guided loads*

- 3.2.1. When two or more items of work equipment used for lifting non-guided loads are installed or erected on a site in such a way that their working radii overlap, appropriate measures must be taken to avoid collision between loads and/or the work equipment parts themselves.

- 3.2.2. When using mobile work equipment for lifting non-guided loads, measures must be taken to prevent the equipment from tilting, overturning or, if necessary, moving or slipping. Checks must be made to ensure that these measures are executed properly.

- 3.2.3. If the operator of work equipment designed for lifting non-guided loads cannot observe the full path of the load either directly or by means of auxiliary equipment providing the necessary information, a competent person must be in communication with the operator to guide him and organizational measures must be taken to prevent collisions of the load which could endanger workers.

- 3.2.4. Work must be organized in such a way that when a worker is attaching or detaching a load by hand, it can be done safely, in particular through the worker retaining direct or indirect control of the work equipment.

- 3.2.5. All lifting operations must be properly planned, appropriately supervised and carried out to protect the safety of workers.

In particular, if a load has to be lifted by two or more pieces of work equipment for lifting non-guided loads simultaneously, a procedure must be established and applied to ensure good coordination on the part of the operators.

- 3.2.6. If work equipment designed for lifting non-guided loads cannot maintain its hold on the load in the event of a complete or partial power failure, appropriate measures must be taken to avoid exposing workers to any resultant risks.

Suspended loads must not be left without surveillance unless access to the danger zone is prevented and the load has been safely suspended and is safely held.

- 3.2.7. Open-air use of work equipment designed for lifting non-guided loads must be halted when meteorological conditions deteriorate to the point of jeopardizing the safe use of the equipment and exposing workers to risks. Adequate protection measures, in particular, to avoid work equipment turning over must be taken to avoid any risks to workers.'
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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 December 1995

on a medium-term Community action programme on equal opportunities for men and women
(1996 to 2000)

(95/593/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

1. Whereas the Council has adopted six Directives, two recommendations and 10 resolutions in the area of equal treatment and equal opportunities for men and women ⁽⁴⁾;
2. Whereas these Directives and acts have played a major part in improving the situation of women;
3. Whereas equal treatment and equal opportunities for men and women are basic principles recognized by Community law;

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ No L 6, 10. 1. 1979, p. 24).

Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ No L 225, 12. 8. 1986, p. 40).

Council Directive 86/313/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ No L 359, 19. 12. 1986, p. 56).

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (OJ No L 348, 28. 11. 1992, p. 1).

Council recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women (OJ No L 331, 19. 12. 1984, p. 34).

Council recommendation 92/241/EEC of 31 March 1992 on child care (OJ No L 123, 8. 5. 1992, p. 16).

Council resolution of 12 July 1982 on the promotion of equal opportunities for women (OJ No C 186, 21. 7. 1982, p. 3).

Council resolution of 7 June 1984 on the action to combat unemployment amongst women (OJ No C 161, 21. 6. 1984, p. 4).

Resolution of the Council and the Ministers for Education meeting within the Council of 3 June 1985 containing an action programme on equal opportunities for girls and boys in education (OJ No C 166, 5. 7. 1985, p. 1).

⁽¹⁾ OJ No C 306, 17. 11. 1995, p. 2.

⁽²⁾ OJ No C 323, 4. 12. 1995.

⁽³⁾ Opinion delivered on 22 November 1995 (not yet published in the Official Journal).

⁽⁴⁾ Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ No L 45, 19. 2. 1975, p. 19).
Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ No L 39, 14. 2. 1976, p. 40).

4. Whereas the Heads of State and of Government meeting within the European Council on 10 and 11 December 1994 at Essen and on 26 and 27 June 1995 at Cannes emphasized that equal opportunities for men and women, and the fight against unemployment, are the priority tasks of the European Union and its Member States;
5. Whereas, in their resolution of 6 December 1994 on equal participation by women in an employment-intensive economic growth strategy within the European Union ⁽¹⁾, the Council and the Representatives of the Governments of the Member States meeting within the Council put various requests to the Commission in preparation for the fourth action programme on equal opportunities for men and women (1996 to 2000);
6. Whereas the said programme is in line with the aims set out in the conclusions of the World Conference on Women in Beijing;
7. Whereas in the White Paper on Growth, Competitiveness, Employment, the Commission underlines the need to strengthen equal opportunities policies for men and women in employment;
8. Whereas, in the White Paper on European Social Policy, the Commission undertook to present during 1995 a fourth action programme on equal opportunities for men and women, to come into force in 1996;
9. Whereas the European Parliament has strongly and repeatedly urged the European Union to strengthen its policy in the field of equal treatment and equal opportunities for men and women;
10. Whereas the first three medium-term Community action programmes on equal opportunities for men and women (1982 to 1985, 1986 to 1990, 1991 to 1995) have played an important role in improving the situation of women and in promoting cooperation at all levels in this area;
11. Whereas it is necessary to consolidate and build upon the results of the three programmes; whereas, despite the efforts made at both national and Community level, inequalities continue to exist, particularly with regard to the employment and pay of women;
12. Whereas the European Union's Information Offices in the Member States should step up their efforts to disseminate information on the Community's equal treatment and equal opportunities policies for men and women;
13. Whereas developing education and vocational training, diversifying the choice of jobs available and increasing the number of working women can help enhance the competitiveness of the European economy and improve integration into the labour market;
14. Whereas there is a need to develop measures taking into account economic and social change and, in particular, to respond to changes in family structures, in the roles of women and men in society, in the organization of working life and in the demographic composition of society;
15. Whereas active partnership between the Commission, the Member States, the social partners, non-governmental organizations and in particular women's organizations needs to be promoted in this area and synergy between all the relevant policies and measures encouraged;
16. Whereas the present programme can, in accordance with Article 3b of the Treaty and having regard to the responsibility of the Member States for promoting equal treatment and equal opportunities

Second Council resolution of 24 July 1986 on the promotion of equal opportunities for women (OJ No C 203, 12. 8. 1986, p. 2).

Council resolution of 16 December 1988 on the reintegration and late integration of women into working life (OJ No C 333, 28. 12. 1988, p. 1).

Council resolution of 29 May 1990 on the protection of the dignity of women and men at work (OJ No C 157, 27. 6. 1990, p. 3).

Council resolution of 21 May 1991 on the third medium-term Community action programme on equal opportunities for women and men (1991 to 1995) (OJ No C 142, 31. 5. 1991, p. 1).

Council resolution of 22 June 1994 on the promotion of equal opportunities for women and men through action by the European Structural Funds (OJ No C 231, 20. 8. 1994, p. 1).

Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council of 6 December 1994 on equal participation by women in an employment-intensive economic growth strategy within the European Union (OJ No C 368, 23. 12. 1994, p. 3).

Council Resolution of 27 March 1995 on the balanced participation of women and men in decision-making (OJ No C 168, 4. 7. 1995, p. 3).

⁽¹⁾ OJ No C 368, 23. 12. 1994, p. 3.

for men and women, bring added value by identifying and stimulating good practice and policies, encouraging innovation and exchanging relevant experience, including in the field of positive actions;

17. Whereas the present programme is not intended to support all measures in favour of women which can be undertaken locally and may, in some cases, receive aid from other Community policies;
18. Whereas the Commission has submitted, together with the proposal for this Decision, a fourth medium-term Community action programme on equal opportunities for men and women;
19. Whereas a financial reference amount, within the meaning of point 2 of the declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Decision for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;
20. Whereas the Treaty does not provide, for the adopting of this Decision, powers other than those of Article 235,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment of a Community action programme

This Decision establishes a medium-term Community action programme on equal opportunities for men and women, hereinafter referred to as 'the programme', for the period from 1 January 1996 to 31 December 2000.

Article 2

Principle of integrating the equal opportunities for men and women dimension in all policies and activities (mainstreaming)

The programme is intended to promote the integration of equal opportunities for men and women in the process of preparing, implementing and monitoring all policies and activities of the European Union and the Member States, having regard to their respective powers.

Article 3

Aims

1. The programme shall support Member States' efforts in the area of equal opportunities for men and women.

2. The programme has the following aims:

- (a) to promote integration of the equal opportunities for men and women dimension in all policies and activities;
- (b) to mobilize all the actors in economic and social life to achieve equal opportunities for men and women;
- (c) to promote equal opportunities for men and women in a changing economy, especially in the fields of education, vocational training and the labour market;
- (d) to reconcile working and family life for men and women;
- (e) to promote a gender balance in decision-making;
- (f) to make conditions more conducive to exercising equality rights.

Article 4

Community actions

1. With a view to achieving the aims set out in Article 3, the following actions shall be implemented, enhanced and/or supported under the programme using existing structures, improving their operation and/or rationalizing them where necessary:

- (a) in order to allow the exchange of information and experience on good practice, methodological and/or technical and/or financial support for projects to identify and develop good practice and transfer information and experience thereon;
- (b) observing and monitoring relevant policies and conducting studies in this field;
- (c) rapid dissemination of the results of the initiatives embarked upon and any other relevant information.

2. The provisions regarding the criteria for applying this Article are set out in the Annex.

Article 5

Consistency and complementarity

The Commission and the Member States shall ensure consistency and complementarity between the initiatives undertaken under the programme and under the Structural Funds and other Community policies or activities, including those relating to education and vocational training, and those pursued by the Member States.

Article 6

Participation of other countries

1. The programme activities which may be opened up to the participation of the countries of the European Economic Area, the associated countries of central and eastern Europe (ACCEE), Cyprus and Malta and the European Union's partner countries in the Mediterranean shall be defined in the context of the European Union's relations with those countries.

2. The cost of the participation referred to in paragraph 1 shall be covered either by the countries concerned out of their own budgets or by Community budget headings relating to the implementation of the cooperation, association or partnership agreements with these countries in the area concerned.

Article 7

Implementation

The Commission shall, in consultation with the Member States, implement the programme in accordance with this Decision.

Article 8

Determination of financial assistance

1. For the actions referred to in Article 4 (1) (a), the Community's financial contribution may amount to:

- as a general rule, a maximum of 60 %;
- in exceptional cases, in accordance with criteria established following the procedure laid down in Article 9, a higher maximum rate.

2. The actions referred to in Article 4 (1) (b) and (c) shall be financed entirely by the Community.

Article 9

Committee

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of Commission.

2. The following shall be adopted in accordance with the procedure referred to in paragraph 3:

- the general guidelines for the support to be supplied by the Community;
- the annual work programme and matters relating to the internal breakdown of the programme;

— procedures for the selection of the actions supported by the Community, the criteria for the follow-up and evaluation of these actions and of the programme as a whole, and the arrangements for the dissemination and transfer of results.

3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

In that event, the Commission shall defer application of the measures which it has decided for a period of two months from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

Article 10

Financing

1. The financial reference amount for the implementation of the programme for the period 1 January 1996 to 31 December 2000 shall be ECU 30 million.

2. The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 11

Monitoring and evaluation

1. The actions supported by the programme shall be continuously monitored with a view to ensuring their effectiveness in accordance with the criteria established following the procedure referred to in Article 9.

2. The programme shall be subject to regular objective external evaluations in accordance with criteria laid down following the procedure referred to in Article 9.

*Article 12***Reports**

1. The Commission shall submit an interim report on the implementation of the programme to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions by 31 December 1998 at the latest.

2. The Commission shall submit a final report on the implementation of the programme to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions by 31 December 2001 at the latest.

Article 13

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 22 December 1995.

For the Council

The President

L. ATIENZA SERNA

ANNEX

PROVISIONS RELATING TO THE CRITERIA FOR APPLYING ARTICLE 4

I. INTRODUCTORY COMMENTS

The programme is intended to support effort to promote equal opportunities for men and women at European Union, national, regional and local levels, having full regard to their respective powers.

The programme constitutes a significant addition to the action undertaken within the framework of other Community policies, including the Structural Funds. Accordingly, the programme is not intended to support all measures in favour of women which can be undertaken locally and may, in some cases, receive aid from those policies.

The added value of the programme lies in the identification and exchange of information and experience on good practice in the field of equal opportunities for men and women.

II. AREAS OF ACTION

Community actions which may receive support under the programme are those referred to in Article 4 and must concern one or more of the following areas:

1. Integration of the equal opportunities for men and women dimension in all policies and activities (mainstreaming):

- promotion and development of methods, strategies, models and studies aimed at integrating the equal opportunities dimension in all policies and activities.

2. Employment and working life:

- education, training and continuing training and the promotion of equal opportunities for men and women in employment,
- access to employment and conditions of employment,
- promotion of economic independence,
- vertical and horizontal desegregation of the labour market,
- equal pay for equal work and work of equal value,
- organization and flexibility of working life,
- aspects linked with the working environment, including sexual harassment,
- entrepreneurship,
- reconciliation of professional and parental responsibilities, including the role of men.

3. Decision-making:

- development and monitoring of methods, strategies and actions to promote balanced participation of men and women in decision-making, including in senior posts.

4. Information and research:

- promotion of information, research, studies and other actions to increase knowledge and promote favourable attitudes to equal opportunities for men and women.

5. Statistics:

- better use and development of statistics broken down according to gender, in consultation with the competent national bodies.

III. SELECTION CRITERIA

1. To qualify for support under the programme, actions must meet the following criteria:
 - present added value at European Union level,
 - aim to promote best practice in the area(s) concerned,
 - contribute to one or more of the aims set out in Article 3,
 - permit transitional exchanges,
 - target transferable results,
 - be submitted and implemented by public and private parties and organizations which have appropriate qualifications and/or experience,
 - have clear and precise objectives and have a realistic time span give those objectives,
 - be evaluated objectively and regularly.
2. With regard to the actions referred to in Article 4 (1) (a), priority will be given to actions which meet one or more of the following criteria:
 - make provision, where appropriate, for the participation of more than one partner, in particular the social partners, non-governmental organizations and especially women's organizations and local authorities,
 - involve practical measures aimed at promoting equal opportunities for men and women in the above areas,
 - be innovatory, as far as possible, in terms of content and organization,
 - lend themselves to the broadest possible transfer opportunities within the European Union,
 - encourage co-financing.

IV. METHOD OF PRESENTING APPLICATIONS FOR SUPPORT

1. Applications for support under the programme must contain the following information:
 - exact particulars of the full identity of action promoters and partners,
 - detailed description of the proposed action,
 - detailed budget estimate covering the entire action and indicating all definite and/or expected sources of financing,
 - summary of any application for financing.
 2. Applications for support will be presented to the Commission and, at the same time, to the Member States concerned, for information and, where appropriate, for an opinion, in line with national practice.
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