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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2194/91

of 25 June 1991

on the transitional period for freedom of movement of workers between Spain and Portugal,
on the one hand, and the other Member States, on the other hand

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Articles 56 (2) and 216 (2) thereof,

Having regard to the proposal from the Commission,

Whereas Articles 56 (1) and 216 (1) of the Act of Accession provide for a period during which measures of derogation to the freedom of movement of workers could be maintained between Spain and Portugal, on the one hand, and the other Member States, on the other hand; whereas this period was to end on 31 December 1992 with the exception of relations between Spain and Portugal, on the one hand, and Luxembourg, on the other hand, for the purposes of which, in accordance with the third subparagraph of paragraph 1 of the said Articles, the period was to end on 31 December 1995;

Whereas, in accordance with Articles 56 (2) and 216 (2) of the Act of Accession, the Council has examined the report from the Commission on the results of the application of the measures of derogation referred to in paragraph 1 of the said Articles;

Whereas this examination has shown that the achievement of the free movement of workers between the Member States is not likely to cause a deterioration in the various national labour markets;

Whereas the measures of derogation provided for in Articles 56 (1) and 216 (1) of the Act of Accession should accordingly be adapted to take account of the new data;

Whereas the particular situation of the Luxembourg labour market should also be taken into account,

HAS ADOPTED THIS REGULATION:

Sole Article

1. The measures referred to in Article 56 (1), first and second subparagraphs, and Article 216 (1), first and second subparagraphs, of the Act of Accession shall cease to apply after 31 December 1991.

2. The measures referred to in Article 56 (1), third subparagraph, and Article 216 (1) third subparagraph, of the Act of Accession shall cease to apply after 31 December 1992.

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

Done at Luxembourg, 25 June 1991.

For the Council

The President

J.-C. JUNCKER

COUNCIL REGULATION (EEC) No 2195/91

of 25 June 1991

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission, drawn up after consulting the Administrative Commission on Social Security for Migrant Workers ⁽¹⁾,

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

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

Whereas it is necessary to amend Regulations (EEC) No 1408/71 ⁽⁴⁾ and No 574/72 ⁽⁵⁾ as updated by Regulation (EEC) No 2001/83 ⁽⁶⁾, as last amended by Regulation (EEC) No 3427/89 ⁽⁷⁾; whereas certain of these amendments are connected with changes made by the Member States in their social security legislation, while others are of a technical nature and are intended to improve these Regulations in the light of experience gained from implementing them;

Whereas the amendments made to Article 57 of Regulation (EEC) No 1408/71 by Regulation (EEC) No 2332 ⁽⁸⁾ make it necessary to alter Article 12 (4) of Regulation (EEC) No 1408/71;

Whereas it has proved necessary, following the judgment delivered by the Court of Justice in Case 302/84 (Ten Holder) on 12 June 1986, to insert a new subparagraph (f) in Article 13 (2) of Regulation (EEC) No 1408/71 in order to determine what legislation is applicable to persons to whom one Member State's legislation ceases to be applicable without the legislation of another Member State becoming applicable to them, in accordance with one of the

rules laid down in the previous subparagraphs of the same Article 13 (2) or one of the exceptions provided for in Articles 14 to 17 of Regulation (EEC) No 1408/71; whereas this amendment also makes it necessary to alter Article 17 of the same Regulation;

Whereas a new provision must be inserted in Regulation (EEC) No 1408/71 to exempt pensioners from the legislation of the State of residence when they are already entitled to sickness insurance, maternity and family benefits under the legislation of another Member State;

Whereas it has proved necessary to supplement Article 39 of Regulation (EEC) No 1408/71 in order to specify the wages or salaries to be taken into account in the case of frontier-zone workers for the application of the legislation of those Member States in which the calculation of invalidity benefits is based on wages or salaries;

Whereas it has proved necessary, following the judgement delivered by the Court of Justice in Case 58/87 (Rebmann) on 29 June 1988, to insert a new paragraph in Article 45 of Regulation (EEC) No 1408/71 providing that the Member State in which the worker resides shall take account for pensions purposes of periods of full unemployment completed by this worker in respect of which benefits have been paid by that State under Article 71 (1) (a) (ii) and (b) (ii) of Regulation (EEC) No 1408/71;

Whereas it has also proved necessary, for Member States whose legislation provides for the calculation of old-age benefits to be based on wages or salaries, to supplement Article 47 of Regulation (EEC) No 1408/71 by specifying the wage or salary to be taken into account where the frontier-zone worker has not completed any period of occupation in the country of residence;

Whereas a loophole has been found in Regulation (EEC) No 1408/71 in respect of the unemployed persons who were formerly employed as mentioned in Article 71 (1) (a) (ii) and (b) (ii) who reside in the territory of the same Member State as the members of their families; whereas this loophole should be remedied by inserting a provision to the effect that the Member State of residence which provides sickness and maternity benefits under Articles 25 (2) and 39 (5) of Regulation (EEC) No 1408/71 shall also pay family benefits to the person concerned;

Whereas it seems necessary, following the addition, by this Regulation, of an eighth paragraph to Article 45 of

(1) OJ No C 221, 5. 9. 1990, p. 3.

(2) OJ No C 19, 28. 1. 1991, p. 579.

(3) OJ No C 41, 18. 2. 1991, p. 34.

(4) OJ No L 149, 5. 7. 1991, p. 2.

(5) OJ No L 74, 27. 3. 1972, p. 1.

(6) OJ No L 230, 22. 8. 1983, p. 6.

(7) OJ No L 331, 16. 11. 1989, p. 1.

(8) OJ No L 224, 2. 8. 1989, p. 1.

Regulation (EEC) No 1408/71, to give the person concerned the right to ask for benefits awarded under the former system to be reviewed in his favour;

Whereas Annex I to Regulation (EEC) No 1408/71 must be amended as a result of the transfer of responsibility for medical services in Gibraltar;

Whereas Annex IV to Regulation (EEC) No 1408/71 must be amended because of the introduction in the United Kingdom of a severe disablement allowance, the value of which does not depend on the length of periods of insurance;

Whereas Section 'A. Belgium' to Regulation (EEC) No 1408/71 should be amended in order to solve the problem of conversion into Belgian francs of income received by self-employed persons in a foreign currency;

Whereas certain entries in section 'C. Germany' of Annex VI to Regulation (EEC) No 1408/71 must be amended to take account of several changes of form and substance made in German sickness insurance and pensions insurance legislation; whereas account should in particular be taken of a special feature of German legislation whereby recognition of a pension insurance period depends only on the person concerned residing in Germany; whereas, in order to protect migrant workers, the instances in which that condition is deemed to be fulfilled by workers who raise their children in another Member State should be specified;

Whereas, following the insertion by this Regulation of a new Article 13 (2) (f) in Regulation (EEC) No 1408/71, section 'G. Ireland' and section 'L. United Kingdom' of Annex VI to Regulation (EEC) No 1408/71 should be amended to clarify the implementation of this new provision with respect to these two States;

Whereas section 'I. Luxembourg' of Annex VI to Regulation (EEC) No 1408/71 should be amended to take account of the changes made in Luxembourg legislation on old-age, invalidity and survivor's pension insurance;

Whereas section 'J. Netherlands' of Annex VI to Regulation (EEC) No 1408/71 must be amended because of changes in the arrangements for collection of contributions and the abolition of the age limit for the obligation to contribute to social insurance; whereas point 1 (b) of the same section also needs to be amended in the interests of clarity;

Whereas section 'L. United Kingdom' of Annex VI to Regulation (EEC) No 1408/71 should be amended as a result of the abolition of the British maternity allowance,

the introduction of a new lump-sum benefit for widows, the change in the manner of calculating earnings giving rise to Class 1 national insurance contributions and the introduction of the severe disablement allowance;

Whereas Article 4 (10) (a) and (b) of Regulation (EEC) No 574/72 should be amended in order to take account of the fact that the former paragraph 2 of Article 14d of Regulation (EEC) No 1408/71 has become paragraph 3 by virtue of Article 1 of Regulation (EEC) No 3811/86 ⁽¹⁾ and to include a reference to Article 8 and to the new Article 10b of Regulation (EEC) No 574/72 inserted by this Regulation;

Whereas, following the insertion by this Regulation into Regulation (EEC) No 1408/71 of a new Article 13 (2) (f) stipulating that persons to whom the legislation of a Member State ceases to apply without the legislation of another Member State becoming applicable to them shall be subject to the legislation of the Member State in whose territory they reside, a provision is required stipulating when, and under what conditions, this legislation ceases to be applicable;

Whereas a reference to Article 14d (1) of Regulation (EEC) No 1408/71 must be inserted in Article 107 (1) (a) of Regulation (EEC) No 574/72 for the purposes of stipulating the conversion rate to be applied for collection of contributions under this provision when it is necessary to convert into national currency the earnings received by an employed or self-employed person in the currency of another Member State;

Whereas section 'L. United Kingdom' of Annex I to Regulation (EEC) No 574/72 should be amended as a result of the division of the Department of Health and Social Security in Great Britain into two separate departments;

Whereas Annex 2 to Regulation (EEC) No 574/72 should be amended in order to take account of organizational changes in Denmark involving the division of the Danish National Social Security Office, and of the transfer of responsibility for Gibraltar's medical services and the division of the Department of Health and Social Security in Great Britain into two separate departments;

Whereas Annex 3 to Regulation (EEC) No 574/72 should be amended in order to take account of the division of the Danish National Social Security Office, of the fact that as from 1 January 1991 the German accident insurance bodies

⁽¹⁾ OJ No L 355, 16. 12. 1986, p. 5.

will have sole responsibility for benefits for accidents at work or occupational diseases in Germany and of the transfer of responsibility for Gibraltar's medical services and the division of the Department of Health and Social Security in Great Britain into two separate departments;

Whereas Annex 4 to Regulation (EEC) No 574/72 must be amended to take account of the new function assigned to the Belgian Accidents at Work Fund, which is to act as the liaison body for accidents at work, the division of the Danish National Social Security Office, the change in the name of the German liaison body for sickness insurance and the division of the Department of Health and Social Security in Great Britain into two separate departments;

Whereas Annex 5 to Regulation (EEC) No 574/72 must be amended because of the change in the Agreement of 7 February 1964 between the Netherlands and Belgium on family and childbirth allowances and in order to take account of the changes in the Agreement of 20 July 1978 between Germany and Luxembourg, which no longer covers benefits in kind for accidents at work and occupational diseases;

Whereas the sections on Belgium, France, Greece, Ireland and the United Kingdom of Annex 10 to Regulation (EEC) No 574/72 should be amended in order to indicate the institutions designated by the competent authorities for implementation of Articles 14c of Regulation (EEC) No 1408/71 and 12a (7) and (8) of Regulation (EEC) No 574/72 for those States;

Whereas sections 'B. Denmark' and 'C. Germany' of Annex 10 to Regulation (EEC) No 574/72 should be amended as necessary to take account of the division of the Danish National Social Security Office and the need to delete, in point 2 (c) of section 'C. Germany' of Annex 10 to Regulation (EEC) No 574/72, the reference to Article 14c (1) of Regulation (EEC) No 1408/71, following the amendments made by Regulation (EEC) No 3811/86;

Whereas section 'C. Germany' of Annex 10 to Regulation (EEC) No 574/72 must be amended to take account of the fact that as from 1 January 1991 the German accident insurance bodies will have sole responsibility for benefits in respect of accidents at work or occupational diseases in Germany, of the fact that the former paragraph 2 of Article 14d of Regulation (EEC) No 1408/71 has become paragraph 3 and of the change in the name of the German liaison body for sickness insurance;

Whereas the former paragraph 2 of Article 14d of Regulation (EEC) No 1408/71 has become the new paragraph 3 and the references to this provision must therefore be corrected in sections 'F. Greece' and 'I.

Luxembourg' of Annex 10 to Regulation (EEC) No 574/72;

Whereas section 'F. Greece' of Annex 10 to Regulation (EEC) No 574/72 must be amended to take account of the transfer of competence between the Greek social security institutions for mariners;

Whereas section 'J. Netherlands' and section 'L. United Kingdom' of Annex 10 to Regulation (EEC) No 574/72 must be amended following the changes in the responsibilities of the Netherlands Social Insurance Council and the division of the Department of Health and Social Security in Great Britain into two separate departments,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. In Article 12 (4), third line, the words 'under Article 57 (3) (c)' shall be replaced by the words 'under Article 57 (5)', with effect from 2 August 1989.
2. In Article 13 (2) the following subparagraph shall be added:
'(f) a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the foregoing subparagraphs or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.'

3. Article 17 shall be replaced by the following:

'Article 17

Exceptions to Articles 13 to 16

Two or more Member States, the competent authorities of these States or the bodies designated by these authorities may by common agreement provide for exceptions to the provisions of Articles 13 to 16 in the interest of certain categories of persons or of certain persons.'

4. The following Article shall be added in Title II:

'Article 17a

Special rules concerning recipients of pensions due under the legislation of one or more Member State

The recipient of a pension due under the legislation of a Member State or of pensions due under the legislation of several Member States who resides in the territory of another Member State may at his request be exempted from the legislation of the latter State provided that he is not subject to that legislation because of the pursuit of an occupation.'

5. The following subparagraph shall be added to Article 39 (5):

'If the legislation which that institution administers provides for the calculation of benefits to be based on wages or salaries, the institution shall take into account the wages or salaries received in the last country of employment and in the country of residence in accordance with the legislation which it administers. Where no wage or salary has been received in the country of residence, the competent institution shall refer, as necessary and in accordance with the rules laid down in its legislation, to the salaries received in the last country of employment.'

6. The following paragraph shall be added to Article 45:

'8. A period of full unemployment of a worker to whom Article 71 (1) (a) (ii) or (b) (ii), first sentence, applies shall be taken into account by the competent institution of the Member State in whose territory the worker concerned resides in accordance with the legislation administered by that institution, as if that legislation applied to him during his last employment.'

If the period of full unemployment in the country of residence of the person concerned can be taken into account only if contribution periods have been completed in that country, this condition shall be deemed to be fulfilled if the contribution periods have been completed in another Member State.'

7. The following paragraph shall be added to Article 47:

'4. If the legislation which the competent institution of a Member State administers requires a salary to be taken into account for the calculation of benefits, where the first and second subparagraphs of Article 45 (8) have been applied, and if, in this Member State, only periods of full unemployment with benefit in accordance with Article 71 (1) (a) (ii) or the first sentence of Article 71 (1) (b) (ii) are taken into consideration for the payment of pensions, the competent institution of that Member State shall pay

the pension on the basis of the salary it used as the reference for providing that unemployment benefit in accordance with the legislation which it administers.'

8. The following Article shall be added to Chapter 7, Section 1:

'Article 72a

Employed persons who have become fully unemployed

An employed person who has become fully unemployed and to whom Article 71 (1) (a) (ii) or (b) (ii), first sentence, apply shall, for the members of his family residing in the territory of the same Member State as he, receive family benefits in accordance with the legislation of that State, as if he had been subject to that legislation during his last employment, taking account, where appropriate, of the provisions of Article 72. These benefits shall be provided by, and at the expense of, the institution of the place of residence.'

9. The following paragraph shall be added to Article 94:

'10. The rights of persons to whom a pension was awarded prior to the entry into force of Article 45 (8) may be reviewed at their request subject to the provisions of Article 45 (8).'

10. In Annex I, Part II, section 'L. United Kingdom' entry (b), the words 'Group Practice Medical Scheme Ordinance 1973' shall be replaced by the words 'Medical (Gibraltar Health Authority) Ordinance 1987', with effect from 1 April 1988.

11. With effect from 29 November 1984, in Annex IV, section 'L. United Kingdom':

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

'(a) Great Britain

Sections 15 and 36 of the Social Security Act 1975.

Sections 14, 15 and 16 of the Social Security Pensions Act 1975';

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

'(b) Northern Ireland

Sections 15 and 36 of the Social Security (Northern Ireland) Act 1975.

Articles 16 to 18 of the Social Security Pensions (Northern Ireland) Order 1975.'

12. Annex VI shall be amended as follows:

(a) the following entry shall be added to section 'A. Belgium':

- '8. For the purposes of applying Articles 14a (2), (3) and (4), 14c (a) and 14d of Regulation (EEC) No 1408/71, business revenues in the reference year which serve as a basis for determining the contributions due by virtue of the social arrangements for self-employed persons shall be calculated using the mean annual rate for the year during which this income was received.

The rate of conversion is the annual mean of the conversion rates published in the *Official Journal of the European Communities* pursuant to Article 107 (5) of Regulation (EEC) No 574/72';

(b) in section 'C. Germany'

- (i) point 6 shall be deleted with effect from 1 January 1989;

- (ii) point 13 shall be deleted with effect from 1 January 1989:

- '13. For the purpose of applying German legislation on compulsory sickness insurance of pensioners as provided for in Article 5 (1) (ii) of Volume V of the Social Insurance Code (Fünftes Buch Sozialgesetzbuch — SGB V) and Article 56 of the Sickness Insurance Reform Law (Gesundheitsreformgesetz), periods of insurance or residence completed under the legislation of another Member State during which the person concerned was entitled to sickness benefits in kind are taken into account, in so far as is necessary, as periods of insurance completed under German legislation provided they do not overlap with periods of insurance completed under that legislation.';

- (iii) point 14 shall be replaced by the following with effect from 1 January 1989:

- '14. For the grant of cash benefits pursuant to Article 47 (1) of Volume V of the German Social Insurance Code (SGB V) and Articles 200 (2) and 561 (1) of the German Law on Social Insurance (Reichsversicherungsordnung — RVO), the German institutions shall determine the net remuneration to be taken into account for the calculation of the benefits as though the insured persons resided in the Federal Republic of Germany.';

- (iv) the following entries shall be added with effect from 1 January 1989:

- '17. For the grant of benefits to persons requiring in-depth and constant care under Articles 53 *et seq.* of Volume V of the German Social Insurance Code (SGB V), the institution of the place of residence shall, for the provision of assistance in the form of benefits in kind, take account of periods of insurance, employment or residence completed under the legislation of another Member State as if they were periods completed under the legislation applicable to that institution.

18. A person in receipt of a pension under German legislation and a pension under the legislation of another Member State shall be deemed, for the purposes of applying Article 27 of the Regulation, to be entitled to sickness and maternity benefits in kind if, under Article 8 (1), point 4, of Volume V of the German Social Insurance Code (SGB V), that person is exempted from compulsory sickness insurance (Krankenversicherung).';

- (v) the following entry shall be added with effect from 1 January 1986:

- '19. A period of insurance for child-rearing under German legislation is valid even for a period during which the employed person concerned brought up the child in another Member State provided that person was unable to

engage in occupational activity by virtue of Article 6 (1) of the Protection of Mothers Law (Mutterschutzgesetz) or took parental leave under Article 15 of the Federal Child-rearing Allowance Law (Bundeserziehungsgeldgesetz) and did not engage in any minor (geringfügig) employment within the meaning of Article 8 of SGB IV.';

(c) the following entry shall be added to section 'G. Ireland':

'10. A period of subjection to Irish legislation in accordance with Article 13 (2) (f) of the Regulation may not:

(i) be taken into account under that provision as a period of subjection to Irish legislation for the purposes of Title III of the Regulation;

nor

(ii) make Ireland the competent State for the provision of benefits provided for in Articles 18, 38 or 39 (1) of the Regulation.';

(d) in section 'I. Luxembourg':

(i) point 1 shall be replaced by the following with effect from 1 January 1988:

'1. Notwithstanding Article 94 (2) of the Regulation, periods of insurance or periods treated as such completed by employed persons or self-employed persons under Luxembourg legislation for invalidity, old-age or death pension insurance either before 1 January 1946 or before an earlier date stipulated by a bilateral convention shall be taken into consideration for the purpose of applying this legislation only if the person concerned demonstrates that he has completed six months of insurance under the Luxembourg scheme after the date in question. Where several bilateral conventions apply, periods of insurance or periods treated as such shall be taken into consideration as from the earliest of these dates.';

(ii) the following entry shall be added with effect from 1 January 1988:

'4. For the purpose of taking the insurance period provided for in Article 171 (7) of the Social Insurance Code (Code des Assurances Sociales) into account, the Luxembourg institution shall recognize periods of insurance completed by the person concerned under the legislation of any other Member State as if they were periods completed under the legislation which it administers. Application of the foregoing provision shall be subject to the condition that the person concerned last completed insurance periods under Luxembourg legislation.';

(e) in section 'J. Netherlands':

(i) in point 1 (b), the words 'at the time at which the aforementioned Article is applicable to him' shall be deleted with effect from 1 November 1989;

(ii) in point 2, the following shall be added with effect from 1 January 1990:

'(i) For the purposes of Article 46 (2) of the Regulation, only periods of insurance completed after the age of 15 years under the Netherlands General Law on Old-Age Insurance (AOW) shall be taken into account as periods of insurance.';

(iii) in point 3, (a) shall be replaced by the following with effect from 1 January 1990:

'(a) (i) for the purposes of Article 46 (2) of the Regulation, only periods of insurance completed after the age of 15 years under the Netherlands General Law on Insurance for Widows and Orphans (AWW) shall be taken into account as periods of insurance;

- (ii) for the purposes of the provisions of Article 46 (2) of the Regulation, periods before 1 October 1959 during which the employed or self-employed person resided in the territory of the Netherlands after the age of 15 years or during which, whilst residing in the territory of another Member State, he pursued an activity as an employed person in the Netherlands for an employer established in that country shall also be considered as periods of insurance completed under Netherlands legislation relating to general insurance for widows and orphans.';

(f) in section 'L. United Kingdom':

- (i) in point 3 (b), after the words 'if, pursuant to Title II of the Regulation', the following words shall be added: 'excluding Article 13 (2) (f)';

- (ii) point 4 shall be replaced by the following with effect from 1 April 1988:

'4. The widow's payment provided under United Kingdom legislation shall be treated, for the purposes of Chapter 3 of the Regulation, as a survivor's pension.';

- (iii) in point 5, after the words 'in accordance with Title II of the Regulation', the following words shall be added: 'excluding Article 13 (2) (f)';

- (iv) point 13.1. shall be replaced by the following:

'13.1. For the purpose of calculating an earnings factor with a view to determining the right to benefits under United Kingdom legislation, subject to point 15, each week during which an employed or self-employed person has been subject to the legislation of another Member State and which commenced during the relevant income tax year within the meaning of United Kingdom legislation shall be taken into account in the following way:

- (a) periods between 6 April 1975 and 5 April 1987:

- (i) for each week of insurance, employment or residence as an employed person, the person concerned shall be deemed to have paid contributions as an employed earner on the basis of earnings equivalent to two-thirds of that year's upper earnings limit;
- (ii) for each week of insurance, self-employment or residence as a self-employed person the person concerned shall be deemed to have paid class 2 contributions as a self-employed earner;

- (b) periods from 6 April 1987 onwards:

- (i) for each week of insurance, employment or residence as an employed person, the person concerned shall be deemed to have received, and paid contributions as an employed earner for, weekly earnings equivalent to two-thirds of that week's upper earnings limit;
- (ii) for each week of insurance, self-employment or residence as a self-employed person the person concerned shall be deemed to have paid class 2 contributions as a self-employed earner;

- (c) for each full week during which he has completed a period treated as a period of insurance, employment, self-employment or residence, the person concerned shall be deemed to have had contributions or earnings credited to him as appropriate, but only to the extent required to bring his total earnings factor for that tax year to the level required to make that tax year a reckonable year within the meaning of the United Kingdom legislation governing the crediting of contributions or earnings.';

(v) point 13.2 (a) shall be replaced by the following:

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

(vi) the following entries shall be added:

- '17. For the purposes of entitlement to severe disablement allowance any employed or self-employed person who is, or has been, subject to United Kingdom legislation in accordance with Title II of the Regulation, excluding Article 13 (2) (f):

(a) shall, for the entire period during which he was employed or self-employed and subject to United Kingdom legislation whilst present or resident in another Member State, be treated as having been present or resident in the United Kingdom;

(b) shall be entitled to have periods of insurance as an employed or self-employed person completed in the territory and under the legislation of another Member state treated as periods of presence or residence in the United Kingdom.

18. A period of subjection to United Kingdom legislation in accordance with Article 13 (2) (f) of the Regulation may not:

(i) be taken into account under that provision as a period of subjection to United Kingdom legislation for the purposes of Title III of the Regulation,

nor

(ii) make the United Kingdom the competent State for the provision of the benefits provided for in Articles 18, 38 or 39 (1) of the Regulation.

19. Subject to any conventions concluded with individual Member States, for the purposes of Article 13 (2) (f) of the Regulation and Article 10b of the Implementing Regulation, United Kingdom legislation shall cease to apply at the end of the day on the latest of the following three days to any person previously subject to United Kingdom legislation as an employed or self-employed person:

(a) the day on which residence is transferred to the other Member State referred to in Article 13 (2) (f);

(b) the day of cessation of the employment or self-employment, whether permanent or temporary, during which that person was subject to United Kingdom legislation;

(c) the last day of any period of receipt of United Kingdom sickness or maternity benefit (including benefits in kind for which the United Kingdom is the competent State) or unemployment benefit which

(i) began before the date of transfer of residence to another Member State or, if later,

(ii) immediately followed employment or self-employment in another Member State while that person was subject to United Kingdom legislation.

20. The fact that a person has become subject to the legislation of another Member State in accordance with Article 13 (2) (f) of the Regulation, Article 10b of the Implementing Regulation and point 19 above, shall not prevent:
- (a) the application to him by the United Kingdom as the competent State of the provisions relating to employed or self-employed persons of Title III, Chapter 1 and Chapter 2, Section 1 or Article 40 (2) of the Regulation if he remains an employed or self-employed person for those purposes and was last so insured under the legislation of the United Kingdom;
 - (b) his treatment as an employed or self-employed person for the purposes of Chapter 7 and 8 of Title III of the Regulation or Articles 10 or 10a of the Implementing Regulation, provided United Kingdom benefit under Chapter 1 of Title III is payable to him in accordance with paragraph (a).'

Article 2

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

1. In Article 4 (10):

- (i) under (a), with effect from 1 January 1987, the words 'Article 14d (2)' shall be replaced by the words 'Article 14d (3)' and the following words shall be inserted after the word 'Regulation': 'Article 14c';
- (ii) under (b), after the words 'Article 6 (1)', the following words shall be inserted: 'Article 8, Article 10b'.

2. The following Article shall be inserted in Title III:

'Article 10b

Formalities pursuant to Article 13 (2) (f) of the Regulation

The date and conditions on which the legislation of a Member State ceases to be applicable to a person referred to in Article 13 (2) (f) of the Regulation shall be determined in accordance with that legislation. The institution designated by the competent authority of the Member State whose legislation becomes applicable to this person shall apply to the institution designated by the competent authority of the former Member State with a request to specify this date.'

3. In Article 107 (1) (a), after the words 'Article 12 (2), (3) and (4)' the words 'Article 14d (1)' shall be added.

4. In Annex 1, section 'L. United Kingdom':

- (i) point 1 shall be replaced by the following with effect from 25 July 1988:
'1. Secretary of State for Social Security, London';
- (ii) the following point shall be inserted with effect from 25 July 1988:
'1.a Secretary of State for Health, London';
- (iii) point 6 shall be replaced by the following with effect from 1 April 1988:
'6. Director of the Gibraltar Health Authority.'

5. Annex 2 shall be amended as follows:

(a) in section 'B. Denmark' with effect from 1 July 1989:

- (i) in point 2 (a), the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Socialministeriet (Ministry for Social Affairs)';
- (ii) in point 3 (a), the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Socialministeriet (Ministry for Social Affairs)';
- (iii) in point 4 (a) the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Arbejdsskadestyrelsen (National Office for Accidents at Work and Occupational Diseases)';

(b) in section 'L. United Kingdom':

- (i) in point 1, the entry concerning Gibraltar shall be replaced by: 'Gibraltar Health Authority' with effect from 1 April 1988;
- (ii) in point 2, in the entry concerning Great Britain, the words 'Health and ...' shall be deleted with effect from 25 July 1988.

6. Annex 3 shall be amended as follows:

(a) in section 'B. Denmark', with effect from 1 July 1989:

in part I — *Institutions of the place of residence:*

- (i) in points (b) and (c) (i) the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Socialministeriet (Ministry of Social Affairs)';
- (ii) in point (d) (i) the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Arbejdsskadestyrelsen (National Office for Accidents at Work and Occupational Diseases)';
- (iii) in point (e) the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Socialministeriet (Ministry of Social Affairs)'.

in part II — *Institutions of the place of stay*, in point (b) (i), the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Arbejdsskadestyrelsen (National Office for Accidents at Work and Occupational Diseases)'.

(b) in section 'C. Germany' point 2 shall be replaced by the following with effect from 1 January 1991:

'2. Accident insurance:

In all cases, the Hauptverband der gewerblichen Berufsgenossenschaften (Federation of Professional and Trade Associations in Industry), St Augustin';

(c) in section 'L. United Kingdom':

- (i) in point 1, the entry for Gibraltar shall be replaced by: 'Gibraltar: Gibraltar Health Authority' with effect from 1 April 1988;
- (ii) in point 2, in the entry for Great Britain, the words 'Health and...' shall be deleted with effect from 25 July 1988;
- (iii) in point 3, in the entry for Great Britain, the words 'Health and...' shall be deleted with effect from 25 July 1988;

7. Annex 4 shall be amended as follows:

- (a) in section 'A. Belgium', point 4 shall be replaced by the following with effect from 1 January 1988:

'4. Accidents at work and occupational diseases

- (a) Accidents at work:

fonds des accidents du travail (Accidents at Work Fund), Brussels;

- (b) Occupational diseases:

ministère de la prévoyance sociale (Ministry of Social Welfare), Brussels';

- (b) in section 'B. Denmark' with effect from 1 July 1989:

- (i) in points 1, 2, 3, 5, 6 and 7 the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Socialministeriet (Ministry of Social Affairs)';

- (ii) in point 4, the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Arbejdsskadestyrelsen (National Office for Accidents at Work and Occupational Diseases)';

- (c) in section 'C. Germany', point 1, the words 'Bundesverband der Ortskrankenkassen' (National Federation of Local Sickness Funds) shall be replaced by the words 'AOK-Bundesverband (National Federation of Local Sickness Funds)' with effect from 1 January 1991;

- (d) in section 'L. United Kingdom', in the entry for Great Britain the words 'Health and ...' shall be deleted, with effect from 25 July 1988.

8. Annex 5 shall be amended as follows:

- (a) in section '9. Belgium — Netherlands' in the first line of entry (a), the reference to Article 6 shall be deleted with effect from 1 April 1985;

- (b) in section '27. Germany — Luxembourg', entry (e) shall be deleted with effect from 1 January 1989.

9. In Annex 6, section 'F. Greece' shall be replaced by the following:

'F. Greece

Pension insurance for employed and self-employed persons (sickness, old age and death):

Direct payment'.

10. Annex 10 shall be amended as follows:

- (a) in section 'A. Belgium', the following entry shall be inserted:

'3.a For the purposes of applying Article 14c of the Regulation and Article 12a of the Implementing Regulation:

Employed persons:

office national de sécurité sociale (National Social Security Office), Brussels;

Self-employed persons:

institut national d'assurances sociales pour travailleurs indépendants (National Social Insurance Institute for the Self-Employed), Brussels';

- (b) in section 'B. Denmark' with effect from 1 July 1989:

- (i) in points 1, 2, 3, 6 and 7 the words 'Sikringsstyrelsen (National Social Security Office)' shall be replaced by the words 'Socialministeriet (Ministry for Social Affairs)';

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

'7. For the purposes of applying Article 110 of the Implementing Regulation:

(a) benefits in pursuance of Chapters 1 to 3 and Chapters 5, 7 and 8 of Title III of the Regulation:

Socialministeriet (Ministry for Social Affairs), København;

(b) benefits in pursuance of Chapter 4 of Title III of the Regulation:

Arbejdsskadestyrelsen (National Office for Accidents at Work and Occupational Diseases), København;

(c) benefits in pursuance of Chapter 6 of Title III of the Regulation:

Direktoratet for Arbejdsløshedsforsikringen (Unemployment Insurance Office), København;'

(c) in section 'C. Germany':

(i) in point 2 (c), first sentence, the reference '(1)' after the words 'Article 14c' shall be deleted with effect from 1 January 1987;

(ii) point 2 (c) (ii) shall be replaced by the following with effect from 1 January 1989:

'(ii) Persons not insured with sickness insurance:

employed persons: Bundesversicherungsanstalt für Angestellte (Federal Insurance Office for Clerical Staff), Berlin;

for manual workers: the competent pension insurance institution for manual workers';

(iii) in point 3, the words 'Bundesverband der Ortskrankenkassen (National Federation of Local Sickness Funds)' shall be replaced by the words 'AOK-Bundesverband (National Federation of Local Sickness Funds)' with effect from 1 January 1991;

(iv) point 8 shall be replaced by the following with effect from 1 January 1991:

'8. For the purposes of applying:

(a) Article 36 of the Regulation and Article 102 (2) of the Implementing Regulation:

AOK-Bundesverband (National Federation of Local Sickness Funds), Bonn 2;

(b) Article 63 of the Regulation and Article 102 (2) of the implementing Regulation:

Hauptverband der gewerblichen Berufsgenossenschaften (Federation of Professional and Trade Associations), St Augustin;

(c) Article 75 of the Regulation and Article 102 (2) of the implementing Regulation:

Bundesanstalt für Arbeit (Federal Labour Office), Nürnberg';

(v) in point 9 (a), the words 'Bundesverband der Ortskrankenkassen (National Federation of Local Sickness Funds)' shall be replaced by the words 'AOK-Bundesverband (National Federation of Local Sickness Funds)' with effect from 1 January 1991;

(vi) point 9 (b) shall be replaced by the following with effect from 1 January 1991:

'(b) refund of benefits in kind incorrectly provided to workers on presentation of the certified statement provided for in Article 62 (2) of the implementing Regulation:

Hauptverband der gewerblichen Berufsgenossenschaften (Federation of Professional and Trade Associations), St. Augustin'.

(vii) in point 10, the words 'For the purposes of applying Article 14d (2) of the Regulation' shall be replaced by the words 'For the purposes of applying Article 14d (3) of the Regulation' with effect from 1 January 1987;

(d) in section 'E. France' the following entry shall be inserted:

'4.a For the purposes of applying Article 14c of the Regulation and Article 12a (7) and (8) of the implementing Regulation:

(a) Article 12a (7) of the implementing Regulation:

(i) employment in France and non-agricultural self-employment in another Member State:

caisse mutuelle régionale (Regional Mutual Benefit Fund);

(ii) employment in France and agricultural self-employment in another Member State:

caisse de mutualité sociale agricole (Agricultural Social Insurance Mutual Benefit Fund);

(b) Article 12a (8) of the implementing Regulation:

(i) non-agricultural self-employment in France:

caisse mutuelle régionale (Regional Mutual Benefit Fund);

(ii) agricultural self-employment in France:

caisse de mutualité sociale agricole (Agricultural Social Insurance Mutual Benefit Fund);

(c) in the case of non-agricultural self-employment in France and employment in Luxembourg, form E 101 shall be issued to the person concerned who shall submit it to the Regional Mutual Benefit Fund';

(e) in section 'F. Greece':

(i) the following entry shall be inserted:

'4.a For the purposes of applying Articles 14c of Regulation (EEC) No 1408/71 and 12a of Regulation (EEC) No 574/72:

(a) in general:

Ιδρυμα Κοινωνικών Ασφαλίσεων (ΙΚΑ), Αθήνα (Social Insurance Institute, Athens);

(b) for mariners:

Ναυτικό Απομαχικό Ταμείο (ΝΑΤ), Πειραιάς (Mariners' Retirement Fund, Piraeus);

(ii) in point 5, the words 'For the purposes of applying Article 14d (2)' shall be replaced by the words 'For the purposes of applying Article 14d (3)' with effect from 1 January 1987;

(iii) point 9 shall be amended as follows:

— the first sentence shall be replaced by the following:

'For the purposes of applying Article 102 (2) of the implementing Regulation';

— subparagraph (b) shall be replaced by the following:

'(b) Benefits for mariners:

Οίκος Ναυτου, Πειραιάς
(Seamen's Home, Piraeus)';

(iv) the following entry shall be added:

'9a. For the purposes of applying Article 110 of the implementing Regulation:

(a) Family allowances, unemployment:

Οργανισμός Απασχολήσεως Εργατικού Δυναμικού (ΟΑΕΔ), Αθήνα (Labour Employment Office, Athens);

(b) benefits for mariners:

Ναυτικό Απομαχικό Ταμείο (ΝΑΤ), Πειραιάς (Mariners' Retirement Fund, Piraeus);

(c) other benefits:

Ιδρυμα Κοινωνικών Ασφαλίσεων (ΙΚΑ), Αθήνα (Social Insurance Institute, Athens)';

- (f) in section 'G. Ireland', the words 'For the purposes of applying Article 14 (c) of the Regulation' shall be inserted at the beginning of point 1;
- (g) in section 'I. Luxembourg', in point 1, the words 'For the purposes of applying Article 14d (2)' shall be replaced by the words 'For the purposes of applying Article 14d (3)' with effect from 1 January 1987;
- (h) in section 'J. Netherlands', in point 1, the words 'For the purposes of applying Article 17 of the Regulation' shall be added at the beginning, with effect from 1 April 1990;
- (i) in section 'L. United Kingdom':
 - (i) point 1 shall be replaced by the following:
 - 1. For the purposes of applying Articles 14c, 14d (3), 17, 36 and 63 of the Regulation and Articles 6 (1), 8, 11 (1), 11a (1), 12a, 13 (2) and (3), 14 (1), (2) and (3), 38 (1), 70 (1), 80 (2), 81, 82 (2), 91 (2), 102 (2), 109, 110 and 113 (2) of the implementing Regulation:

Great Britain:

Department of Social Security (Overseas Branch), Newcastle-upon-Tyne NE98 1YX);

Northern Ireland (excluding Articles 36 and 63 of the Regulation and Articles 102 (2) and 113 (2) of the implementing Regulation, for which see Great Britain):

Department of Health and Social Services (Overseas Branch), Belfast BT1 5DP;

- (ii) point 2 shall be replaced as follows:

- 2. For the purposes of applying Articles 85 (2), 86 (2) and 89 (1) of the implementing Regulation:

Great Britain:

Department of Social Security, Child Benefit Centre, Newcastle-upon-Tyne NE88 1AA;

Northern Ireland:

Department of Health and Social Services (Overseas Branch), Belfast BT1 5DP.

Article 3

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

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

Done at Luxembourg, 25 June 1991.

For the Council

The President

J.-C. JUNCKER

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 25 June 1991

amending Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC)

(91/382/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission drawn up following consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

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

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

Whereas, under the terms of that Article, such directives are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-size undertakings.

Whereas the communication from the Commission on its programme concerning safety, hygiene and health at work ⁽⁴⁾ provides for the adoption of directives designed to guarantee the safety and health of workers;

Whereas the Council, in its resolution of 21 December 1987 on safety, hygiene and health at work ⁽⁵⁾, took note of the Commission's intention of submitting to the Council in the near future minimum requirements at Community level concerning protection against the risks resulting from dangerous substances, including carcinogenic substances; whereas it considered that in this connection the principle of substitution using a recognized non-dangerous or less dangerous substance should be taken as a basis;

Whereas asbestos is a particularly hazardous agent which can cause serious illness and which is found in various forms in a large number of circumstances at work;

Whereas, in view of the progress made in scientific knowledge and technology and in the light of experience gained in applying Council Directive 83/447/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC) ⁽⁶⁾, the protection of workers

⁽¹⁾ OJ No C 161, 30. 6. 1990, p. 14.

⁽²⁾ OJ No C 284, 12. 11. 1990, p. 98 and OJ No C 129, 20. 5. 1991, p. 93.

⁽³⁾ OJ No C 332, 31. 12. 1990, p. 162.

⁽⁴⁾ OJ No C 28, 3. 2. 1988, p. 3.

⁽⁵⁾ OJ No C 28, 3. 2. 1988, p. 1.

⁽⁶⁾ OJ No L 263, 24. 9. 1983, p. 25.

should be improved and the action levels and limit values laid down in Directive 83/477/EEC should be reduced;

Whereas the prohibition of the application of asbestos by means of the spraying process is not sufficient to prevent asbestos fibres being released into the atmosphere; whereas other working procedures that involve the use of certain materials containing asbestos must also be prohibited;

Whereas a decision cannot yet be taken establishing a single method for measurement of asbestos-in-air concentrations at Community level;

Whereas this Directive should be reviewed by 31 December 1995, taking account, in particular, of progress made in scientific knowledge and technology and of experience gained in applying this Directive;

Whereas Decision 74/325/EEC ⁽¹⁾, as last amended by the 1985 Act of Accession, provides that the Advisory Committee on Safety, Hygiene and Health Protection at Work is to be consulted by the Commission for the purpose of drafting proposals in this field,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 83/477/EEC is hereby amended as follows:

1. Article 3 (3) shall be replaced by the following:

'3. If the assessment referred to in paragraph 2 shows that the concentration of asbestos fibres in the air at the place of work in the absence of any personal protective equipment is, at the option of the Member States, at a level as measured or calculated:

(a) for chrysotile

- lower than 0,20 fibres per cm³ in relation to an eight-hour reference period, and/or
- lower than a cumulative dose of 12,00 fibre-days per cm³ over a three-month period;

(b) for all other forms of asbestos either alone or in mixtures, including mixtures containing chrysotile:

- lower than 0,10 fibres per cm³ in relation to an eight-hour reference period, and/or
- lower than a cumulative dose of 6,00 fibre-days per cm³ over a three-month period,

Articles 4, 7, 13, 14 (2), 15 and 16 shall not apply.'

2. Article 5 shall be replaced by the following:

'Article 5

The application of asbestos by means of the spraying process and working procedures that involve using low-density (less than 1g/cm³) insulating or soundproofing materials which contain asbestos shall be prohibited.'

3. In point (1) of Article 7, the third paragraph shall be replaced by the following:

'In accordance with Article 118a of the Treaty and taking account in particular of progress made in scientific knowledge and technology and of experience gained in applying this Directive, the Council shall review the provisions of the first sentence of the first paragraph by 31 December 1995, with a view to establishing a single method for measurement of asbestos-in-air concentrations as Community level;'

4. Article 8 shall be replaced by the following:

'Article 8

The following limit values shall be applied:

(a) concentration of chrysotile fibres in the air at the place of work:

0,60 fibres per cm³ measured or calculated in relation to an eight-hour reference period;

(b) concentration in the air at the place of work of all other forms of asbestos fibres, either alone or in mixtures, including mixtures containing chrysotile:

0,30 fibres per cm³ measured or calculated in relation to an eight-hour reference period.'

5. Article 9 shall be replaced by the following:

'Article 9

1. Without prejudice to the third paragraph of point 1 of Article 7, in accordance with Article 118a of the Treaty and taking account in particular of progress made in scientific knowledge and technology and of experience gained in applying this Directive, the Council shall review the provisions of this Directive by 31 December 1995.

2. The amendments required to adapt the Annexes to this Directive to take account of technical progress shall be made in accordance with the procedure described in Articles 9 and 10 of Council Directive 80/1107/EEC of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work (*).

(¹) OJ No L 185, 9. 7. 1974, p. 15.

(*) OJ No L 327, 3.12.1980, p. 8.'

6. Article 12 is hereby amended as follows:

(a) the following subparagraph shall be added to paragraph 2:

'At the request of the competent authorities, the plan shall include information on the following:

- the nature and probable duration of the work,
- the place where the work is carried out,
- the methods applied where the work involves the handling of asbestos or of materials containing asbestos,
- the characteristics of the equipment used for:
 - protection and decontamination of those carrying out the work,
 - protection of other persons present on or near the worksite.'

(b) the following paragraph shall be added:

'3. At the request of the competent authorities, the plan referred to in paragraph 1 must be notified to them before the start of the projected work.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1993.

They shall forthwith inform the Commission thereof.

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

The date 1 January 1993 shall, however, be replaced by 1 January 1996 in the case of asbestos-mining activities.

However, as regards the Hellenic Republic:

- the date referred to in the first subparagraph shall be 1 January 1996,
- the date referred to in the fourth subparagraph shall be 1 January 1999.

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

Article 3

This Directive is addressed to the Member States,

Done at Luxembourg, 25 June 1991.

For the Council

The President

J.-C. JUNCKER

COUNCIL DIRECTIVE

of 25 June 1991

supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship

(91/383/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament ⁽²⁾,

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

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers;

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

Whereas recourse to forms of employment such as fixed-duration employment and temporary employment has increased considerably;

Whereas research has shown that in general workers with a fixed-duration employment relationship or temporary employment relationship are, in certain sectors, more exposed to the risk of accidents at work and occupational diseases than other workers;

Whereas these additional risks in certain sectors are in part linked to certain particular modes of integrating new workers into the undertaking; whereas these risks can be reduced through adequate provision of information and training from the beginning of employment;

Whereas the Directives on health and safety at work, notably Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ⁽⁴⁾, contain provisions intended to improve the safety and health of workers in general;

Whereas the specific situation of workers with a fixed-duration employment relationship or a temporary employment relationship and the special nature of the risks they face in certain sectors calls for special additional rules, particularly as regards the provision of information, the training and the medical surveillance of the workers concerned;

Whereas this Directive constitutes a practical step within the framework of the attainment of the social dimension of the internal market,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

SCOPE AND OBJECT

Article 1

Scope

This Directive shall apply to:

1. employment relationships governed by a fixed-duration contract of employment concluded directly between the employer and the worker, where the end of the contract is established by objective conditions such as: reaching a specific date, completing a specific task or the occurrence of a specific event;
2. temporary employment relationships between a temporary employment business which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and/or establishment making use of his services.

⁽¹⁾ OJ No C 224, 8. 9. 1990, p. 4.

⁽²⁾ Opinion delivered on 20 November 1990 (not yet published in the Official Journal) and OJ No C 158, 17. 6. 1991.

⁽³⁾ OJ No C 332, 31. 12. 1990, p. 167

⁽⁴⁾ OJ No L 183, 29. 6. 1989, p. 1.

*Article 2***Object**

1. The purpose of this Directive is to ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.

2. The existence of an employment relationship as referred to in Article 1 shall not justify different treatment with respect to working conditions inasmuch as the protection of safety and health at work are involved, especially as regards access to personal protective equipment.

3. Directive 89/391/EEC and the individual Directives within the meaning of Article 16 (1) thereof shall apply in full to workers with an employment relationship as referred to in Article 1, without prejudice to more binding and/or more specific provisions set out in this Directive.

SECTION II**GENERAL PROVISIONS***Article 3***Provision of information to workers**

Without prejudice to Article 10 of Directive 89/391/EEC, Member States shall take the necessary steps to ensure that:

1. before a worker with an employment relationship as referred to in Article 1 takes up any activity, he is informed by the undertaking and/or establishment making use of his services of the risks which he faces;
2. such information:
 - covers, in particular, any special occupational qualifications or skills or special medical surveillance required, as defined in national legislation, and
 - states clearly any increased specific risks, as defined in national legislation, that the job may entail.

*Article 4***Workers' training**

Without prejudice to Article 12 of Directive 89/391/EEC, Member States shall take the necessary measures to ensure that, in the cases referred to in Article 3, each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of his qualifications and experience.

*Article 5***Use of workers' services and medical surveillance of workers**

1. Member States shall have the option of prohibiting workers with an employment relationship as referred to in Article 1 from being used for certain work as defined in national legislation, which would be particularly dangerous to their safety or health, and in particular for certain work which requires special medical surveillance, as defined in national legislation.

2. Where Member States do not avail themselves of the option referred to in paragraph 1, they shall, without prejudice to Article 14 of Directive 89/391/EEC, take the necessary measures to ensure that workers with an employment relationship as referred to in Article 1 who are used for work which requires special medical surveillance, as defined in national legislation, are provided with appropriate special medical surveillance.

3. It shall be open to Member States to provide that the appropriate special medical surveillance referred to in paragraph 2 shall extend beyond the end of the employment relationship of the worker concerned.

*Article 6***Protection and prevention services**

Member States shall take the necessary measures to ensure that workers, services or persons designated, in accordance with Article 7 of Directive 89/391/EEC, to carry out activities related to protection from and prevention of occupational risks are informed of the assignment of workers with an employment relationship as referred to in Article 1, to the extent necessary for the workers, services or persons designated to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment.

SECTION III**SPECIAL PROVISIONS***Article 7***Temporary employment relationships: information**

Without prejudice to Article 3, Member States shall take the necessary steps to ensure that:

1. before workers with an employment relationship as referred to in Article 1 (2) are supplied, a user undertaking and/or establishment shall specify to the temporary employment business, *inter alia*, the occupational qualifications required and the specific features of the job to be filled;

2. the temporary employment business shall bring all these facts to the attention of the workers concerned.

Member States may provide that the details to be given by the user undertaking and/or establishment to the temporary employment business in accordance with point 1 of the first subparagraph shall appear in a contract of assignment.

Article 8

Temporary employment relationships: responsibility

Member States shall take the necessary steps to ensure that:

1. without prejudice to the responsibility of the temporary employment business as laid down in national legislation, the user undertaking and/or establishment is/are responsible, for the duration of the assignment, for the conditions governing performance of the work;
2. for the application of point 1, the conditions governing the performance of the work shall be limited to those connected with safety, hygiene and health at work.

SECTION IV

MISCELLANEOUS PROVISIONS

Article 9

More favourable provisions

This Directive shall be without prejudice to existing or future national or Community provisions which are more favourable to the safety and health protection of workers with an employment relationship as referred to in Article 1.

Article 10

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall forthwith inform the Commission thereof.

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

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

3. Member States shall report to the Commission every five years on the practical implementation of this Directive, setting out the points of view of workers and employers.

The Commission shall bring the report to the attention of the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

4. The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a regular report on the implementation of this Directive, due account being taken of paragraphs 1, 2 and 3.

Article 11

This Directive is addressed to the Member States.

Done at Luxembourg, 25 June 1991

For the Council

The President

J.-C. JUNCKER