



COMMISSION OF THE EUROPEAN COMMUNITIES

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97/0320 (CNS)

Proposal for a  
**COUNCIL REGULATION (EC)**  
amending Regulation (EEC) No 1408/71 as regards its extension  
to nationals of third countries

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(presented by the Commission)

## EXPLANATORY MEMORANDUM

### I. GENERAL FRAMEWORK

This proposal seeks to extend Community coordination of social security schemes, as laid down by Regulation (EEC) No 1408/71<sup>1</sup>, to employed persons and self-employed persons who are insured in a Member State and who are not Community nationals. The proposal is being put forward by the Commission in the light of the considerations set out below.

#### 1. Moving towards equal treatment for nationals of third countries legally resident in the Community

The Commission has for many years been endeavouring to improve the legal status of nationals of third countries legally resident in the Community. The White Paper on European social policy<sup>2</sup> underlined the importance of this objective, and the Commission's medium-term social action programme (1995-97) also highlights this issue.

Moreover, the Commission adopted, on 30 July 1997<sup>3</sup>, a draft Convention on rules for the admission of third-country nationals to the Member States. In line with its strategy of securing equal treatment for legally resident nationals of third countries, the Commission's proposal is aimed at introducing a mechanism whereby nationals of third countries resident over a long period are recognized as long-term residents. Under the terms of the Commission's proposal, such persons should enjoy specific rights, on an equal footing with Community citizens, both in the Member State where they are recognized as long-term residents and in the other Member States.

The stance taken by the European Parliament<sup>4</sup> and the Economic and Social Committee<sup>5</sup> is similar to that of the Commission.

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<sup>1</sup> Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ L 28, 30.1.1997), last amended by Council Regulation (EC) No 1290/97 of 27 June 1997 (OJ L 176, 4.7.1997). The legal basis for this Regulation comprises Article 51 and Article 235 of the EC Treaty.

<sup>2</sup> COM(94) 333 of 27 July 1994.

<sup>3</sup> COM(97) 387 of 30 July 1997.

<sup>4</sup> See for example: Resolution of 14 June 1990 on migrant workers from third countries (OJ C 175, 16.6.1990, p. 180); Resolution of 18 November 1992 on European immigration policy, point 30 (OJ C 337, 21.12.1992, p. 94); Resolution of 15 July 1993 on European immigration policy, point 13 (OJ C 255, 20.9.1993, p. 184); and, more recently, its Resolution of 30 January 1997 on racism, xenophobia and anti-Semitism and on the European Year against Racism (1997), point 17 (OJ C 55, 24.2.1997).

<sup>5</sup> See for example: Opinion of 26 September 1991 on the status of migrant workers from third countries (OJ C 339, 31.12.1991, p. 82).

The Council and the Member States have also recognized "the great importance of implementing, in the field of social policy, policies based on the principles of non-discrimination and equal opportunities at Community and Member State level, within the framework of their respective powers, as a contribution to the common fight against racism and xenophobia"<sup>6</sup>.

Anchoring the principle of equal treatment for nationals of third countries in both national and Community law forms part of an overall strategy to combat racism and xenophobia within the Community. Mindful of the workings of the internal market and the pressing need to combat racism and xenophobia, the Advisory Committee on Racism and Xenophobia, set up by the Corfu European Council in July 1994, is another keen advocate of equal rights being granted to nationals of third countries whose situation is regularized<sup>7</sup>.

These calls for nationals of third countries to be given equal rights take on special significance in 1997, the European Year against Racism. European social legislation, and in particular Regulation (EEC) No 1408/71 on the coordination of social security schemes, which does not at present cover nationals of third countries, is at the heart of the matter. The lack of social protection afforded by the Regulation could put the persons concerned at a disadvantage.

## 2. The purpose of Community coordination

Based on Article 51 of the EC Treaty, Community legislation for coordinating the Member States' social security schemes is designed to ensure, firstly, that persons moving within the Community do not lose their social security rights and, secondly, that they do not become doubly liable for contributions. Generally speaking, the Member States' social security systems do not take into consideration the specific situation of persons working, residing or staying in another Member State. Consequently, the wide diversity of national systems, with only national legislation being applied to transnational situations, could seriously hamper people's freedom of movement.

The underlying principles of Community legislation on coordination are: equal treatment for Community nationals; determination of the legislation applicable in transnational situations; export of benefits; and aggregation of periods completed in more than one Member State.

Coordination is purely "internal" and relates exclusively to the Member States' social security schemes. It has nothing to do with the systems of countries which are not members of the Community or the European Economic Area, or with events which occur under their legislation. There is no "external" coordination linking the systems of Member States to those of one or more other countries whereby it might, for example, be possible to take account of periods completed under the legislation of

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<sup>6</sup> Point 3 of the Resolution of the Council and the representatives of the Governments of the Member States, meeting with the Council, of 5 October 1995 on the fight against racism and xenophobia in the fields of employment and social affairs (OJ C 296, 10.11.1995).

<sup>7</sup> Advisory Committee on Racism and Xenophobia, Final report (April 1995), p. 43.

third countries, to export benefits to such countries or to equate periods of residence in a third country with periods of residence in the Community.

Furthermore, coordination is not aimed at harmonizing the Member States' social security schemes, nor does it impinge on the differences between them, whether in terms of substance or procedurally. The Member States retain complete freedom to decide who is insured, what benefits are provided and under what conditions, and what contributions must be paid, subject to compliance with the principle of non-discrimination on grounds of nationality.

3. Persons covered by Regulation (EEC) No 1408/71

Regulation (EEC) No 1408/71 covers employed or self-employed persons who are Community nationals and who are or have been subject to the legislation of one or more Member States. However, the Regulation also protects the family members and survivors of such persons, whatever their nationality, and applies also to Community nationals who are survivors of nationals of third countries. The nationality requirement is also set aside in respect of refugees or stateless persons residing in the territory of a Member State. Finally, under the EEA Agreement, the Regulation applies to nationals of the EEA member countries.

In reality, the protection afforded by Regulation (EEC) No 1408/71 extends to any Community worker insured under a social security scheme who, when moving within the Community, encounters difficulties in relation to social security. For the purpose of applying the Regulation, it is not necessary for the person concerned to have exercised his or her right to freedom of movement as a worker (pursuant to Article 48 of the EC Treaty). The person concerned needs only to move within the Community, for whatever reason<sup>8</sup>. Thus, the Regulation is applicable to a pensioner from one Member State who goes to live in another Member State without having worked there.

4. Coordination rules applicable to nationals of third countries excluded from the scope of Regulation (EEC) No 1408/71

Most of the 13 million nationals of third countries residing legally in Member States are not protected by the coordination rules of Regulation (EEC) No 1408/71. As matters stand, their situation with regard to "internal" coordination differs according to their nationality and the Member State concerned. In this connection, a distinction can be made between various categories:

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<sup>8</sup> See in particular: Judgment of 19 March 1964, *Unger*, Case 75/63, ECR 177; Judgment of 11 March 1965, *Bertholet*, Case 31/65, ECR 81; Judgment of 12 November 1969, *Entr'aide Médicale*, ECR 1969, 405; Judgment of 16 March 1978, *Pierik*, Case 117/77, ECR 825.

- nationals of third countries *already covered* by Regulation (EEC) No 1408/71, i.e. stateless persons and refugees;
- nationals of third countries *partially covered by Regulation (EEC) No 1408/71* as members of the family of a Community national (derived rights);
- nationals of third countries covered by agreements concluded between the Community and third countries containing provisions relating to social security: see Association Agreement with Turkey (more particularly, the Association Council's Decision 3/80 of 19 September 1980) and cooperation agreements with Morocco, Tunisia and Algeria;
- nationals of third countries *covered by bilateral agreements* concluded between two or more Member States (more often than not, such agreements do not touch on all the areas of social security or offer less complete protection than Regulation (EEC) No 1408/71);
- nationals of third countries *covered by the Council of Europe's European Interim Agreement* of 11 December 1953 or by *other multilateral agreements*;
- nationals of third countries *covered by bilateral social security agreements concluded between a Member State and a third country* (such agreements provide for "external" coordination but generally take account of "internal" situations, particularly with frequent references to the principle of equal treatment);
- nationals of third countries who do not fit into any of the above categories and therefore do not benefit from *any protection in relation to social security* when they move within the Community, not even qualifying for equal treatment.

The muddled legal situation resulting from the multiplicity of protection levels is not only harmful to nationals of third countries but also makes it extremely difficult for the Member States' social security bodies to determine their specific rights and generates sizeable administrative costs. The confusion caused by the multitude of instruments applicable to nationals of third countries is exacerbated by the differences in case-law as regards the interpretation of such instruments by the national courts.

##### 5. Can the exclusion of nationals of third countries still be justified?

Increasingly strong objections are being voiced about the exclusion of nationals of third countries from the Community coordination system, not only from the viewpoint of adequate social protection but also in the light of the resultant administrative and legal complications.

There seems to be no reason for not including nationals of third countries who already benefit from Community law, namely workers from third countries who are sent abroad by a Community undertaking for the purpose of providing services<sup>9</sup>. Without prejudice to the rights of those providing services, the inclusion of posted workers in Regulation (EEC) No 1408/71 avoids potentially problematic conflicts in coordination of the rules relating to social security, such as double levying of contributions, as the Court has pointed out in the past<sup>10</sup>. The double contribution requirement on the part of employers may, moreover, constitute an obstacle to the freedom to provide services.

The report presented on 18 March 1997 by the High-level Group on Free Movement of Persons, chaired by Mrs Simone Veil, drew attention to the problems caused by the exclusion of nationals of third countries, not only from the point of view of those concerned but also in terms of management of social security schemes. The High-level Group advocates that all or part of the Community coordination rules be extended to nationals of third countries who are resident and insured in a Member State.

Moreover, the case-law of the European Court of Human Rights makes it increasingly difficult to justify the exclusion of nationals of third countries. In its judgment in Case *Gaygusuz v Austria* of 16 September 1996, the Court held that the prohibition of discrimination on grounds of nationality applied also to social security rights. In so far as the human rights guaranteed by the European Convention on Human Rights are recognized as general principles of Community law, the exclusion of nationals of third countries from the scope of Regulation (EEC) No 1408/71 no longer seems compatible with these principles.

The above judgment is especially significant in the context of the European Union's commitment to respect the fundamental rights guaranteed, in particular, by the European Convention on Human Rights<sup>11</sup> and in the light of the efforts to give nationals of third countries equal treatment (cf. section 1).

6. What would be the consequences of extending Regulation (EEC) No 1408/71 to nationals of third countries?

The Community legislation for coordinating the Member States' social security schemes is designed to ensure, firstly, that persons moving within the Community do not lose their social security rights and, secondly, that they do not become doubly liable for contributions. Therefore the first objective of the extension of Regulation (EEC) No 1408/71 to nationals of third countries is to ensure that when they are covered by a social security scheme of a Member State they do not lose rights under this scheme simply because they move between Member States (e.g. loss of coverage for health care, loss of contribution records) and to ensure that they do not become doubly liable for contributions.

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<sup>9</sup> Judgment of 9 August 1994, *Vander Elst*, Case C-43/93, ECR I - 3803.

<sup>10</sup> Judgment of 3 February 1982, *Séco and Desquenne & Giral*, Cases 62 and 63/81, ECR 223.

<sup>11</sup> See, in this connection, Article F(2) of the Treaty on European Union.

The extension of Regulation (EEC) No 1408/71 to nationals of third countries would have a limited effect as regards entitlement to social security, having to do only with "internal" coordinating provisions aimed mainly at:

- aggregating periods of insurance, employment and residence completed *within* the Community;
- exporting old-age, invalidity and survivor's benefits *within* the Community;
- taking into consideration, for the calculation of family allowances or unemployment benefits, family members residing *within* the Community;
- providing social protection for workers *residing in one Member State* but working in another (e.g. frontier workers).

The extension would not in any way oblige the Member States to take account of non-Community situations in terms of acquiring entitlement to, calculating or paying benefits (residence in a third country or periods completed under non-Community legislation). External co-ordination would continue to be governed by bilateral or multilateral social security agreements concluded with third countries either directly by the Member States or by the Community and the Member States.

Moreover, the application of Regulation (EEC) No 1408/71 on its own cannot give the persons concerned any entitlement to enter, stay in or work in a Member State, this being, as before, a matter for cooperation in the field of justice and home affairs. Even if they were covered by Regulation (EEC) No 1408/71, it would not give them the right to move freely within the Community.

The application of Regulation (EEC) No 1408/71 is entirely independent of considerations about the legal situation of the person concerned as regards entitlement to stay in or enter the territory. The terms "residence" and "stay" within the meaning of Article 1 of the Regulation and the case-law of the Court of Justice<sup>12</sup> cover factual concepts focusing on "duration and continuity".

Extension of the Regulation to nationals of third countries would therefore have no effect on their legal situation as to movement within the Community, including the performance of economic activities indissolubly linked to such movement.

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<sup>12</sup> See, in this connection, judgment of 8 July 1992, *Knoch*, Case C-102/91, ECR I - 4341.

7. The advantages of wholesale extension of Regulation (EEC) No 1408/71 to nationals of third countries

Not only the persons concerned but also national or Community institutions and employers have a vested interest in simplifying the current rules, with a consequent appreciable reduction in administrative costs<sup>13</sup>, by reducing the number of instruments governing internal coordination in respect of a single category of persons - nationals of third countries. Wholesale extension would also make the provisions of Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 applicable to such persons. Partial extension of the coordination rules would merely increase the administrative confusion and heighten discrimination in terms of legal status, which would scarcely be compatible with the principle of equal treatment based on respect for human rights and the fight against racism. Accordingly, in the Commission's opinion, the most satisfactory solution lies in laying down coordination rules for the benefit of such persons by means of a single Community instrument.

Wholesale extension of the Regulation to nationals of third countries will help to reduce administrative costs appreciably; moreover, the resultant financial implications should be slight, given that such persons are already affiliated to a social security scheme in a Member State and may therefore already enjoy certain advantages, such as application of the principle of equal treatment and of the provisions of bilateral or multilateral agreements.

A further point to note is that nationals of third countries are involved, in the same way as Community nationals, by means of contributions paid and taxation, in the funding of the Member States' social security systems and, hence, in the financial implications of Community coordination.

8. What is the legal basis for extending the Regulation to nationals of third countries?

The Community's power to extend coordination to nationals of third countries may derive from Articles 51 and 235 of the EC Treaty, on which Regulation (EEC) No 1408/71 is based.

Regulation (EEC) No 1408/71 is not geared just to the free movement of workers but also constitutes an instrument of social protection. For the purpose of applying the Regulation, the crucial element is not exercise of the right to freedom of movement but the fact that the person concerned is insured under a social security scheme. The purpose is to maintain social protection for persons moving within the Community for whatever reason. In line with the task devolving on the Community under Article 2 of the EC Treaty, the aim is to provide a high level of social protection.

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<sup>13</sup> For example, the national institutions cannot at the moment use E-forms issued under Regulation (EEC) No 1408/71 to transmit necessary information to institutions in other Member States.



Consequently, Regulation (EEC) No 1408/71 contains a number of provisions applicable to situations where the person concerned has not exercised the right to freedom of movement for workers, but where there is a social security problem with a cross-border dimension. For instance, the Regulation provides for the export of benefits to a Member State in which the person concerned has never worked (Article 10), it enables persons staying temporarily in another Member State to receive health care (Article 22), and it ensures entitlement to family benefits in respect of family members residing in another Member State (Article 73).

It must also be borne in mind that the first coordinating regulation, Regulation No 3, was adopted in 1958 on the basis of Article 51 of the EC Treaty, nine years before the entry into force, in 1968, of the right to freedom of movement for workers.

The Council, in adopting certain provisions of Regulation (EEC) No 1408/71 applicable to persons who are not migrant workers within the meaning of Article 48 of the EC Treaty, and the Court of Justice, which applies the Regulation to the same category of persons<sup>14</sup>, appear to recognize that Article 51 of the EC Treaty allows the Community to coordinate national social security schemes for all workers insured under one of those schemes, even if they are not migrant workers within the meaning of Article 48 of the EC Treaty.

Moreover, the legal basis of the Regulation was extended to Article 235 when its scope was enlarged to cover self-employed persons<sup>15</sup>. In so far as Article 51 of the EC Treaty does not explicitly provide for the possibility of extending coordination to nationals of third countries, Article 235 could be used as an additional legal basis, the more so because the objective is to attain a high level of social protection (Article 2 of the EC Treaty).

## II. COMMENTS ON THE ARTICLES

### Article 1

Amendment of Regulation (EEC) No 1408/71

#### 1. Amendment of Article 1

Given that Article 2 would not contain any reference to the nationality of employed or self-employed persons, it would be advisable also to remove the definition of the terms "refugee" and "stateless person" contained in Article 1(d) and (e).

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<sup>14</sup> See the judgments referred to in footnote 8 and the judgment of 3 May 1990, *Kits van Heiningen*, Case C-2/89, ECR I - 1755.

<sup>15</sup> By Regulation (EEC) No 1390/81 of 12 May 1981, OJ L 143, 29.5.1981.

2. Amendment of Article 2

This proposal seeks to extend Regulation (EEC) No 1408/71 to all employed persons and self-employed persons and members of their families, irrespective of their nationality (Community or other). References to the nationality of those concerned and to special categories of persons other than Community nationals (stateless persons, refugees, survivors of nationals of third countries) should be deleted.

It is therefore advisable to amend the first paragraph of Article 2 and to delete the second paragraph.

In this context, it should be noted that employed persons and self-employed persons are covered by Regulation (EEC) No 1408/71 only in so far as they are legally insured under a social security scheme of a Member State.

3. Amendment of Article 22a

In the light of extension of the scope of Regulation (EEC) No 1408/71 to nationals of third countries, it is no longer appropriate to limit the application of Article 22a to Member State nationals.

4. Insertion of a new Article 95c: transitional measures

This Article contains transitional provisions designed to protect the persons targeted by the proposal so that they do not lose rights as a result of the entry into force of the Regulation.

**III. JUSTIFICATION FOR THE PROPOSED REGULATION FROM THE POINT OF VIEW OF SUBSIDIARITY**

This proposal for a Council Regulation satisfies the two criteria underpinning the principle of subsidiarity, namely necessity and proportionality as required by Article 3b of the Treaty on European Union.

On the one hand, Article 51 constitutes a legal basis whereby the Council may take measures in relation to transnational social security. On the other hand, a binding legislative act, in the form of a Regulation, is clearly proportionate to the objective sought. The purpose is to guarantee equal treatment in the social sphere, with particular emphasis on the coordination of the Member States' social security schemes, among Community nationals and nationals of third countries, and to simplify and clarify the relevant legal rules applying to the latter category of persons within the Community. A Regulation is deemed to be the most appropriate instrument for achieving this objective.

#### **IV. APPLICATION IN THE COUNTRIES OF THE EUROPEAN ECONOMIC AREA**

The free movement of persons is an underlying objective and principle of the Agreement on the European Economic Area (EEA), which entered into force on 1 January 1994<sup>16</sup>. In Chapter 1 of Part III, dealing with the free movement of persons, services and capital, Articles 28, 29 and 30 are concerned with freedom of movement for workers and self-employed persons. More particularly, Article 29 restates the principles set out in Article 51 of the EC Treaty relating to social security for workers moving within the Community. Consequently, this proposal for a Regulation, if adopted, must be applied to the EEA member countries.

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<sup>16</sup> OJ L 1, 3.1.1994, as amended by Decision No 7/94 of the EEA Joint Committee of 21 March 1994 (OJ L 160, 28.6.1994).

Proposal for a  
**COUNCIL REGULATION (EC)**  
amending Regulation (EEC) No 1408/71 as regards its extension  
to nationals of third countries

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(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>17</sup>, presented after consultation of the social partners and of the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the European Parliament<sup>18</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>19</sup>,

Whereas the Corfu European Council decided in June 1994 to step up efforts to develop, at European Union level, a comprehensive strategy for combating racism and xenophobia;

Whereas the Council and the Member States recognized, in their Resolution of 5 October 1995 on the fight against racism and xenophobia in the fields of employment and social affairs<sup>20</sup>, "the great importance of implementing, in the field of social policy, policies based on the principles of non-discrimination and equal opportunities at Union and Member State level, within the framework of their respective powers, as a contribution to the common fight against racism and xenophobia";

Whereas the European Parliament has on several occasions called for equal treatment to be given to Community nationals and nationals of third countries in the social sphere, for example in its Resolution of 30 January 1997 on racism, xenophobia and anti-Semitism and the European Year against Racism (1997)<sup>21</sup>;

Whereas the Economic and Social Committee has echoed this call, particularly in its opinion of 26 September 1991 on the status of migrant workers from third countries<sup>22</sup>;

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<sup>17</sup> OJ .....

<sup>18</sup> OJ .....

<sup>19</sup> OJ .....

<sup>20</sup> OJ C 296, 10.11.1995, p. 13.

<sup>21</sup> OJ C 55, 24.2.1997, p. 17.

<sup>22</sup> OJ C 339, 31.12.1991, p. 82.

Whereas, in the preamble to the Single European Act, the Member States emphasize the need “to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice”;

Whereas Article F(2) of the Treaty on European Union provides that the Union “shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”;

Whereas the promotion of a high level of social protection and the raising of the standard of living and quality of life in the Member States are objectives of the Community;

Whereas Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community<sup>23</sup> already applies to workers moving within the Union even where they have not exercised their right to freedom of movement as migrant workers;

Whereas, given that certain provisions of Regulation (EEC) No 1408/71 are already applicable to persons who are not migrant workers within the meaning of Article 48 of the EC Treaty, Article 51 of the EC Treaty allows the Community to coordinate national social security schemes for all workers insured under one of those schemes, even if they are not migrant workers within the meaning of Article 48 of the EC Treaty;

Whereas the large number of legal instruments governing problems encountered by nationals of third countries in connection with the coordination of Member States’ social security schemes creates significant legal and administrative complexity;

Whereas the lack of a clear and consistent set of rules for coordinating social security matters could give rise to specific problems such as double levying of contributions in the case of service providers employing workers who are nationals of third countries;

Whereas the application of Regulation (EEC) No 1408/71 should therefore be extended to nationals of third countries; whereas that Regulation should be amended accordingly;

Whereas transitional provisions should be adopted to protect the persons referred to by the present Regulation and to ensure that they do not lose rights as a result of its entry into force;

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<sup>23</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) and last amended by Regulation (EC) No 1290/97 (OJ L 176, 4.7.1997, p. 1).

Whereas the extension of Regulation (EEC) No 1408/71 to nationals of third countries will further the aim of equal treatment for such persons with Community nationals in the social sphere, particularly as regards coordination of the Member States' social security schemes, and is conducive to simplifying and clarifying the legal rules applicable within the Community;

Whereas the extension of Regulation (EEC) No 1408/71 to nationals of third countries must not give the persons concerned any entitlement to enter, to stay or reside in a Member State or to have access to its labour market;

Whereas, to achieve these objectives, it is necessary and appropriate that the rules for coordinating national social security schemes be amended by means of a Community legal instrument which is binding and directly applicable in every Member State;

Whereas the amendments made by this Regulation are in accordance with the provisions of the third paragraph of Article 3b of the Treaty,

HAS ADOPTED THIS REGULATION:

#### Article 1

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

1. In Article 1, points (d) and (e) shall be deleted.
2. Article 2 shall be amended as follows:
  - (a) Paragraph 1 shall be replaced by the following:

*"1. This Regulation shall apply to employed or self-employed persons who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and their survivors."*
  - (b) Paragraph 3 shall be deleted.
3. Article 22a shall be replaced by the following:

#### *"Article 22a*

#### *Special rules for certain categories of persons*

*Notwithstanding Article 2, Article 22(1)(a) and (c) shall also apply to persons who are insured under the legislation of a Member State and to the members of their families residing with them."*

4. The following Article 95c shall be inserted:

“Article 95c

Transitional provisions for application of Regulation (EC) No\*

1. No entitlement for periods prior to ... shall be acquired under Regulation (EC) No .... \*\*
2. Any period of insurance and, where appropriate, any period of employment, self-employment or residence completed under the legislation of a Member State before .... shall be taken into consideration for the determination of rights acquired 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 which materialized prior to ....
4. Any benefit which has not been awarded or which 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 with effect from ....., 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 .... may be reviewed at their request, taking into account the provisions of Regulation (EC) No ....
6. If the request referred to in paragraph 4 or paragraph 5 is lodged within two years from ....., 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 request referred to in paragraph 4 or paragraph 5 is lodged after expiry of the period referred to in paragraph 6, rights which have not been forfeited or which are not statute-barred shall have effect from the date of such request, except where more favourable provisions of the legislation of any Member State apply.”

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\* Number of the Regulation resulting from this proposal.

\*\* Date of entry into force of the Regulation resulting from this proposal.

## **Article 2**

**This Regulation shall enter into force on the first day of the month following 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 Brussels,**

**For the Council  
The President**



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# DOCUMENTS

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