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### Legislation

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## I

(Acts whose publication is obligatory)

**REGULATION (EC) No 647/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 13 April 2005**

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

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 Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

(1) Certain amendments should be made to Regulations (EEC) No 1408/71 <sup>(3)</sup> and (EEC) No 574/72 <sup>(4)</sup>, in order to take account of recent developments in the of the Court of Justice of the European Communities, to facilitate the application of those Regulations and to reflect changes in the social security legislation of the Member States.

<sup>(1)</sup> OJ C 80, 30.3.2004, p. 118.

<sup>(2)</sup> Opinion of the European Parliament of 11 March 2004 (not yet published in the Official Journal), Council Common Position of 15 November 2004 (OJ C 38 E, 15.2.2005, p. 21) and Position of the European Parliament of 8 March 2005 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 149, 5.7.1971, p. 2. Regulation updated by Regulation (EC) No 118/97 (OJ L 28, 30.1.1997, p. 1), as last amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council (OJ L 100, 6.4.2004, p. 1) and repealed with effect from the date of entry into force of the implementing Regulation by Regulation (EC) No 883/2004 of the European Parliament and of the Council (OJ L 166, 30.4.2004, p. 1).

<sup>(4)</sup> OJ L 74, 27.3.1972, p. 1. Regulation as last amended by Regulation (EC) No 631/2004.

(2) In order to take account of recent developments in, the conclusions of judgments should be drawn, particularly in the cases of *Johann Franz Duchon v Pensionsversicherungsanstalt der Angestellten* <sup>(5)</sup> and *Office national de l'emploi v Calogero Spataro* <sup>(6)</sup>.

(3) The judgments in *Friedrich Jauch v Pensionsversicherungsanstalt der Arbeiter* and *Ghislain Leclere, Alina Deaconescu v Caisse nationale des prestations familiales* <sup>(7)</sup>, concerning the classification of special non-contributory cash benefits require, for reasons of legal safety, that the two cumulative criteria to be taken into account be specified so that such benefits can feature in Annex IIa to Regulation (EEC) No 1408/71. On this basis, there is a case for revising the Annex, taking into account legislative amendments in the Member States affecting this type of benefits, which are subject to specific coordination given their mixed nature. In addition, it is important to specify the transitional provisions relating to the benefit which was the subject of the judgment in the *Jauch* case in order to protect the rights of beneficiaries.

(4) On the basis of the case-law relating to the relationships between Regulation (EEC) No 1408/71 and the provisions of bilateral social security agreements, it is necessary to review Annex III to that Regulation. The entries in part A of Annex III are only justified in two cases: where they are more favourable to migrant workers <sup>(8)</sup>, or where they relate to specific and exceptional situations, usually linked to historical circumstances. In addition, it is not appropriate to accept entries in part B

<sup>(5)</sup> Judgment in Case C-290/00 [2002] ECR I-3567.

<sup>(6)</sup> Judgment in Case C-170/95 [1996] ECR I-2921.

<sup>(7)</sup> Judgments in Case C-215/99 [2001] ECR I-1901 and Case C-43/99 [2001] ECR I-4265.

<sup>(8)</sup> The principle of the most favourable treatment has been recalled by the ECJ in its Judgments in Case C-227/89 [1991] ECR I-323, Case C-475/93 [1995] ECR I-3813, Case C-75/99 [2000] ECR I-9399 and Case C-277/99 [2002] ECR I-1261.

except where exceptional and objective situations justify a derogation from Article 3(1) of that Regulation and from Articles 12, 39 and 42 of the Treaty <sup>(1)</sup>.

- (5) In order to facilitate the application of Regulation (EEC) No 1408/71, there should be certain provisions concerning, on the one hand, civil servants and persons treated as such and, on the other, members of the travelling or flying personnel of an undertaking which operates international transport services for passengers or goods by rail, road, air or inland waterway, and also to specify the methods for determining the average amount to take into account in the context of Article 23 of that Regulation.
- (6) The revision of Annex IIa to Regulation (EEC) No 1408/71 will lead to the removal of some existing entries and, taking into account legislative amendments in some Member States, to the inclusion of certain new entries. In the latter case, it is then for these Member States to consider the need for transitional arrangements or bilateral solutions to address the situation of persons whose acquired rights may be affected as a consequence,

to in paragraph 1, and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;

or

- (ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned,

and

- (b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone;

and

- (c) which are listed in Annex IIa.;

HAVE ADOPTED THIS REGULATION:

#### Article 1

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

1. Article 3 shall be amended as follows:
- (a) in paragraph 1, the words 'resident in the territory of one of the Member States' shall be deleted;
- (b) in paragraph 3, the words 'and the provisions of conventions concluded pursuant to Article 8(1)' shall be deleted;
2. Article 4(2a) shall be replaced by the following:

'2a. This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement has characteristics both of the social security legislation referred to in paragraph 1 and of social assistance.

"Special non-contributory cash benefits" means those:

- (a) which are intended to provide either:
- (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred

3. Article 7(2)(c) shall be replaced by the following:

'(c) certain provisions of social security conventions entered into by the Member States before the date of application of this Regulation provided that they are more favourable to the beneficiaries or if they arise from specific historical circumstances and their effect is limited in time if these provisions are listed in Annex III.;

4. Article 9a shall be replaced by the following:

'Article 9a

#### Prolongation of the reference period

If the legislation of a Member State subordinates recognition of entitlement to a benefit to the completion of a minimum period of insurance during a determined period preceding the contingency insured against (reference period) and lays down that periods during which benefits were paid under the legislation of that Member State or periods devoted to child-rearing in the territory of that Member State shall extend this reference period, the periods during which invalidity or old age pensions or sickness, unemployment, industrial accidents at work or occupational disease benefits were paid under the legislation of another Member State and periods devoted to child-rearing in the territory of another Member State shall also extend this reference period.;

<sup>(1)</sup> Judgments in Case C-214/94 [1996] ECR I-2253, Case C-308/93 [1996] ECR I-2097 and Case C-55/00 [2002] ECR I-413.

5. Article 10a(1) shall be replaced by the following:

'1. The provisions of Article 10 and of Title III shall not apply to the special non-contributory cash benefits referred to in Article 4(2a). The persons to whom this Regulation applies shall receive these benefits exclusively in the territory of the Member State in which they reside and under the legislation of that State, in so far as these benefits are mentioned in Annex IIa. Benefits shall be paid by, and at the expense of, the institution of the place of residence.;

6. in Article 23, the following paragraph shall be inserted:

'2a. The provisions of paragraphs 1 and 2 shall also apply where the legislation applied by the competent institution provides for a specific reference period and this period coincides, where appropriate, with the whole or part of the periods completed by the person concerned under the legislation of one or more other Member States.;

7. Article 35(2) shall be deleted;

8. Article 69(4) shall be deleted;

9. the following Articles shall be inserted:

'Article 95f

Transitional provisions relating to Annex II, section I, under the headings "D. GERMANY" and "R. AUSTRIA".

1. Annex II, section I, under the headings "D. GERMANY" and "R. AUSTRIA", as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (\*), shall not establish any entitlement for the period prior to 1 January 2005.

2. Any period of insurance and, where appropriate, any period of employment, self-employment or residence under the legislation of a Member State prior to 1 January 2005 shall be taken into consideration in determining acquired rights in accordance with the provisions of this Regulation.

3. Subject to the provisions of paragraph 1, a right shall be acquired under this Regulation even where it relates to a contingency that occurred prior to 1 January 2005.

4. Any benefit that has not been awarded or that has been suspended on account of the nationality or the residence of the person concerned shall, at the latter's request, be awarded or resumed from 1 January 2005, provided that the rights for which benefits were previously awarded did not give rise to a lump-sum payment.

5. The rights of persons to whom a pension was awarded prior to 1 January 2005 may, on the application of the persons concerned, be reviewed, taking account of the provisions of

this Regulation. This shall also apply to other benefits pursuant to Article 78.

6. If an application referred to in paragraph 4 or 5 is submitted within two years from 1 January 2005, 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.

7. If the application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period after 1 January 2005, rights which have not been forfeited or 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.

Article 95g

Transitional provisions relating to the deletion, in Annex IIa, of the entry relating to the Austrian care allowance (Pflegegeld).

In the case of applications for care allowances under Austrian federal law (Bundespflegegeldgesetz) submitted not later than 8 March 2001 on the basis of Article 10a(3) of this Regulation, this provision shall continue to apply as long as the beneficiary of the care allowance continues to reside in Austria after 8 March 2001.

(\* ) OJ L 117, 4.5.2005, p. 1.'

10. Annexes II, IIa, III, IV and VI shall be amended in accordance with Annex I to this Regulation.

Article 2

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

1. Article 4(11) shall be deleted;

2. the following Article shall be inserted:

'Article 10c

Formalities laid down in the event of the application of Article 13(2)(d) of the Regulation to civil servants and persons treated as such.

For the application of Article 13(2)(d), the institution designated by the competent authority of the Member State whose legislation is applicable shall issue a certificate stating that the civil servant or the person treated as such is subject to its legislation.;

3. Article 12a shall be amended as follows:

(a) the title shall be replaced by the following:

'Rules applicable in respect of the persons referred to in Article 14(2) and (3), Article 14a(2) to (4) and Article 14c of the Regulation who normally carry out an employed or self-employed activity in the territory of two or more Member States';

(b) the introductory sentence shall be replaced by the following:

'For the application of the provisions of Article 14(2) and (3), Article 14a(2) to (4) and Article 14c of the Regulation, the following rules shall apply:';

(c) the following paragraph shall be inserted:

'1a. Where, in accordance with Article 14(2)(a) of the Regulation, a person who is a member of the travelling or flying personnel of an international transport undertaking is subject to the legislation of the Member State in whose territory the registered office or place of business of the undertaking, or the branch or permanent establishment employing him, is located, or where he resides and is predominantly employed, the institution designated by the competent authority of that Member

State shall issue to the person concerned a certificate stating that he is subject to its legislation.';

4. Article 32a shall be deleted;

5. The Annexes shall be amended in accordance with Annex II to this Regulation.

#### *Article 3*

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

Article 1(9), as far as Article 95f of Regulation (EEC) No 1408/71 is concerned, Annex I, points (1)(a) and (1)(b) and Annex II, points (2) and (4) shall apply from 1 January 2005.

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

Done at Strasbourg, 13 April 2005.

*For the European Parliament*

*The President*

J. P. BORELL FONTELLES

*For the Council*

*The President*

N. SCHMIT

## ANNEX I

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

1. Annex II shall be amended as follows:
  - (a) in section I, under the heading 'D. GERMANY', the text shall be replaced by the words: 'does not apply';
  - (b) in section I, under the heading 'R. AUSTRIA', the text shall be replaced by the words: 'does not apply';
  - (c) section II shall be amended as follows:
    - (i) under the heading 'G. SPAIN', the word 'None' shall be replaced by the following:

'Childbirth allowances (one-off cash benefits for the birth of the third child and subsequent children and one-off cash benefits in the event of a multiple birth)';
    - (ii) under the heading 'H. FRANCE', the text shall be replaced by the following:

'Birth or adoption grant (early childhood benefit)';
    - (iii) under the heading 'W. FINLAND', the text shall be replaced by the following:

'Maternity package, maternity lump-sum grant and assistance in the form of a lump sum intended to offset the cost of international adoption pursuant to the Maternity Grant Act';
  - (d) in section III, under the heading 'D. GERMANY', point b shall be deleted;
2. Annex IIa shall be replaced by the following text that includes, unchanged, the entries as set out in the 2003 Act of Accession:

'ANNEX IIa

**Special non-contributory cash benefits**

*Article 10a*

A. BELGIUM

- (a) Income replacement allowance (Law of 27 February 1987)
- (b) Guaranteed income for elderly persons (Law of 22 March 2001).

B. CZECH REPUBLIC

Social allowance (State Social Support Act No 117/1995 Sb.).

C. DENMARK

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

D. GERMANY

Basic subsistence income for the elderly and for persons with reduced earning capacity under Chapter 4 of Book XII of the Social Code.

E. ESTONIA

- (a) Disabled adult allowance (Social Benefits for Disabled Persons Act of 27 January 1999)
- (b) State unemployment allowance (Social Protection of the Unemployed Act of 1 October 2000).

F. GREECE

Special benefits for the elderly (Law 1296/82).

## G. SPAIN

- (a) Minimum income guarantee (Law No 13/82 of 7 April 1982)
- (b) Cash benefits to assist the elderly and invalids unable to work (Royal Decree No 2620/81 of 24 July 1981)
- (c) Non-contributory invalidity and retirement pensions as provided for in Article 38(1) of the Consolidated Text of the General Law on Social Security, approved by Royal Legislative Decree No 1/1994 of 20 June 1994
- (d) Allowances to promote mobility and to compensate for transport costs (Law No 13/1982 of 7 April 1982).

## H. FRANCE

- (a) Supplementary allowances of the Special Invalidity Fund and the Old Age Solidarity Fund (Law of 30 June 1956, codified in Book VIII of the Social Security Code)
- (b) Disabled adults' allowance (Law of 30 June 1975, codified in Book VIII of the Social Security Code)
- (c) Special allowance (Law of 10 July 1952, codified in Book VIII of the Social Security Code).

## I. IRELAND

- (a) Unemployment assistance (Social Welfare (Consolidation) Act 1993, Part III, Chapter 2)
- (b) Old age (non-contributory) pension (Social Welfare (Consolidation) Act 1993, Part III, Chapter 4)
- (c) Widow's (non-contributory) pension and widower's (non-contributory) pension (Social Welfare (Consolidation) Act 1993, Part III, Chapter 6 as amended by Part V of the Social Welfare Act 1997)
- (d) Disability allowance (Social Welfare Act 1996, Part IV)
- (e) Mobility allowance (Health Act 1970, Section 61)
- (f) Blind pension (Social Welfare (Consolidation) Act 1993, Part III, Chapter 5).

## J. ITALY

- (a) Social pensions for persons without means (Law No 153 of 30 April 1969)
- (b) Pensions and allowances for the civilian disabled or invalids (Laws No 118 of 30 March 1974, No 18 of 11 February 1980 and No 508 of 23 November 1988)
- (c) Pensions and allowances for the deaf and dumb (Laws No 381 of 26 May 1970 and No 508 of 23 November 1988)
- (d) Pensions and allowances for the civilian blind (Laws No 382 of 27 May 1970 and No 508 of 23 November 1988)
- (e) Benefits supplementing the minimum pensions (Laws No 218 of 4 April 1952, No 638 of 11 November 1983 and No 407 of 29 December 1990)
- (f) Benefits supplementing disability allowances (Law No 222 of 12 June 1984)
- (g) Social allowance (Law No 335 of 8 August 1995)
- (h) Social increase (Article 1(1) and (12) of Law No 544 of 29 December 1988 and successive amendments).

## K. CYPRUS

- (a) Social Pension (Social Pension Law of 1995 (Law 25(I)/95), as amended)
- (b) Severe motor disability allowance (Council of Ministers' Decisions Nos 38210 of 16 October 1992, 41370 of 1 August 1994, 46183 of 11 June 1997 and 53675 of 16 May 2001)
- (c) Special grant to blind persons (Special Grants Law of 1996 (Law 77(I)/96), as amended).

## L. LATVIA

- (a) State Social Security Benefit (Law on Social Assistance of 26 October 1995)
- (b) Allowance for the compensation of transportation expenses for disabled persons with restricted mobility (Law on Social Assistance of 26 October 1995).

## M. LITHUANIA

- (a) Social pension (Law of 1994 on Social Pensions)
- (b) Special transport compensation for the disabled who have mobility problems (Law of 2000 on Transport Compensations, Article 7).

## N. LUXEMBOURG

Income for the seriously disabled (Article 1(2), Law of 12 September 2003), with the exception of persons recognised as being disabled workers and employed on the mainstream labour market or in a sheltered environment.

## O. HUNGARY

- (a) Invalidity annuity (Decree No 83/1987 (XII 27) of the Council of Ministers on Invalidity Annuity)
- (b) Non-contributory old age allowance (Act III of 1993 on Social Administration and Social Benefits)
- (c) Transport allowance (Government Decree No 164/1995 (XII 27) on Transport Allowances for Persons with Severe Physical Handicap).

## P. MALTA

- (a) Supplementary allowance (Section 73 of the Social Security Act (Cap. 318) 1987)
- (b) Age pension (Social Security Act (Cap. 318) 1987).

## Q. NETHERLANDS

- (a) Disablement Assistance Act for Handicapped Young Persons, of 24 April 1997 (Wajong)
- (b) Supplementary Benefits Act of 6 November 1986 (TW).

## R. AUSTRIA

Compensatory supplement (Federal Act of 9 September 1955 on General Social Insurance — ASVG, Federal Act of 11 October 1978 on Social insurance for persons engaged in trade and commerce — GSVG and Federal Act of 11 October 1978 on Social insurance for farmers — BSVG).

## S. POLAND

Social pension (Act of 29 November 1990 on social assistance).

## T. PORTUGAL

- (a) Non-contributory State old-age and invalidity pension (Decree-Law No 464/80 of 13 October 1980)
- (b) Non-contributory widowhood pension (Regulatory Decree No 52/81 of 11 November 1981).

## U. SLOVENIA

- (a) State pension (Pension and Disability Insurance Act of 23 December 1999)
- (b) Income support for pensioners (Pension and Disability Insurance Act of 23 December 1999)
- (c) Maintenance allowance (Pension and Disability Insurance Act of 23 December 1999).

## V. SLOVAKIA

Adjustment of pensions as the sole source of income (Act No 100/1988 Zb.).



## W. FINLAND

- (a) Disability allowance (Disability Allowance Act, 124/88)
- (b) Child care allowance (Child Care Allowance Act, 444/69)
- (c) Housing allowance for pensioners (Act concerning the Housing allowance for pensioners, 591/78)
- (d) Labour market support (Act on Unemployment Benefits 1290/2002)
- (e) Special assistance for immigrants (Act on Special Assistance for Immigrants, 1192/2002).

## X. SWEDEN

- (a) Housing supplements for persons receiving a pension (Law 2001: 761)
- (b) Financial support for the elderly (Law 2001: 853)
- (c) Disability allowance and care allowance for disabled children (Law 1998: 703).

## Y. UNITED KINGDOM

- (a) State Pension credit (State Pension Credit Act 2002)
- (b) Income-based allowances for jobseekers (Jobseekers Act 1995, 28 June 1995, Sections 1, (2)(d)(ii) and 3, and Jobseekers (Northern Ireland) Order 1995 of 18 October 1995, Articles 3(2)(d)(ii) and 5)
- (c) Income Support (Social Security Act 1986 of 25 July 1986, Section 20 to 22 and Section 23, and Social Security (Northern Ireland) Order 1986 of 5 November 1986, Articles 21 to 24)
- (d) Disability Living Allowance (Disability Living Allowance and Disability Working Allowance Act 1991 of 27 June 1991, Section 1, and Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 of 24 July 1991, Article 3)
- (e) Attendance Allowance (Social Security Act 1975 of 20 March 1975, Section 35, and Social Security (Northern Ireland) Act 1975 of 20 March 1975, Section 35)
- (f) Carer's Allowance (Social Security Act 1975 of 20 March 1975, Section 37, and Social Security (Northern Ireland) Act 1975 of 20 March 1975, Section 37).;

## 3. Annex III shall be amended as follows:

- (a) the following paragraph shall be introduced at the beginning of the Annex under 'General comments':

'3. Account being taken of the provisions of Article 6 of this Regulation, it is to be noted that the provisions of bilateral Conventions which do not fall within the scope of this Regulation and which remain in force between Member States are not listed in this Annex, *inter alia*, provisions providing for aggregation of insurance periods fulfilled in a third country.;

- (b) in part A, the following points shall be deleted:

Points 2, 3(b), 5, 6, 7, 8, 9, 13, 16, 17, 19, 22, 23, 24, 48, 50, 51, 52, 53, 54, 58, 61, 62, 64, 69, 71(a) and (c), 73(a) and (b), 74, 75, 83(a), (b), (c), (d), (e), (f), (g), 85, 88, 89, 111, 112, 113, 114, 118, 121, 122, 124, 127, 128, 129, 130, 131, 132, 136, 139, 140, 145, 146, 147, 148, 149, 153, 156, 157, 159, 162, 163, 164, 165, 169, 172, 173, 175, 178, 179, 184, 188, 190, 193, 194, 195, 237, 238, 240, 243, 244, 245, 265, 270, 271, 272, 274, 277, 278, 279, 288, 289, 299, 300;

- (c) in part A, point 3(a) (Belgium — Germany) the text shall be replaced by the following:

'Articles 3 and 4 of the Final Protocol of 7 December 1957 to the General Convention of that date, as in the Complementary Protocol of 10 November 1960 (reckoning of insurance periods completed in some border regions before, during and after the Second World War);

- (d) in part A, point 67 (Denmark — Finland) the text shall be replaced by the following:

'Article 10 of the Nordic Convention on Social Security of 15 June 1992, concerning coverage of extra travel expenses in case of sickness during stay in another Nordic country making a more expensive return travel to the country of residence necessary';

- (e) in part A, point 68 (Denmark — Sweden) the text shall be replaced by the following:

'Article 10 of the Nordic Convention on Social Security of 15 June 1992, concerning coverage of extra travel expenses in case of sickness during stay in another Nordic country making a more expensive return travel to the country of residence necessary';

- (f) in part A, point 71(b) (Germany — Greece) the text shall be replaced by the following:
- ‘Articles 8(1), (2)(b) and (3), 9 to 11 and Chapters I and IV, in so far as they concern these Articles, of the Convention on unemployment insurance of 31 May 1961, together with the note in the minutes of 14 June 1980 (reckoning of insurance periods for unemployment benefits in case of transfer of residence from one State to another)’;
- (g) in part A, point 72 (Germany — Spain) the text shall be replaced by the following:
- ‘Article 45(2) of the Social Security Convention of 4 December 1973 (representation by diplomatic and consular authorities)’;
- (h) in part A, point 73 (Germany — France) the text of paragraphs (c), (d), (e) and (f) shall be replaced by the following:
- (a) Complementary Agreement No 4 of 10 July 1950 to the General Convention of the same date, as in Supplementary Agreement No 2 of 18 June 1955 (reckoning of periods of insurance completed between 1 July 1940 and 30 June 1950);
- (b) Title I of the said Supplementary Agreement No 2 (reckoning of periods of insurance completed before 8 May 1945);
- (c) points 6, 7 and 8 of the General Protocol of 10 July 1950 to the General Convention of the same date (administrative arrangements);
- (d) Titles II, III and IV of the Agreement of 20 December 1963 (social security in the Saar)’.
- (i) in part A, point 79 (Germany — Luxembourg) the text shall be replaced by the following:
- ‘Articles 4, 5, 6 and 7 of the Treaty of 11 July 1959 (reckoning of insurance periods completed between September 1940 and June 1946)’;
- (j) in part A, point 83 (Germany — Austria) the text of paragraphs (h) and (i) shall be replaced by the following:
- ‘Article 1(5) and Article 8 of the Convention on Unemployment Insurance of 19 July 1978 and Article 10 of the Final Protocol to this Convention (granting of unemployment allowances to frontier workers by the previous State of employment) shall continue to apply to persons who have exercised an activity as a frontier worker on or before 1 January 2005 and become unemployed before 1 January 2011’;
- (k) in part A, point 90 (Germany — United Kingdom) the text of paragraphs (a), (b) and (c) shall be replaced by the following:
- (a) Article 7(5) and (6) of the Convention on social security of 20 April 1960 (legislation applicable to civilians serving the military forces);
- (b) Article 5(5) and (6) of the Convention on unemployment insurance of 20 April 1960 (legislation applicable to civilians serving the military forces)’;
- (l) in part A, point 142 (Spain — Portugal) the text shall be replaced by the following:
- ‘Article 22 of the General Convention of 11 June 1969 (export of unemployment benefits)’;
- (m) in part A, point 180 (Ireland — United Kingdom) the text shall be replaced by the following:
- ‘Article 8 of the Agreement of 14 September 1971 on social security (concerning the transfer and reckoning of certain disability credits)’;
- (n) in part A, point 267 (Netherlands — Portugal) shall be replaced by the following:
- ‘Article 31 of the Convention of 19 July 1979 (export of unemployment benefits)’;
- (o) in part A, point 298 (Finland — Sweden) the text shall be replaced by the following:
- ‘Article 10 of the Nordic Convention on Social Security of 15 June 1992, concerning coverage of extra travel expenses in case of sickness during stay in another Nordic country making a more expensive return travel to the country of residence necessary’;
- (p) in part B, the following entries shall be deleted:
- 2, 3, 5, 6, 7, 8, 9, 13, 16, 17, 19, 22, 23, 24, 48, 50, 51, 52, 53, 54, 58, 61, 62, 64, 67, 68, 69, 71, 72, 73, 74, 75, 79, 82, 83, 85, 88, 89, 90, 111, 112, 113, 114, 118, 121, 122, 124, 127, 128, 129, 130, 131, 132, 136, 139, 140, 142, 145, 146, 147, 148, 149, 153, 156, 157, 159, 162, 163, 164, 165, 169, 172, 173, 175, 178, 179, 180, 184, 187, 188, 190, 193, 194, 195, 237, 238, 240, 243, 244, 245, 265, 267, 270, 271, 272, 274, 277, 278, 279, 288, 289, 290, 298, 299, 300;

4. in Annex IV, section B shall be amended as follows:

(a) under the heading 'D. GERMANY', the text shall be replaced by the following:

'Farmers' old-age insurance (Alterssicherung der Landwirte)';

(b) under the heading 'J. ITALY', the text shall be replaced by the following:

'Pension insurance schemes for (Assicurazione pensioni per):

- medical practitioners (medici)
- pharmacists (farmacisti)
- veterinarians (veterinari)
- nurses, medical auxiliaries, children's nurses (infermieri, assistenti sanitari, vigilatrici infanzia)
- psychologists (psicologi)
- engineers and architects (ingegneri ed architetti)
- surveyors (geometri)
- solicitors (avvocati)
- economists (dottori commercialisti)
- accountants and business experts (ragionieri e periti commerciali)
- employment consultants (consulenti del lavoro)
- notaries (notai)
- customs agents (spedizionieri doganali)
- biologists (biologi)
- agricultural technicians and scientists (agrotecnici e periti agrari)
- sales representatives (agenti e rappresentanti di commercio)
- journalists (giornalisti)
- industrial technicians (periti industriali)
- actuaries, chemists, agronomists, foresters, geologists (attuari, chimici, dottori agronomi, dottori forestali, geologi)';

(c) under the heading 'R. AUSTRIA', the text shall be replaced by the following:

'Pension schemes of pension institutions of liberal profession associations (Kammern der Freien Berufe)';

5. Annex VI shall be amended as follows:

(a) under the heading 'C. DENMARK', point 6 (b) shall be deleted;

(b) under the heading 'C. DENMARK', the following text shall be added:

'11. The temporary benefit for unemployed persons who have been admitted to the "flexible-job" scheme (ledighedsydelse) (Law No 455 of 10 June 1997) is covered by Title III, chapter 6 (Unemployment benefits). As regards unemployed persons going to another Member State, Articles 69 and 71 of this Regulation will be applicable when this Member State has similar employment schemes for the same category of persons.';

(c) under the heading 'D. GERMANY', points 3, 11 and 17 shall be deleted and the following points shall be added:

'24. For the calculation of the theoretical amount referred to in Article 46(2)(a) of the Regulation, in pension schemes for liberal professions, the competent institution shall take as the basis, in respect of each of the years of insurance completed under the legislation of any other Member State, the average annual pension entitlement acquired during the period of membership of the competent institution through the payment of contributions.

25. Article 79a of the Regulation shall apply mutatis mutandis to the calculation of orphans' pensions and increases or supplements in respect of children from pension schemes for liberal professions.';

- (d) under the heading 'H. FRANCE', the text in point 7 shall be replaced by the following:  
'Notwithstanding Articles 73 and 74 of this Regulation, the housing allowances and the supplement for childcare of the parents' choice (early childhood benefit) shall be granted only to persons concerned and to members of their families residing in French territory.');
- (e) under the heading 'I. IRELAND', point 11 shall be deleted;
- (f) under the heading 'R. AUSTRIA', the following points shall be added:
- '8. For the calculation of the theoretical amount in accordance with Article 46(2)(a) of this Regulation concerning benefits or parts of benefits of a pension scheme of the liberal profession associations (Kammern der Freien Berufe), financed exclusively by the funded scheme method or based on a pension account system, the competent institution shall take into account, in respect of each month of insurance completed under the legislation of any other Member State, capital in proportion to the capital actually accrued in the pensions scheme concerned, or considered to have accrued in the pension account scheme, and the number of months of the insurance periods in the pension scheme concerned.
9. Article 79a of the Regulation shall apply mutatis mutandis to the calculation of orphans' pensions and increases or supplements to pensions in respect of children from a pension scheme of the liberal profession associations (Kammern der Freien Berufe).';
- (g) under the heading 'Y. UNITED KINGDOM', the text shall be amended as follows:
- (i) in point 2(b), (i) and (ii) shall be replaced by the following:
- (i) a spouse or former spouse where a claim is made by:
- a married woman, or
  - a person whose marriage has terminated otherwise than by the death of the spouse,
- or
- (ii) a former spouse, where a claim is made by:
- a widower who immediately before pensionable age is not entitled to widowed parent's allowance, or
  - a widow who immediately before pensionable age is not entitled to widowed mother's allowance, widowed parent's allowance or widow's pension, or who is only entitled to an age-related widow's pension calculated pursuant to Article 46(2) of the Regulation, and for this purpose "age-related widow's pension" means a widow's pension payable at a reduced rate in accordance with section 39(4) of the Social Security Contributions and Benefits Act 1992.;
- (ii) point 22 shall be deleted.
-

## ANNEX II

The Annexes to Regulation (EEC) No 574/72 are hereby amended as follows:

1. in Annex 2, under the heading 'X. SWEDEN', point 2 shall be replaced by the following:  
'2. For unemployment benefits: Inspektionen för arbetslöshetsförsäkringen (Swedish Unemployment Insurance Board);
  2. in Annex 4, under the heading 'D. GERMANY', the following point shall be added:  
'9. Pension schemes for liberal professions:  
Arbeitsgemeinschaft Berufsständischer Versorgungseinrichtungen (Association of Occupational Pension Institutions), Köln';
  3. in Annex 10, under the heading 'C. DENMARK', point 1 first indent shall be replaced by the following:  
'1. For the purposes of applying Articles 10c, 11(1), 11a(1), 12a, 13(2) and (3), 14(1), (2) and (3) of the implementing Regulation: Den Sociale Sikringsstyrelse (Social Security Department), København';
  4. in Annex 10, under the heading 'R. AUSTRIA', point 1 shall be replaced by the following:  
'1. For the application of Article 14(1)(b), Article 14a(1)(b) and Article 17 of the Regulation:  
Bundesminister für soziale Sicherheit, Generationen und Konsumentenschutz (Federal Minister for Social Security, Generations and Consumer Protection), in agreement with the respective public administration with regard to special schemes for civil servants and in agreement with the respective pension institution with regard to pension schemes of the liberal profession associations (Kammern der Freien Berufe);
  5. Annex 11 shall be deleted.
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**REGULATION (EC) No 648/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 13 April 2005  
amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 26, 95, 133 and 135 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

(1) Council Regulation (EEC) No 2913/92 <sup>(3)</sup> lays down the rules for the customs treatment of goods that are imported or to be exported.

(2) It is necessary to establish an equivalent level of protection in customs controls for goods brought into or out of the customs territory of the Community. In order to achieve this objective, it is necessary to establish an equivalent level of customs controls in the Community and to ensure a harmonised application of customs controls by the Member States, which have principal responsibility for applying these controls. Such controls should be based upon commonly agreed standards and risk criteria for the selection of goods and economic operators in order to minimise the risks to the Community and its citizens and to the Community's trading partners. Member States and the Commission should therefore introduce a Community-wide risk management framework to support a common approach so that priorities are set effectively and resources are allocated efficiently with the aim of maintaining a proper balance between customs controls and the facilitation of legitimate trade. Such a framework should also provide for common criteria and harmonised requirements for authorised economic operators and ensure a harmonised

application of such criteria and requirements. The establishment of a risk management framework common to all Member States should not prevent Member States from controlling goods by spot-checks.

(3) Member States should grant the status of authorised economic operator to any economic operator that meets common criteria relating to the operator's control systems, financial solvency and compliance record. The status of authorised economic operator, once granted by one Member State, should be recognised by the other Member States, but does not confer the right to benefit automatically in the other Member States from simplifications provided for in the customs rules. However, the other Member States should allow the use of simplifications by authorised economic operators provided they meet all the specific requirements for use of the particular simplifications. In considering a request to use simplifications, the other Member States need not repeat the evaluation of the operator's control systems, financial solvency or compliance record, which will already have been completed by the Member State that granted the operator the status of authorised economic operator, but should ensure that any other specific requirements for use of the particular simplification are met. The use of simplifications in other Member States may also be coordinated by agreement between the customs authorities concerned.

(4) Simplifications under the customs rules should continue to be without prejudice to customs controls as defined within the Community Customs Code, notably relating to safety and security. Such controls are the responsibility of the customs authorities and, while the status of authorised economic operator should be recognised by those authorities as a factor during risk analysis and in the granting of any facilitation to the economic operator with regard to controls relating to safety and security, the right to control should remain.

(5) Risk-related information on import and export goods should be shared between the competent authorities of the Member States and the Commission. To this end, a common, secure system should be set up, enabling the competent authorities to access, transfer and exchange this information in a timely and effective manner. Such information may also be shared with third countries where an international agreement so provides.

<sup>(1)</sup> OJ C 110, 30.4.2004, p. 72.

<sup>(2)</sup> Opinion of the European Parliament of 20 April 2004 (not yet published in the Official Journal), Council Common Position of 29 November 2004 (OJ C 38 E, 15.2.2005, p. 36) and Position of the European Parliament of 23 February 2005 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 302, 19.10.1992, p. 1. Regulation as last amended by the 2003 Act of Accession.

- (6) The conditions under which information provided by economic operators to customs may be disclosed to other authorities in the same Member State, other Member States, to the Commission, or to authorities in third countries should be specified. For this purpose, it should be clearly indicated that Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(2)</sup> apply to the processing of personal data by the competent authorities as well as by any other authority receiving data pursuant to the Community Customs Code.
- (7) In order to allow for appropriate risk-based controls, it is necessary to establish the requirement of pre-arrival or pre-departure information for all goods brought into or out of the customs territory of the Community, except for goods passing through by air or ship without a stop within this territory. Such information should be available before the goods are brought into or out of the customs territory of the Community. Different time-frames and rules may be set according to the type of goods, of transport or of economic operator or where international agreements provide for special security arrangements. In order to avoid security loopholes, this requirement should also be introduced with regard to goods brought into or out of a free zone.
- (8) Regulation (EEC) No 2913/92 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION

#### Article 1

Regulation (EEC) No 2913/92 is hereby amended as follows:

1. Article 4 shall be amended as follows:

— the following points shall be inserted:

‘(4a) “Customs office of entry” means the customs office designated by the customs authorities in accordance with the customs rules to which goods brought into the customs territory of the Community must be conveyed without delay and at which they will be subject to appropriate risk-based entry controls;

(4b) “Customs office of import” means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods brought into the customs territory of the Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be carried out;

(4c) “Customs office of export” means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods leaving the customs territory of the Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be completed;

(4d) “Customs office of exit” means the customs office designated by the customs authorities in accordance with the customs rules to which goods must be presented before they leave the customs territory of the Community and at which they will be subject to customs controls relating to the completion of exit formalities, and appropriate risk-based controls.’;

— point 14 shall be replaced by the following:

‘(14) “Customs controls” means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status; such acts may include examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts.’;

— The following points shall be added:

‘(25) “Risk” means the likelihood of an event occurring, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, which

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

<sup>(2)</sup> OJ L 8, 12.1.2001, p. 1.

— prevents the correct application of Community or national measures, or

- compromises the financial interests of the Community and its Member States, or
- poses a threat to the Community's security and safety, to public health, to the environment or to consumers.

(26) "Risk management" means the systematic identification of risk and implementation of all measures necessary for limiting exposure to risk. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regular monitoring and review of the process and its outcomes, based on international, Community and national sources and strategies.;

2. the following Section and Article shall be inserted:

'Section 1A

### **Authorised economic operators**

*Article 5a*

1. Customs authorities, if necessary following consultation with other competent authorities, shall grant, subject to the criteria provided for in paragraph 2, the status of "authorised economic operator" to any economic operator established in the customs territory of the Community.

An authorised economic operator shall benefit from facilitations with regard to customs controls relating to security and safety and/or from simplifications provided for under the customs rules.

The status of authorised economic operator shall, subject to the rules and conditions laid down in paragraph 2, be recognised by the customs authorities in all Member States, without prejudice to customs controls. Customs authorities shall, on the basis of the recognition of the status of authorised economic operator and provided that the requirements relating to a specific type of simplification provided for in Community customs legislation are fulfilled, authorise the operator to benefit from that simplification.

2. The criteria for granting the status of authorised economic operator shall include:

- an appropriate record of compliance with customs requirements,
- a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls,
- where appropriate, proven financial solvency, and
- where applicable, appropriate security and safety standards.

The committee procedure shall be used to determine the rules:

- for granting the status of authorised economic operator,
- for granting authorisations for the use of simplifications,
- for establishing which customs authority is competent to grant such status and authorisations,
- for the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety, taking into account the rules for common risk management,
- for consultation with, and provision of information to, other customs authorities;

and the conditions under which:

- an authorisation may be limited to one or more Member States,
- the status of authorised economic operator may be suspended or withdrawn, and
- the requirement of being established in the Community may be waived for specific categories of authorised economic operator, taking into account, in particular, international agreements.;

3. Article 13 shall be replaced by the following:

*Article 13*

1. Customs authorities may, in accordance with the conditions laid down by the provisions in force, carry out all the controls they deem necessary to ensure that customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status are correctly applied. Customs controls for the purpose of the correct application of Community legislation may be carried out in a third country where an international agreement provides for this.

2. Customs controls, other than spot-checks, shall be based on risk analysis using automated data processing techniques, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national, Community and, where available, international level.

The committee procedure shall be used for determining a common risk management framework, and for establishing common criteria and priority control areas.

Member States, in cooperation with the Commission, shall establish a computer system for the implementation of risk management.

3. Where controls are performed by authorities other than the customs authorities, such controls shall be performed in close coordination with the customs authorities, wherever possible at the same time and place.



4. In the context of the controls provided for in this Article, customs and other competent authorities, such as veterinary and police authorities, may communicate data received, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, between each other and to the customs authorities of the Member States and to the Commission where this is required for the purposes of minimising risk.

Communication of confidential data to the customs authorities and other bodies (e.g. security agencies) of third countries shall be allowed only in the framework of an international agreement and provided that the data protection provisions in force, in particular Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (\*) and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (\*\*) are respected.

(\*) OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

(\*\*) OJ L 8, 12.1.2001, p. 1.

4. Article 15 shall be replaced by the following:

*'Article 15*

All information which is by nature confidential or which is provided on a confidential basis shall be covered by the duty of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged to do so pursuant to the provisions in force, particularly in connection with legal proceedings. Any disclosure or communication of information shall fully comply with prevailing data protection provisions, in particular Directive 95/46/EC and Regulation (EC) No 45/2001.;

5. in Article 16 'control by the customs authorities' shall be replaced by 'customs controls';

6. the following Articles shall be inserted under Chapter 1 of Title III:

*'Article 36a*

1. Goods brought into the customs territory of the Community shall be covered by a summary declaration,

with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory.

2. The summary declaration shall be lodged at the customs office of entry.

Customs authorities may allow the summary declaration to be lodged at another customs office, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of entry.

Customs authorities may accept, instead of the lodging of the summary declaration, the lodging of a notification and access to the summary declaration data in the economic operator's computer system.

3. The summary declaration shall be lodged before the goods are brought into the customs territory of the Community.

4. The committee procedure shall be used to establish:

- the time limit by which the summary declaration is to be lodged before the goods are brought into the customs territory of the Community,
- the rules for exceptions from, and variations to, the time limit referred to in the first indent, and
- the conditions under which the requirement for a summary declaration may be waived or adapted,

in accordance with the specific circumstances and for particular types of goods traffic, modes of transport and economic operators and where international agreements provide for special security arrangements.

*Article 36b*

1. The committee procedure shall be used to establish a common data set and format for the summary declaration, containing the particulars necessary for risk analysis and the proper application of customs controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices.

2. The summary declaration shall be made using a data processing technique. Commercial, port or transport information may be used, provided that it contains the necessary particulars.

Customs authorities may accept paper-based summary declarations in exceptional circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using a data processing technique.

3. The summary declaration shall be lodged by the person who brings the goods, or who assumes responsibility for the carriage of the goods into the customs territory of the Community.

4. Notwithstanding the obligation of the person referred to in paragraph 3, the summary declaration may be lodged instead by:

- (a) the person in whose name the person referred to in paragraph 3 acts; or
- (b) any person who is able to present the goods in question or to have them presented to the competent customs authority; or
- (c) a representative of one of the persons referred to in paragraph 3 or points (a) or (b).

5. The person referred to in paragraphs 3 and 4 shall, at his request, be authorised to amend one or more particulars of the summary declaration after it has been lodged. However, no amendment shall be possible after the customs authorities:

- (a) have informed the person who lodged the summary declaration that they intend to examine the goods; or
- (b) have established that the particulars in questions are incorrect; or
- (c) have allowed the removal of the goods.

#### Article 36c

1. The customs office of entry may waive the lodging of a summary declaration in respect of goods for which, before expiry of the time limit referred to in Article 36a(3) or (4), a customs declaration is lodged. In such case, the customs declaration shall contain at least the particulars necessary for a summary declaration and, until such time as the former is accepted in accordance with Article 63, it shall have the status of a summary declaration.

Customs authorities may allow the customs declaration to be lodged at a customs office of import different from the customs office of entry, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of entry.

2. Where the customs declaration is lodged other than by use of data processing technique, the customs authorities shall apply the same level of risk management to the data as that applied to customs declarations made using a data processing technique.;

7. in Article 37(1) 'control by the customs authority' shall be replaced by 'customs controls' and in Article 38(3) 'the control of the customs authority of' shall be replaced by 'customs controls by';

8. Article 38(5) shall be replaced by the following:

'5. Paragraphs 1 to 4 and Articles 36a to 36c and 39 to 53 shall not apply to goods which temporarily leave the customs territory of the Community while moving between two points in that territory by sea or air, provided that the carriage is effected by a direct route and by regular air or shipping services without a stop outside the customs territory of the Community.';

9. Article 40 shall be replaced by the following:

#### 'Article 40

Goods entering the customs territory of the Community shall be presented to customs by the person who brings them into that territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory of the Community without a stop within this territory. The person presenting the goods shall make a reference to the summary declaration or customs declaration previously lodged in respect of the goods.';

10. in Title III, Chapter 3 shall be re-titled 'Unloading of goods presented to customs';

11. Articles 43 to 45 shall be deleted;

12. Article 170(2) shall be replaced by the following:

'2. Goods shall be presented to the customs authorities and undergo the prescribed customs formalities where:

- (a) they have been placed under a customs procedure which is discharged when they enter a free zone or free warehouse; however, where the customs procedure in question permits exemption from the obligation to present goods, such presentation shall not be required;
- (b) they have been placed in a free zone or free warehouse on the basis of a decision to grant repayment or remission of import duties;
- (c) they qualify for the measures referred to in Article 166(b);
- (d) they enter a free zone or free warehouse directly from outside the customs territory of the Community.';

13. Article 176(2) shall be replaced by the following:

'2. Where goods are transhipped within a free zone, the records relating to the operation shall be kept at the disposal of the customs authorities. The short-term storage of goods in connection with such transshipment shall be considered to be an integral part of the operation.

For goods brought into a free zone directly from outside the customs territory of the Community or out of a free zone directly leaving the customs territory of the Community, a summary declaration shall be lodged in accordance with Articles 36a to 36c or 182a to 182d, as appropriate.;

14. Article 181 shall be replaced by the following:

'Article 181

The customs authorities shall satisfy themselves that the rules governing exportation, outward processing, re-exportation, suspensive procedures or the internal transit procedure, as well as the provisions of Title V, are respected where goods are to leave the customs territory of the Community from a free zone or free warehouse.;

15. in Article 182(3), first sentence, 'Re-exportation or' shall be deleted;

16. under Title V (Goods leaving the customs territory of the Community) the following Articles shall be inserted:

'Article 182a

1. Goods leaving the customs territory of the Community, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory, shall be covered either by a customs declaration or, where a customs declaration is not required, a summary declaration.

2. The committee procedure shall be used to establish:

- the time limit by which the customs declaration or a summary declaration is to be lodged at the customs office of export before the goods are brought out of the customs territory of the Community,
- the rules for exceptions from and variations to the time limit referred to above,
- the conditions under which the requirement for a summary declaration may be waived or adapted, and
- the cases in which and the conditions under which goods leaving the customs territory of the Community are not subject to either a customs declaration or a summary declaration,

in accordance with the specific circumstances and for particular types of goods traffic, modes of transport and

economic operators and where international agreements provide for special security arrangements.

Article 182b

1. Where goods leaving the customs territory of the Community are assigned to a customs approved treatment or use for the purpose of which a customs declaration is required under the customs rules, this customs declaration shall be lodged at the customs office of export before the goods are to be brought out of the customs territory of the Community.

2. Where the customs office of export is different from the customs office of exit, the customs office of export shall immediately communicate or make available electronically the necessary particulars to the customs office of exit.

3. The customs declaration shall contain at least the particulars necessary for the summary declaration referred to in Article 182d(1).

4. Where the customs declaration is made other than by use of a data processing technique, the customs authorities shall apply the same level of risk management to the data as that applied to customs declarations made using a data processing technique.

Article 182c

1. Where goods leaving the customs territory of the Community are not assigned to a customs approved treatment or use for which a customs declaration is required, a summary declaration shall be lodged at the customs office of exit before the goods are to be brought out of the customs territory of the Community.

2. Customs authorities may allow the summary declaration to be lodged at another customs office, provided that this office immediately communicates or makes available electronically the necessary particulars to the customs office of exit.

3. Customs authorities may accept, instead of the lodging of a summary declaration, the lodging of a notification and access to the summary declaration data in the economic operator's computer system.

Article 182d

1. The committee procedure shall be used to establish a common data set and format for the summary declaration, containing the particulars necessary for risk analysis and the proper application of customs controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices.

2. The summary declaration shall be made using a data processing technique. Commercial, port or transport information may be used, provided that it contains the necessary particulars.

Customs authorities may accept paper-based summary declarations in exceptional circumstances, provided that they apply the same level of risk management as that applied to summary declarations made using a data processing technique.

3. The summary declaration shall be lodged by:

- (a) the person who brings the goods, or who assumes responsibility for the carriage of the goods, out of the customs territory of the Community; or
- (b) any person who is able to present the goods in question or to have them presented to the competent customs authority; or
- (c) a representative of one of the persons referred to in points (a) or (b).

4. The person referred to in paragraph 3 shall, at his request, be authorised to amend one or more particulars of the summary declaration after it has been lodged. However, no amendment shall be possible after the customs authorities:

- (a) have informed the person who lodged the summary declaration that they intend to examine the goods; or
- (b) have established that the particulars in question are incorrect; or
- (c) have allowed the removal of the goods.'

#### Article 2

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

Article 5a(2), Article 13(2) 2nd subparagraph, Article 36a(4), Article 36b(1), Article 182a(2) and Article 182d(1) shall be applicable from 11 May 2005.

All other provisions shall be applicable once the implementing provisions on the basis of the Articles referred to in the second subparagraph have entered into force. However, electronic declaration and automated systems for the implementation of risk management and for the electronic exchange of data between customs offices of entry, import, export and exit, as stipulated in Articles 13, 36a, 36b, 36c, 182b, 182c and 182d, shall be in place three years after these Articles have become applicable.

Not later than two years after these Articles have become applicable, the Commission shall evaluate any request from Member States for an extension of the three-year period referred to in the third subparagraph for electronic declaration and automated systems for the implementation of risk management and for the electronic exchange of data between customs offices. The Commission shall submit a report to the European Parliament and to the Council and propose, where appropriate, an extension of the three-year period referred to in the third subparagraph.

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

Done at Strasbourg, 13 April 2005.

*For the European Parliament*  
*The President*  
J. P. BORRELL FONTELLES

*For the Council*  
*The President*  
N. SCHMIT

**DECISION No 649/2005/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 13 April 2005**

**amending Decision No 1419/1999/EC establishing a Community action for the European Capital of Culture event for the years 2005 to 2019**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 151 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Committee of the Regions <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) Decision No 1419/1999/EC of the European Parliament and of the Council of 25 May 1999 establishing a Community action for the European Capital of Culture event for the years 2005 to 2019 <sup>(3)</sup> is geared towards highlighting the wealth, diversity and shared characteristics of European cultures and towards contributing to improving European citizens' mutual knowledge.
- (2) Annex I to Decision No 1419/1999/EC sets out the chronological order in accordance with which the Member States can submit nominations for this event. That Annex is limited to the Member States at the time the Decision was adopted on 25 May 1999.
- (3) Article 6 of Decision No 1419/1999/EC states that that decision may be revised, in particular with a view to the future enlargement of the European Union.
- (4) In the light of the 2004 enlargement, it is important that the new Member States should likewise be able within a short period of time to submit nominations in the context of the European Capital of Culture event, without changing the order for the other Member States so that, from 2009 onwards and until the end of the current Community action, two capitals may be selected each year in the Member States.
- (5) Decision No 1419/1999/EC should therefore be amended,

HAVE DECIDED AS FOLLOWS:

*Article 1*

Decision No 1419/1999/EC is hereby amended as follows:

1. The following Recital shall be inserted:

'(12a) Whereas account should be taken of the financial consequences of this Decision in such a way as to ensure that there is adequate and appropriate Community funding for the designation of two European Capitals of Culture;'

2. Article 2(1) shall be replaced by the following:

'1. Cities in Member States shall be designated as European Capital of Culture, in turn, as set out on the list contained in Annex I. Up until 2008 inclusive, the designation shall apply to one city of the Member State appearing on the list. From 2009 onwards, the designation shall apply to one city of each of the Member States appearing on the list. The chronological order set out in Annex I may be altered by mutual agreement between the Member States concerned. Each Member State shall submit, in turn, its nomination of one or more cities to the European Parliament, the Council, the Commission and the Committee of the Regions. This nomination shall be submitted no later than four years before the event in question is due to begin and may be accompanied by a recommendation from the Member State concerned.'

3. Annex I shall be replaced by the text appearing in the Annex to this Decision.

*Article 2*

This Decision shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 May 2004.

Done at Strasbourg, 13 April 2005.

*For the European Parliament*

*The President*

J. P. BORRELL FONTELLES

*For the Council*

*The President*

N. SCHMIT

<sup>(1)</sup> OJ C 121, 30.4.2004, p. 15.

<sup>(2)</sup> Opinion of the European Parliament of 22 April 2004 (not yet published in the Official Journal), Council Common Position of 21 October 2004 (OJ C 25 E, 1.2.2005, p. 41) and Position of the European Parliament of 22 February 2005 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 166, 1.7.1999, p. 1.

## ANNEX

## ORDER OF ENTITLEMENT TO NOMINATE A 'EUROPEAN CAPITAL OF CULTURE'

2005	Ireland	
2006	Greece <sup>(1)</sup>	
2007	Luxembourg	
2008	United Kingdom	
2009	Austria	Lithuania
2010	Germany	Hungary
2011	Finland	Estonia
2012	Portugal	Slovenia
2013	France	Slovakia
2014	Sweden	Latvia
2015	Belgium	Czech Republic
2016	Spain	Poland
2017	Denmark	Cyprus
2018	Netherlands <sup>(1)</sup>	Malta
2019	Italy	

<sup>(1)</sup> The Culture/Audiovisual Council, at its meeting of 28 May 1998, noted the exchange of positions between Greece and the Netherlands in accordance with Article 2(1) of Decision No 1419/1999/EC.

**CORRIGENDA****Corrigendum to Council Regulation (EC) No 870/2004 of 24 April 2004 establishing a Community programme on the conservation, characterisation, collection and utilisation of genetic resources in agriculture and repealing Regulation (EC) No 1467/94**

*(Official Journal of the European Union L 162 of 30 April 2004)*

In the Contents on the cover page, on page 18, in the title, and on page 23, in the closing formula, the date of adoption:

*for:* '24 April 2004',

*read:* '26 April 2004'.

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**Corrigendum to Council Regulation (EC) No 1590/2004 of 26 April 2004 establishing a Community programme on the conservation, characterisation, collection and utilisation of genetic resources in agriculture and repealing Regulation (EC) No 1467/94**

*(Official Journal of the European Union L 304 of 30 September 2004)*

Given that the text of this Regulation has already been published as Regulation (EC) No 870/2004 (OJ L 162, 30.4.2004, p. 18), the second publication in *Official Journal of the European Union* L 304 of 30 September 2004, page 1, is hereby cancelled.

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