

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 1305/89**

of 11 May 1989

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

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

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

Whereas Regulations (EEC) No 1408/71 <sup>(4)</sup> and (EEC) No 574/72 <sup>(5)</sup>, as updated by Regulation (EEC) No 2001/83 <sup>(6)</sup> and as last amended by Regulation (EEC) No 3811/86 <sup>(7)</sup>, are subject to the technical adaptations set out in Chapter VIII (1) and (2) of Annex I to the Act of Accession of Spain and Portugal;

Whereas, as a result of the accession of Spain and Portugal, other adjustments to the said Regulations should be made, in particular to take account of the guidelines set out in Annex II to the Act of Accession,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

1. Article 95 is hereby replaced by the following:

*Article 95*

**Transitional provisions for self-employed persons**

1. No right shall be acquired under this Regulation in respect of a period prior to 1 July 1982 or to the

date of its implementation in the territory of the Member State concerned.

2. All insurance periods and, where appropriate, all periods of employment, of self-employment or of residence completed under the legislation of a Member State before 1 July 1982 or before the date of implementation of this Regulation in the territory of that Member State shall be taken into consideration for the determination of rights acquired under this Regulation.

3. Subject to paragraph 1, a right shall be acquired under this Regulation even though it relates to a contingency which materialized prior to 1 July 1982 or to the date of implementation of this Regulation in the territory of the Member States concerned.

4. Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from 1 July 1982 or from the date of implementation of this Regulation in the territory of the Member State concerned provided that the rights previously determined have not given rise to a lump-sum payment.

5. The rights of a person to whom a pension was awarded prior to 1 July 1982 or to the date of implementation of this Regulation in the territory of the Member State concerned may, on the application of the person concerned, be reviewed, taking into account this Regulation. This provision shall also apply to the other benefits referred to in Article 78.

6. If an application referred to in paragraph 4 or 5 is submitted within two years of 1 July 1982 or of the date of implementation of this Regulation in the territory of the Member State concerned, the rights acquired under this Regulation 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.

<sup>(1)</sup> OJ No C 71, 26. 3. 1986, p. 8.

<sup>(2)</sup> OJ No C 148, 16. 6. 1986, p. 124.

<sup>(3)</sup> OJ No C 263, 20. 10. 1986, p. 37.

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

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

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

<sup>(7)</sup> OJ No L 355, 16. 12. 1986, p. 5.

7. If an application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period from 1 July 1982 or following the date of implementation of this Regulation in the territory of the Member State concerned, rights which have not been forfeited or are not barred by limitation 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.

2. In Annex III, Sections A and B, under 22. GERMANY — SPAIN, 'none' is replaced by the following:

'Articles 4 (1) and 45 (2) of the Social Security Convention of 4 December 1973.'

3. In Annex VII, point 7 shall be replaced by the following:

'7. For the pension insurance scheme for self-employed persons: where he is self-employed in Greece and gainfully employed in any other Member State.'

#### Article 2

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

1. Article 118 is replaced by the following:

##### *Article 118*

#### **Transitional provisions relating to pensions for employed persons**

1. Where the contingency arises before 1 October 1972 or before the date of implementation of the implementing Regulation in the territory of the Member State concerned and the claim for pension has not been awarded before that date, such claim shall give rise to a double award, in as much as benefits must be granted, pursuant to such contingency, for a period prior to that date:

(a) for the period prior to 1 October 1972 or to the date of implementation of the implementing Regulation in the territory of the Member State concerned, in accordance with Regulation No 3 or the agreements in force between the Member States concerned;

(b) for the period commencing on 1 October 1972 or on the date of implementation of the implementing Regulation in the territory of the Member State concerned, in accordance with the Regulation.

However, if the amount calculated pursuant to the provisions referred to under (a) is greater than that calculated pursuant to the provisions referred to under (b), the person concerned shall continue to be entitled to the amount calculated pursuant to the provisions referred to under (a).

2. A claim for invalidity, old age or survivors' benefits submitted to an institution of a Member State from 1 October 1972 or from the date of implemen-

tation of the implementing Regulation in the territory of the Member State concerned shall automatically necessitate the reassessment of the benefits which have been awarded for the same contingency prior to that date by the institution or institutions of one or more of the other Member States, in accordance with the Regulation; such reassessment may not give rise to any reduction in the amount of the benefit awarded.'

2. Article 119 is replaced by the following:

##### *Article 119*

#### **Transitional provisions relating to pensions for self-employed persons.**

1. Where the contingency arises before 1 July 1982 or before the date of implementation of the implementing Regulation in the territory of the Member State concerned and the claim for pension has not been awarded before that date, such claim shall give rise to a double award, in as much as benefits must be granted, pursuant to such contingency, for a period prior to that date:

(a) for the period prior to 1 July 1982 or to the date of implementation of the implementing Regulation in the territory of the Member State concerned, in accordance with the Regulation or agreements in force between the Member States concerned before that date;

(b) for the period commencing on 1 July 1982 or on the date of implementation of the implementing Regulation in the territory of the Member State concerned, in accordance with the Regulation.

However, if the amount calculated pursuant to the provisions referred to under (a) is greater than that calculated pursuant to the provisions referred to under (b), the person concerned shall continue to be entitled to the amount calculated pursuant to the provisions referred to under (a).

2. A claim for invalidity, old age or survivors' benefits submitted to the institution of a Member State from 1 July 1982 or from the date of implementation of the implementing Regulation in the territory of the Member State concerned shall automatically necessitate the reassessment of the benefits that have already been awarded for the same contingency prior to that date by the institution or institutions of one or more of the other Member States, in accordance with the Regulation; such reassessment may not give rise to any reduction in the amount of benefit awarded.'

#### *Article 3*

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

It shall apply with effect from 1 January 1986.

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

Done at Brussels, 11 May 1989.

*For the Council*  
*The President*  
C. ARANZADI

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