



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.2005
COM(2005) 676 final

2005/0258 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council 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 Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal is intended to update Community Regulation (EEC) No 1408/71 to reflect changes in Member States' national social security legislation.

- **General context**

The proposal is a regular update of Regulation (EEC) No 1408/71, more precisely of its annexes, to reflect changes of the legal situation at national level correctly, thus ensuring proper Community coordination of national social security schemes.

- **Existing provisions in the area of the proposal**

Regulation (EEC) No 1408/71, which was updated by Regulation (EC) No 118/97 and last amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council.

This proposal will update and amend the references in certain annexes to the Regulation because the national legislation to which they refer has been amended.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Member States were invited to submit requests for amendments updating Regulations (EEC) No 1408/71 and 574/72 to reflect the changes in their national legislation. The Commission staff evaluated the requests, discussed them with Member States' representatives at a meeting of the Administrative Commission on Social Security for Migrant Workers and clarified, where necessary, clarified further details with representatives from the individual Member States concerned

Summary of responses and how they have been taken into account

The requests which are considered to be compatible with EU law and to which the Administrative Commission agreed were accepted and incorporated.

- **Collection and use of expertise**

Scientific/expertise domains concerned

Social security coordination.

Methodology used

Discussions in meetings of the Administrative Commission on Social Security for Migrant Workers and, where needed, further discussions to obtain clarification, particularly on the details of national legislation, with representatives on the Administrative Commission from the Member States concerned.

Main organisations/experts consulted

Administrative Commission on Social Security for Migrant Workers, as well as some of the representatives on the Administrative Commission.

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

Agreement to update certain entries for Member States in the Annexes to Regulation 1408/71.

Means used to make the expert advice publicly available

None.

• **Impact assessment**

Member States frequently amend their national social security legislation. As a consequence, the references made to national legislation in EU legislation coordinating social security schemes become outdated and create legal uncertainty. This is to the detriment of EU citizens moving within the EU, because they are not properly informed about their rights and makes it more difficult for the national social security institutions properly to apply EU provisions coordinating social security.

The references in EU coordinating legislation, in particular in Regulations 1408/71 and 574/72, therefore need to be updated to reflect national legislation correctly. EU Regulations can be updated only by a Regulation.

It is in the interest of the citizens concerned that the Community Regulations are updated soon after the changes to national legislation. Especially in view of the fundamental pension reforms in Sweden and Finland as well as the reform of the Netherlands health care insurance scheme, Regulation 1408/71 needs to be updated as soon as possible, despite the entry into force, on 20 May 2004, of Regulation 883/2004 replacing it: this new Regulation will not apply until the implementing Regulation has entered into force, which will probably not be before 2007.

In terms of workload or costs, the proposed amending Regulation will make no specific difference to the present situation of social security institutions and administrations, workers or employers. On the contrary, the objective of this update is to improve Community coordination of social security schemes, thus offering better protection for EU citizens moving within the EU.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal is intended to update some of the annexes to Regulation 1408/71 to reflect changes in Member States' national social security legislation. It will therefore facilitate application of the Community legislation coordinating social security schemes by ensuring that it correctly reflects the national legislation in force.

- **Legal basis**

Articles 42 and 308 of the EC Treaty

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

Community action in the form of coordination measures in the field of social security is required by Article 42 of the Treaty and is necessary to guarantee that the right to free movement for workers laid down in the Treaty can be fully exercised. Without such coordination, there would be a risk that freedom of movement would be inoperable, since people would be less likely to make use of this right if it meant, in essence, losing social security rights already acquired in another Member State. Existing Community legislation on social security does not aim to replace the different national schemes. It should be stressed that the proposed amending Regulation is not a harmonisation measure and does not go beyond what is necessary for effective coordination. The proposal basically aims at updating the existing coordinating rules to reflect the changes that have been made to the national legislation.

Even though the proposal is, therefore, mainly based on contributions by Member States, Member States could not adopt such provisions at national level since this could potentially conflict with the Regulation. Therefore it is necessary to ensure that the annexes to the Regulation are properly adapted so that the Regulation can apply effectively in the Member States concerned.

Social security coordination concerns cross-border situations where no Member State can act alone. The Community coordinating Regulation replaces the numerous existing bilateral agreements. This not only simplifies social security coordination for Member States but also ensures equal treatment of persons who are insured in accordance with national social security legislation.

Community action will better achieve the objectives of the proposal for the following reason(s).

Coordination of social security schemes makes sense only at Community level. The aim is to ensure that coordination of social security schemes operates effectively throughout all Member States. This is based on, and justified by, the free movement of

persons within the EU.

There are no qualitative indicators, but the Regulation concerns each EU citizen moving, for whatever reason, within the EU.

The proposal is purely a coordinating measure which can be taken only at Community level. Member States remain responsible for organising and financing their own social security schemes.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Regulation (EEC) No 1408/71 requires this form of action because a Regulation may be amended only by a Regulation. But Member States remain solely responsible for organising and financing their own social security schemes.

The proposal makes it easier for the Member States to coordinate social security schemes and is therefore beneficial for citizens as well as for national social security authorities. These special provisions are based on proposals by the Member States which means that any potential financial and administrative burden is minimized and proportionate to the abovementioned objective. Conversely, without such an update of Regulation 1408/71 the financial and administrative burdens would be likely to be greater.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

There is no alternative because a Regulation like Regulation (EEC) No 1408/71 can be amended only by a Regulation

4) **BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

5) **ADDITIONAL INFORMATION**

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

A. Article 2 (Entry into force)

As the new Health Care Insurance Act in the Netherlands applies from 1 January 2006,

the amendments regarding the Netherlands in Annexes I and VI need to apply from 1 January 2006.

B. Annex

I. Amendment of Annex I

1. Amendment of Part I

Annex I Part I defines the terms "employed persons" or "self-employed persons" where these cannot be determined from the national legislation.

The wording in section "X. SWEDEN" should be brought into line with the new Social Insurance Act (1999:799) and a reference to the Social Insurance Contributions Act should be added to identify self-employed persons.

2. Amendment of Part II

Annex I Part II defines the term "member of the family" where national legislation does not enable a distinction to be drawn between members of the family and other persons

The wording in section "Q. NETHERLANDS" should be brought into line with the new Health Care Insurance Act.

II. Amendment of Annex IIa

Annex IIa lists special non contributory benefits granted to the persons concerned exclusively in the territory of the Member State in which they reside, under Article 10a of Regulation (EEC) No 1408/71.

1. Lithuania's Law of 1994 on Social Pensions has been amended and the social pension currently listed in Annex IIa has been split into several separate allowances. Of these allowances, the new social assistance pension and special relief allowance are mixed benefits containing elements of social security and social assistance and are non-contributory as they are financed by the government, thus fulfilling the criteria to be considered as special non-contributory benefits. The reference in section "M. LITHUANIA" should be amended to reflect this change in the national legislation.

2. Although the Slovak legislature abolished the social pension by Act 461/2003 as of 31 December 2003, the benefit continues to be paid under the old Act 100/1988 Coll. to persons who had previously been entitled to it. This benefit is non-contributory, guarantees a minimum income for persons who do not qualify for a contributory old age or invalidity pension and is means-tested. It therefore fulfils the criteria to be considered as a special non-contributory benefit and should therefore be included in section "V. SLOVAKIA".

III. Amendment of Annex III, Part A

Annex III lists the provisions of existing bilateral agreements which were in force prior to the application of the Regulation in the Member States concerned. Part A lists the provisions of bilateral agreements which continue to apply, despite the fact that the

provisions of bilateral agreements are generally replaced by Regulation (EEC) 1408/71.

The provision of the General Convention of 28 October 1952 between Italy and the Netherlands listed in Annex III, Part A concerns the export of benefits to non-EU countries. However, it should be deleted because either the payment of a pension in a non-EU country falls within the scope of the Regulation (if the pension falls within its material scope and the beneficiary within its personal scope), in which case the principle of equal treatment applies or it does not, in which case this matter can no longer be dealt with in Annex III.

IV. Amendment of Annex IV

1. Amendment of Annex IV, Part A

Annex IV, Part A lists the "legislations referred to in Article 37(1) of the Regulation under which the amount of invalidity benefits is independent of the length of periods of insurance."

In the Slovak Republic, the level of invalidity pensions depends on the length of insurance periods ("type "B" system), with the exception of invalidity pension for persons who became invalid when they were dependent children and who were not insured for the required period but who are nevertheless deemed to have fulfilled the required insurance period. This benefit should therefore be included in section "V. SLOVAKIA".

2. Amendment of Annex IV, Part B

Annex VI, Part B lists the special schemes for self-employed persons to which special provisions on the aggregation of insurance periods completed in another Member State apply.

The Spanish law currently listed in Annex IV, Part B has been amended and, consequently, the reference in section "G. SPAIN" should be updated accordingly.

3. Amendment of Annex IV, Part C

Annex IV, Part C lists the "cases referred to in Article 46(1)(b) of the Regulation where the calculation of benefit in accordance with Article 46(1) of the Regulation may be waived" as the double pension calculation will never lead to a higher result.

If the Slovak survivor's pension is based on an old-age or invalidity pension which was actually paid to the deceased person, both the pro rata and national calculation will always lead to the same result. This survivor's pension should therefore be included in section "V. SLOVAKIA". Under the reformed Swedish pension system, the income pension is contribution-dependent rather than benefit-dependent and independent of insurance periods. Therefore, a pro rata calculation based on the Regulation is not possible. The Swedish guarantee pension depends on periods of residence in Sweden, a pro rata calculation will always result in the same amount as the national calculation. Therefore the current entry in section "X. SWEDEN" should be amended accordingly.

4. Amendment of Annex IV, Part D

Annex IV, Part D lists the benefits (points 1 and 2) and agreements (point 3) which meet the conditions laid down in Article 46b(2) of the Regulation, thus allowing application of the national legislation regarding the reduction, suspension or withdrawal of benefits.

Due to the new Swedish pension legislation, the current entries under Annex IV, Part D, points 1(i) and 2(i) need to be updated. In addition, income-related sickness benefits and activity allowances must be added to point 1(i).

Point 3 needs to be amended to reflect the fact that the old Nordic Convention has been replaced and that the bilateral agreement on social security between Finland and Luxembourg entered into force on 1 February 2002.

V. Amendment of Annex VI

Annex VI sets out special procedures for applying the legislation of certain Member States.

Section "E. ESTONIA" should be amended to add the rules for calculating parental benefit when migrant workers have not worked in Estonia during the entire reference year required by national legislation.

Section "Q. THE NETHERLANDS" should be amended to reflect the entry into force of the new health care reform as of 1 January 2006.

Point 1(a) specifies the categories of persons who are entitled to health care under Netherlands legislation.

Point 1(b) specifies the institution with which such persons must be insured. Point 1(c) permits the levying of premiums or contributions on such insured persons and members of their family. Point 1(d) concerns the consequences of delays in registering for insurance.

Point 1(e) specifies the benefits in kind to which a person insured in another Member State is entitled during a period of stay or period of residence in the Netherlands. Point 1(f) lists the Netherlands benefits and pensions that enable the recipients to be considered as pensioners within the meaning of the Regulation, thus enabling them to benefit from the provisions of the sickness chapter of Regulation 1408/71.

Point 1(g) clarifies that the no-claims refund is to be considered a sickness benefit in cash for the purpose of the Regulation. This means that the benefit will be payable by the Netherlands to insured persons who are resident in another Member State.

Section "W. FINLAND" should be amended to reflect the reform of the Finnish employment pension legislation. It provides that when insurance periods completed in other Member States have to be taken into account in order to fulfil the conditions for an entitlement to a pension, the earnings for the credited period are calculated only from the income during the reference period in Finland by dividing the income by the number of months of insurance in Finland.

Section "X. SWEDEN" should be amended to reflect the new legislation regarding coverage under Swedish social security legislation and the reform of the Swedish pension legislation.

As of 1 January 2001, the new Social Insurance Act (1999:799) amended the legislation on parental benefits in Chapter 4 of the National Insurance Act. For the purpose of calculating the parental benefit, Point 1(a) of section "X. SWEDEN" sets out how to determine income if a parent has worked in Sweden and another Member State during the reference period. Point 1(b) sets out how to determine income if a parent has not worked in Sweden at all during the reference period.

Point 2 of section "X. SWEDEN" concerns certain transitional provisions relating to Swedish pensions. Under Swedish legislation a person needs at least three years of residence in Sweden to become entitled to a guarantee pension. To become entitled to a full guarantee pension a person needs 40 years of residence in Sweden. However, all persons born in or before 1937, and who have been resident in Sweden for at least 10 years, even those who never have worked, are entitled to a full guarantee pension. This amendment provides that the aggregation principle does not apply to the guarantee pensions for such persons born in or before 1937.

Point 3 concerns the Swedish sickness benefit and activity allowance. Entitlement to these benefits is based on a person's income during a reference period. Amendment (a) specifies how the income should be calculated, when the person has worked in another Member State and amendment (b) specifies how the reference period should be determined when the person has worked in another Member State.

Point 4 clarifies the rules for calculating survivors' benefits where the qualification requirement cannot be met during the reference period in accordance with Swedish legislation. Point (a) sets out how to take into account pension rights acquired by the deceased person in Member States other than Sweden during the reference period for the earnings-related survivor's pension, while point (b) sets out how to take into account such rights in connection with the right to a widow's pension where the death occurred on or after 1 January 2003.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council 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 Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 308 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) To take account of changes in the legislation of certain Member States, certain annexes to Regulation (EEC) No 1408/71 need to be adapted.
- (2) Regulation (EEC) No 1408/71 should therefore be amended accordingly.
- (3) To ensure that the fundamental reform of the Netherlands health insurance scheme with effect from 1 January 2006 is correctly reflected in the European coordinating provisions from the date when it takes effect and thus provide legal certainty regarding the coordination of sickness benefits, it is necessary to provide that the amendments of Annexes I and VI to Regulation (EEC) No 1408/71 which relate to the reform of the Netherlands health care insurance scheme should apply retroactively with effect from 1 January 2006.
- (4) The Treaty does not provide powers other than those under Article 308 to take appropriate measures within the field of social security for persons other than employed persons,

¹ OJ C [...] [...], p. .

² OJ C [...] [...], p. .

³ OJ C [...] [...], p. .

HAVE ADOPTED THIS REGULATION:

Article 1

Annexes I, IIa, III, IV and VI to Regulation (EEC) No 1408/71 are amended as set out in the Annex to this Regulation.

Article 2

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

Point 2 and point 6(b) of the Annex, regarding the Netherlands, shall apply with effect from 1 January 2006.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

The annexes to Regulation (EEC) No 1408/71 are amended as follows:

1. In Annex I, Part I, section "X. SWEDEN" is replaced by the following:

"X. SWEDEN

Persons who are engaged in gainful employment and who pay their own contributions on this income pursuant to Chapter 3 of the Social Insurance Contributions Act (2000:980) shall be considered as self-employed."

2. In Annex I, Part II, section "Q. NETHERLANDS" is replaced by the following:

"Q. NETHERLANDS

For the purpose of determining entitlement to benefits pursuant to Chapters 1 and 4 of Title III of the Regulation, "member of the family" means a spouse, registered partner or child under the age of 18."

3. Annex IIa is amended as follows:

- (a) Section "M. LITHUANIA" is replaced by the following:

"M. LITHUANIA

- (a) Social assistance pension (Law of 2005 on State Social Allowances, Article 5).

- (b) Special relief compensation (Law of 2005 on State Social Allowances, Article 15).

- (c) Special transport compensation for the disabled who have mobility problems (Law of 2000 on Transport Compensation, Article 7)."

- (b) In section "V. SLOVAKIA", the current entry becomes point (a) and the following new point is added:

"(b) Social pension which has been awarded before 1 January 2004."

4. Annex III, Part A is amended as follows:

Point 187 is deleted.

5. Annex IV is amended as follows:

- (a) In Part A, in section "V. SLOVAKIA", the word "None" is replaced by the following:

"Invalidity pension for a person who became invalid as a dependent child and who is always deemed to have fulfilled the required period of insurance (Article 70(2), Article 72(3) and Article 73(3) and (4) of Act No 461/2003 on social insurance, as amended)."

- (b) In Part B, section "G. SPAIN" is replaced by the following:
"G. SPAIN
Scheme for lowering the retirement age of self-employed persons engaged in seafaring activities as described in Royal Decree No 2930/2004 of 30 December 2004."
- (c) Part C is amended as follows:
- (i) In section "V. SLOVAKIA", the word "None" is replaced by the following:
"Survivor's pension (widow's, widower's and orphan's pension) the amount of which is derived from the old-age pension, pre-retirement old-age pension or invalidity pension formerly paid to the deceased."
- (ii) Section "X. SWEDEN" is replaced by the following:
"X. SWEDEN
"Earnings-related old-age pensions (Act 1998:674) and guarantee pensions in the form of old-age pensions (Act 1998:702)"
- (d) Part D is amended as follows:
- (i) Point 1(i) is replaced by the following:
"(i) Swedish guarantee pension and guarantee supplement which tops up the full Swedish state pensions provided under the legislation on the state pension which applied before 1 January 1993, and the full state pension awarded under the transitional rules of the legislation applying from that date, and Swedish income-related sickness benefit and activity allowance."
- (ii) Point 2(i) is replaced by the following:
"(i) Sickness benefit and activity allowance in the form of guarantee allowance (Act 1962:381, as amended by Act 2001:489), survivor's pension, as calculated on the basis of insurance periods (Acts 2000:461 and 2000:462) and old-age pension in the form of guarantee pension calculated on the basis of previously credited periods (Act 1998:702)."
- (iii) Point 3(a) is replaced by the following:
"(a) Nordic Convention on Social Security of 18 August 2003"
and the following new point is added:
"(c) Social Security Agreement of 10 November 2000 between the Republic of Finland and the Grand Duchy of Luxembourg."

6. Annex VI is amended as follows:

- (a) In section "E. ESTONIA", the word "None" is replaced by the following:
"For the purpose of calculating parental benefit the periods of employment in Member States other than Estonia shall be considered to be based on the same average amount of social tax as paid during the periods of employment in Estonia, with which they are aggregated. If during the reference year the person has been employed only in other Member States the calculation of the benefit shall be considered to be based on the average social tax paid in Estonia between the reference year and the maternity leave."
- (b) In section "Q. NETHERLANDS", point 1 shall be replaced by the following:
- "1. Health care insurance
- (a) As regards entitlement to benefits in kind under Netherlands legislation, persons entitled to benefits in kind for the purpose of the implementation of Chapters 1 and II of Title III of this Regulation shall mean:
- (i) persons who, under Article 2 of the *Zorgverzekeringswet* (Health Care Insurance Act), are obliged to take out insurance under a health care insurer,
- and
- (ii) insofar as they are not already included under point (i), persons who are resident in another Member State and who, under the Regulation, are entitled to health care in their state of residence, the costs being borne by the Netherlands.
- (b) The persons referred to in point (a)(i) must, in accordance with the provisions of the *Zorgverzekeringswet* (Health Care Insurance Act), take out insurance with a health care insurer, and the persons referred to in point a(ii) must register with the *College voor zorgverzekeringen* (Health Care Insurance Board).
- (c) The provisions of the *Zorgverzekeringswet* (Health Care Insurance Act) and the *Algemene wet bijzondere ziektekosten* (Law on General Insurance Against Special Medical Expenses) concerning liability for the payment of contributions shall apply to the persons referred to under point (a) and the members of their families. In respect of family members, the contributions shall be levied on the person from whom the right to health care is derived.
- (d) The provisions of the *Zorgverzekeringswet* (Health Care Insurance Act) concerning late insurance shall apply *mutatis mutandis* in the event of late registration with the *College voor zorgverzekeringen* (Health Care Insurance Board) in respect of the persons referred to in point a(ii).
- (e) Persons entitled to benefits in kind by virtue of the legislation of a Member State other than the Netherlands who reside in the

Netherlands or stay temporarily in the Netherlands shall be entitled to benefits in kind in accordance with the policy offered to insured persons in the Netherlands by the institution of the place of residence or the place of stay, taking into account Article 11(1), (2) and (3) and Article 19(1) of the *Zorgverzekeringswet* (Health Care Insurance Act), as well as to benefits in kind provided for by the *Algemene wet bijzondere ziektekosten* (Law on General Insurance Against Special Medical Expenses).

- (f) For the purposes of Articles 27 to 34 of this Regulation, the following benefits shall be treated as pensions due under Netherlands legislation:
- pensions awarded under the Law of 6 January 1966 on pensions for civil servants and their survivors (*Algemene burgerlijke pensioenwet*) (Netherlands Civil Service Pensions Act);
 - pensions awarded under the Law of 6 October 1966 on pensions for military personnel and their survivors (*Algemene militaire pensioenwet*) (Military Pensions Act);
 - benefits for incapacity for work awarded under the Law of 7 June 1972 on benefits for incapacity for work for military personnel (*Wet arbeidsongeschiktheidsvoorziening militairen*) (Military Personnel Incapacity for Work Act);
 - pensions awarded under the Law of 15 February 1967 on pensions for employees of the *NV Nederlandse Spoorwegen* (Netherlands Railway Company) and their survivors (*Spoorwegpensioenwet*) (Railway Pensions Act);
 - pensions awarded under the *Reglement Dienstvoorwaarden Nederlandse Spoorwegen* (Regulation governing conditions of employment of the Netherlands Railway Company);
 - benefits awarded to retired persons before reaching the pensionable age of 65 years under a pension scheme designed to provide income for former employed persons in their old age, or benefits provided in the event of premature exit from the labour market under a scheme set up by the state or by an industrial agreement for persons aged 55 or over whereby the percentage benefit is set at at least 70% of the latest salary.
- (g) For the purposes of Chapters 1 and 4 of Title III of this Regulation, the no-claims refund provided for in the Netherlands scheme in the event of limited use of health care facilities shall be deemed to be a sickness benefit in cash."

- (c) In section "W. FINLAND", points 1 and 2 are deleted and the following point is inserted:

"1. When applying Article 46(2)(a) for the purpose of calculating earnings for the credited period under Finnish legislation on earnings-related pensions, where an individual has pension insurance periods based on employment in another Member State for part of the reference period under Finnish legislation, the earnings for the credited period shall be equivalent to the sum of earnings obtained during the part of the reference period in Finland divided by the number of months for which there were insurance periods in Finland during the reference period."

Points 3, 4 and 5 are renumbered points 2, 3 and 4.

- (d) Section "X. SWEDEN" is amended as follows:

- (i) Point 1 is replaced by the following:

"1. For the purpose of determining a parent's income during 240 days before the birth of the child under Chapter 4 section 6 of *Lag (1962:381) om allmän försäkring* (the National Insurance Act):

- (a) where during part of that period the parent had income in Sweden, and during another part of that period had income in another Member State, the parent's annual income in the other Member State shall be considered to be equal to the parent's annual income in Sweden;
- (b) where during that period a parent had no income in Sweden but had income in another Member State, this income shall be considered to be above the minimum guaranteed level (*lägsta nivå*) provided the parent has been economically active in that other Member State to the extent that the activity would have given rise to an income above the required minimum guaranteed level (*lägsta nivå*) if it had been carried out in Sweden."

- (ii) Point 2 is replaced by the following:

"2. The provisions of this Regulation on the aggregation of insurance periods shall not apply to the transitional provisions in the Swedish legislation on entitlement to guarantee pension for persons born in or before 1937 who have been resident in Sweden for a specified period before applying for a pension (Act 2000:798)."

- (iii) Point 3 is replaced by the following:

"3. For the purpose of calculating notional income for earnings-related sickness benefit and earnings-related activity allowance in accordance with Chapter 8 of *Lag (1962:381) om allmän försäkrings* (the National Insurance Act), the following shall apply:

- (a) where the insured person, during the reference period, has also been subject to the legislation of one or more other Member States on account of activity as an employed or self-employed person, income in the Member State(s) concerned shall be deemed to be equivalent to the insured person's average gross income in Sweden during the part of the reference period in Sweden, calculated by dividing the earnings in Sweden by the number of months over which those earnings accrued;
- (b) where the benefits are calculated pursuant to Article 40 of the Regulation and persons are not insured in Sweden, the reference period shall be determined in accordance with Chapter 8(2) and (8) of the abovementioned Act as if the person concerned were insured in Sweden. If the person concerned has no pension-generating income during this period under the Act on earnings-related old-age pension (1998:674), the reference period shall be permitted to run from the earlier point in time when the insured person had income from gainful employment in Sweden."

(iv) Point 4 is replaced by the following:

- "4. a) For the purpose of calculating notional pension income for earnings-related survivor's pension (Act 2000:461), if the requirement in Swedish legislation for pension entitlement in respect of at least three out of the five calendar years immediately preceding the insured person's death (reference period) is not met, account shall also be taken of insurance periods completed in other Member States as if they had been completed in Sweden. Insurance periods in other Member States shall be regarded as based on the average Swedish pension base. If the person concerned has only one year in Sweden with a pension base, each insurance period in another Member State shall be regarded as constituting the same amount.
- b) For the purpose of calculating notional pension credits for widow's pensions relating to deaths on or after 1 January 2003, if the requirement in Swedish legislation for pension credits in respect of at least two out of the four years immediately preceding the insured person's death (reference period) is not met and insurance periods were completed in another Member State during the reference period, those years shall be regarded as being based on the same pension credits as the Swedish year."