



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

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

(Text of interest to the EEA)

(presented by the Commission)

EXPLANATORY MEMORANDUM

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

INTRODUCTION

Since the entry into force of Regulation (EEC) No 2001/83, updating into a single official text Regulations (EEC) Nos 1408/71 and 574/72, following the extension of their scope to include self-employed persons, these Regulations have been amended by Council Regulations (EEC) Nos 1660/85 and 1661/85, Commission Regulation No 513/86, Council Regulations Nos 3811/86, 1305/89, 2332/89, 3427/89, 2195/91, 1247/92, 1248/92, 1249/92 and 1945/93, and the Acts of Accession of the Kingdom of Spain and the Portuguese Republic in 1985 and the Republics of Austria and Finland and the Kingdom of Sweden in 1995.

The proposal is intended to update the Community Regulations in the light of certain administrative, procedural or substantive amendments to national legislation, to take account of certain bilateral agreements signed between Member States and to improve coordination.

Article 1

Amendments to Regulation (EEC) No 1408/71

1 Amendment to Article 1 u) i)

The Regulation points out that the "*special childbirth allowances*" referred to in Article II are excluded from the term "*family benefits*" within the meaning of the Regulation. "*Adoption allowances*" which may be treated in the same way as "*childbirth allowances*", should, by analogy, also be excluded. This exclusion was not explicit in the regulation, and the proposed amendment is intended to correct this shortcoming.

2 Insertion of a new Article 22 a)

A new Article 22 a) is inserted, permitting seconded workers and members of their family accompanying them access to the necessary health care during a stay for occupational purposes.

3 Deletion of Article 32 and amendment of the first paragraph of Article 36

Given the problems of application and the absence of any benefit to those affected by this Article, it is deleted for the purposes of simplification. The reference to Article 32 contained in Article 36 must also, therefore, be deleted.

4 Amendment of Annex I, section II

Section II of Annex I contains, in accordance with what is laid down in the second paragraph of Article 1 f) of the Regulation, the interpretation of the concept of "members of the family" for those Member States whose legislation with regard to sickness or maternity benefits in kind does not make it possible to identify these persons.

The amendment to "B. DENMARK" is intended to provide further clarification for this concept, which is not laid down in Danish legislation on sickness insurance as all persons resident in Denmark are entitled to benefits in kind in that State. Under the terms of this legislation, children under the age of 16 residing in the home of their parents are covered by the same sickness insurance as the latter, while persons over 16 may freely choose their type of insurance. This new definition takes account of spouses and children under 18, which is the age of majority.

5 Amendment to Annex II, section II

Section II of Annex II refers to the special childbirth allowances excluded from the scope of the Regulation under the terms of Article 1 u).

In the light of the amendment proposed for this item, adoption allowances must be specifically referred to in the title of this section.

Furthermore, the amendment proposed for the heading "A. BELGIUM" introduces the adoption premium, which is granted in the event of the adoption of a newborn child. This is a one-off payment corresponding to the childbirth allowance payable for the first child, which is already included under this heading.

The amendment proposed for the heading "E. FRANCE" introduces the adoption allowance, which is very similar to the young children's allowance, which is also listed under this heading.

6 Amendment to Annex II A

Annex II A refers to special non-contributory benefits payable to the parties concerned exclusively on the territory of the Member State in which they reside, pursuant to Article 10 a) of the Regulation.

The amendment to the heading "B. DENMARK", which consists of adding the accommodation allowance for pensioners, is due to the fact that this is a special non-contributory benefit within the meaning of Article 4(2a) of Regulation (EEC) No 1408/71, which, in essence, is a function of living conditions in the State of residence.

7 Amendment to Annex III (A and B), No "35. GERMANY-AUSTRIA", e).

The existing text lays down that certain more favourable regulations in the bilateral agreement between Germany and Austria remain applicable to Austrian and German citizens during a transition period.

The proposed addition also guarantees this advantage in the event of a pension being transformed from an old age to, for example, a survivor's pension.

8 Amendment to Annex IV Section C.

Section C of Annex IV sets out the cases referred to in Article 46 (1b) of the Regulation under which calculation of the benefit may be waived in accordance with Article 46 (2) of the Regulation.

The amendment proposed for the heading "O. UNITED KINGDOM" is intended on the one hand to include all cases in which periods of insurance have been completed under United Kingdom legislation after 6 April 1975, provided that sufficient contributions have been paid in the course of each year, and, on the other, to exclude all cases in which periods of insurance completed under United Kingdom legislation in force on 5 July 1948 are taken into account when adding periods completed under the legislation of another Member State.

9 Amendment to Annex VI

Annex VI contains special procedures for applying the legislations of certain Member States.

a) Amendment to the heading "C. GERMANY".

The proposed amendments are intended to take account of the new terminology introduced in German legislation and to delete certain references which have become superfluous. Other amendments relate to the conditions for awarding widow's pensions and for reimbursing contributions, as well as certain transitional provisions.

b) Amendment to the heading "L. PORTUGAL".

It is proposed that an item be inserted to provide for the possibility of retired civil servants and members of their family receiving the benefits in kind referred to in Articles 31a) and 22 (1c and 3) of Regulation (EEC) No 1408/71.

Article 2

Amendments to Regulation (EEC) No 574/72

1 Insertion of an Article 19a)

The aim of inserting the new Article 19a) is to facilitate the application of Article 21(2) of Regulation (EEC) No 1408/71, relating to benefits in kind when

members of the family are residing in a Member State other than that in which the employed or self-employed person is residing.

2 Amendment to Annex 2

Annex 2 refers to the competent institutions of each Member State.

Amendment to the heading "K. AUSTRIA":

The amendment proposed to items 3a) and 4b) take account of administrative changes in Austria. Thus, the "*Regionale Geschäftsstellen des Arbeitsmarktservice (Local Office of the Labour Market Service)*" becomes the competent institution in place of the "*Arbeitsamt (Employment Office)*".

3 Amendment to Annex 3 of Regulation (EEC) 574/72.

Annex 3 refers to the institutions of the place of residence and the institutions of the place of stay.

Amendment to the section "K. AUSTRIA":

The amendment proposed for items 4 and 5b) is similar to that above relating to Annex 2.

4 Amendment to Annex 4 of Regulation (EEC) No 574/72.

Annex 4 refers to liaison bodies.

Amendment to the heading "K. AUSTRIA":

The proposed amendment to items 2a) and b) and 3b) is similar to that set out above in relation to Annex 2. In item 2a), the "*Landesgeschäftsstelle Salzburg des Arbeitsmarktservice (Regional Office of the Labour Market Service Salzburg), Salzburg*" becomes the liaison body in place of the "*Landesarbeitsamt Salzburg (Provincial Employment Office Salzburg), Salzburg*". In items 2b) and 3b), the "*Landesgeschäftsstelle Wien des Arbeitsmarktservice (Regional Office of the Labour Market Service Vienna), Wien*" replaces the "*Landesarbeitsamt Wien (Provincial Employment Office Vienna), Wien*".

5 Amendment to Annex 5.

Annex 5 refers to the implementing provisions of bilateral conventions which remain in force. There are two amendments to be included in this Annex.

An agreement concerning the partial waiving of the reimbursement provided for in Articles 36 (3) and 63 (3) of the Regulation, and the

reciprocal waiving of the reimbursement provided for in Article 105 (2) of the implementing Regulation (partial waiving of reimbursement of expenditure for benefits in kind provided in the event of sickness, maternity, industrial accident or occupational disease and waiving of reimbursement of the costs of administrative checks and medical examinations) was concluded between Belgium and France by an exchange of letters on 21 November 1994 and 8 February 1995.

A supplementary exchange of letters on 22 March and 15 April 1994, supplementing the previous agreement set down in item b) of the heading "41. FRANCE-ITALY" by means of Regulation (EEC) No 1945/93, took place between these two Member States within the context of the provisions quoted in the preceding paragraph.

Two agreements have been concluded, the first between Austria and the United Kingdom on 30 November 1994 and the second on 13 February 1995 between Denmark and Austria, concerning the procedures for reimbursement of medical expenses between the competent institutions of these Member States.

Finally, an agreement concerning the partial waiving of the reimbursement provided for in Articles 36 (3) and 63 (3) of the Regulation, and the reciprocal waiving of the reimbursement provided for in Article 105 (2) of the implementing Regulation (partial waiving of reimbursement of expenditure for benefits in kind provided in the event of sickness, maternity, industrial accident or occupational disease and waiving of reimbursement of administrative and medical examination costs) was concluded between Italy and the United Kingdom by an exchange of letters on 1 and 16 February 1995.

JUSTIFICATION IN RELATION TO SUBSIDIARITY OF THE PROPOSAL TO AMEND REGULATIONS 1408/71 AND 574/72 .

The proposed amendments are in accordance with the two criteria of the principle of subsidiarity, namely necessity and proportionality as inscribed in Article 3b of the Treaty of the European Community.

Indeed, on the one hand, Article 51 obliges the Council to adopt such measures in the field of social security as are necessary to provide freedom of movement for workers. The coordination of national social security schemes is within the exclusive competence of the Community. On the other hand, a binding legislative intervention is obviously proportionate to the objective of effective free movement. This is the reason why the Council chose the Regulation as the most appropriate legal instrument to attain this objective.

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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 Commission¹, presented following consultation of the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas it is necessary to introduce certain amendments to Regulations (EEC) Nos 1408/71⁴ and 574/72⁵, as last amended by Regulation (EEC) No 1945/93⁶ and the Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden in 1995⁷; whereas some of these amendments are linked to changes introduced by Member States to their social security legislation, with others being technical in nature and intended to complete the said Regulations;

Whereas it is necessary, given the fact that the nature of and the conditions for granting special adoption allowances are similar to those for childbirth allowances, to supplement Article 1 u) i) of Regulation (EEC) No 1408/71 in order to enable reference to be made to these in Section II of Annex II;

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4 OJ L 149, 5.7.1971, p. 2
5 OJ L 74, 27.03.1972, p. 1
6 OJ L 181, 23.07.1993, p. 1
7 OJ L 1, 1.1.1995, p.1

Whereas it appears necessary to enable seconded employed persons employed on the territory of several Member States or employed on the territory of a Member State in an undertaking having its registered place of business in another Member State and operating across their shared frontier; self-employed workers in similar situations; seamen in comparable situations and persons benefitting from a derogation to the provisions of Articles 13 to 16 of Regulation (EEC) No 1408/71 by agreement between competent authorities, including civil servants and persons treated as such; and to members of their families accompanying them, to benefit from the provisions of Article 22 (1a) of Regulation (EEC) No 1408/71 for any situation in which benefits are required, provided that the stay is for occupational purposes;

Whereas it is necessary, for reasons of simplification and unification of the administrative regulations, to delete Article 32 of Regulation (EEC) No 1408/71;

Whereas it is necessary to amend the heading "B. DENMARK" of Annex I B to Regulation (EEC) No 1408/71 in order to specify the current definition of the expression "members of the family";

Whereas, in the light of the amendment to be introduced to Article 1 u) i) of Regulation (EEC) No 1408/71, the title of Section II of Annex II must be amended accordingly; whereas the headings "A. BELGIUM" and "E. FRANCE" of this Annex should be supplemented to take account respectively of the adoption premium and adoption allowance which have been introduced in the legislation of these Member States in relation to family benefits;

Whereas it is necessary to add to Annex II (a) to Regulation (EEC) No 1408/71, under the heading "B. DENMARK", the accommodation allowance for retired persons, which constitutes a special non-contributory benefit within the meaning of paragraph 2 a) of Article 4 of Regulation (EEC) No 1408/71;

Whereas it would appear advantageous to specify in Annex III A and B, No "35. GERMANY-AUSTRIA", e) to Regulation (EEC) No 1408/71, that the temporary application of the provisions of the bilateral agreement between Germany and Austria also remain valid in the event of a transformation of a pension;

Whereas the heading "O. UNITED KINGDOM" of Annex IV C to Regulation (EEC) No 1408/71 should be amended to enable the competent United Kingdom authorities to renounce the pro rata calculation of the pension when this calculation does not give a result financially more favourable to the beneficiary;

Whereas, following changes in German legislation on this subject, it is necessary to adapt accordingly the heading "C. GERMANY" of Annex VI to Regulation (EEC) No 1408/71;

Whereas it is also necessary to add an item to the heading "L. PORTUGAL" of Annex VI to Regulation (EEC) No 1408/71 in order that retired civil servants and members of their family may receive sickness and/or maternity benefits in kind in the event of immediate need during the course of a stay in the territory of

another Member State or when travelling there to receive care appropriate to their state of health with the prior authorisation of the competent Portuguese institutions;

Whereas it is necessary to insert a new Article 19 a) in Regulation (EEC) No 574/72 in order to permit the administrative and financial implementation of the provision of benefits in kind in the event of a stay in the competent State of members of the family residing in a Member State other than that in which the employed or self-employed person resides;

Whereas, following an administrative reorganisation in Austria, it is necessary to adapt accordingly the heading "K. AUSTRIA" in Annexes 2, 3 and 4 to Regulation (EEC) 574/72;

Whereas the items "4. BELGIUM-FRANCE", "23. DENMARK-AUSTRIA", "41. FRANCE-ITALY", "82. ITALY-UNITED KINGDOM" and "97. AUSTRIA-UNITED KINGDOM" of Annex V to Regulation (EEC) 574/72 must be adapted to take account of agreements concluded by these Member States;

HAS ADOPTED THIS REGULATION:

Article 1

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

1 Article 1 u) i) is amended as follows:

"the terms "family benefits" means all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4(1h), excluding the special childbirth or adoption allowances referred to in Annex II"

2 The following Article 22 a) is inserted after Article 22:

"Article 22 a)

Employment in a Member State other than the competent State - Stay in the State of employment

The employed or self-employed person referred to in Article 13 (2d), Article 14, Article 14 a), Article 14 b) or Article 17, and members of the family accompanying him, shall benefit from the provisions of Article 22 (1a) for any condition requiring treatment during a stay on the territory of the Member State in which the worker is employed or whose flag the vessel aboard which the worker is employed is flying"

3 Article 32 is deleted.

4 At the end of the first paragraph of Article 36, the words "*without prejudice to the provisions of Article 32*" are deleted.

5 In Annex I section B, item "B. DENMARK", the current text is replaced as follows:

"where it is decided whether, under the terms of the Regulation, a right to sickness or maternity benefits in kind exists pursuant to Articles 22 (1a) and 31 of the Regulation, the expression "member of the family" shall mean:

- 1) *the spouse of an employed person, a self-employed person or other entitled person under the terms of the Regulation, in so far as they are not themselves entitled persons under the terms of the Regulation;*
- 2) *or a child under 18 years of age in the care of someone who is an entitled person under the terms of the Regulation".*

6 Section II of Annex II is amended as follows:

a) A new title is inserted, replacing the previous title:

"Special childbirth or adoption allowances under the terms of Article 1 u) i)"

b) The heading "A. BELGIUM" is supplemented as follows: an item b) is added after the current item, which becomes a):

"b) Adoption premium".

c) The heading "E. FRANCE" is supplemented as follows: an item b) is added after the current item, which becomes a):

"b) Adoption allowance"

7 In Annex II a), section B, heading "B. DENMARK", the word "*none*" should be replaced as follows:

"accommodation expenses for pensioners (Law on individual accommodation assistance, consolidated by Law No 704 of 22 July 1994)".

8 In Annex III A and B, heading "35. GERMANY-AUSTRIA", e), the full stop after the words "*begun prior to 31 December 1994*" is replaced by a semi-colon, followed by a new line and the addition in question, which relates to both items i) and ii);

"this shall also apply to periods during which another pension, including a survivor's pension, was collected, replacing the initial one, where the periods of collection follow each other without interruption".

- 9 In Annex IV C, the text of the heading "O. UNITED KINGDOM" is replaced by the following text:

"all applications for retirement and widow's pension determined pursuant to the provisions of Title III, Chapter III of the Regulation, with the exception of those for which:

- a) *during a tax year beginning on or after 6 April 1975*
 - i) *the party concerned had completed periods of insurance, employment or residence under the legislation of the United Kingdom and of another Member State; and*
 - ii) *one (or more) of the tax years referred to in i) was not considered a qualifying year within the meaning of the legislation of the United Kingdom.*
- b) *the periods of insurance completed under the legislation in force in the United Kingdom for the periods prior to 5 July 1948 would be taken into account for the purposes of Article 46 (2) of the Regulation by application of the periods of insurance, employment or residence under the legislation of another Member State".*

- 10 Annex VI is amended as follows:

- a) Item 2 a) of the heading "C. GERMANY" is deleted. Item 2 b), which becomes item 2 a), is replaced by the following text:

"2 a) The standard period for allocation shall be determined exclusively with reference to German periods".

Item 2 c), which becomes item 2 b), is replaced by the following:

"2 b) For the allocation of periods governed by German pension law to German insurance classes, only German legislation shall apply".

Item 2 d) becomes item 2 c) and item 2 e) is deleted.

Items 3 and 4 are deleted. In item 5, which becomes item 3, the words "*National Federation of Local Sickness Funds*" shall be replaced by the words "*National Federation of Local General Funds*".

The first paragraph of item 7, which becomes item 4, is replaced by the following text:

"4. *Article 7 of Book VI of the Social Code shall apply to nationals of the other Member States and to stateless persons and refugees residing in the territory of other Member States, according to the following rules:*".

Indent c) of this item is replaced by the following text:

"If the party concerned is a national of another Member State, has his domicile or residence in the territory of a third Member State, has contributed for at least 60 months to the German pension insurance scheme or was eligible for voluntary insurance under the provisions of Article 232 of Book VI of the Social Code, and is not compulsorily or voluntarily insured under the legislation of another Member State".

Items 9, 10 and 11 become items 5, 6 and 7 respectively. Item 12, which becomes item 8, is replaced by the following text:

"Periods of compulsory insurance completed under the legislation of another Member State, either under a special scheme for craftsmen or, if no such scheme exists, under a special scheme for self-employed persons or under the general scheme, shall be taken into account to justify the existence of the 18 years of compulsory contributions required for exemption from compulsory affiliation to pension insurance for self-employed craftsmen".

Items 13 and 14 become items 9 and 10. Item 16, which becomes item 11, is replaced by the following text:

"11. Greek teachers who have civil servant status and who, by the fact that they have taught in German schools, have contributed to the compulsory German pension insurance scheme as well as to the special Greek civil servant scheme and who ceased to be covered by compulsory German insurance after 31 December 1978 may, on request, have the compulsory contributions reimbursed in accordance with Article 210 of Book VI of the Social Code. Applications for reimbursement of contributions are to be introduced during the course of the year following the date of entry into force of this provision. The party concerned may also pursue his claim within the six calendar months following the date on which he ceased to be subject to compulsory insurance.

Article 210 of Book VI of the Social Code shall only apply with regard to the periods during which compulsory contributions to the pension insurance scheme were paid in addition to contributions to the special Greek civil servant scheme and with regard to the allocation periods immediately following the periods during which these compulsory contributions were paid".

Items 17, 18 and 19 become items 12, 13 and 14 respectively. Following the latter, a new item 15 is inserted, with the following text:

"15. Where the provisions of German pension law in force on 31 December 1991 apply, the provisions of Annex VI shall also apply in the version thereof in force on 31 December 1991".

b) In the heading "L. PORTUGAL", the following item is added:

"3. Serving or retired civil servants, and members of their families, covered by a special health care scheme, may receive sickness and maternity benefits in kind in the event of immediate need during a stay in the territory of another Member State or when travelling there to receive care appropriate to their state of health with the prior authorisation of the competent Portuguese institution, in accordance with the procedures laid down in Articles 31 a) and 22 (1a) and c)) and (3) of Regulation (EEC) No 1408/71, under the same conditions as employed and self-employed persons covered by the general social security scheme".

Article 2

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

1 The following Article 19 a) is inserted after Article 19:

"Application of the second indent of Article 21 (2) of the Regulation

Article 19 a)

Benefits in kind in the event of a stay in the competent State - Members of the family resident in the Member State other than that in which the employed or self-employed person resides

1. *In order to receive benefits in kind under the terms of Article 21 of the Regulation, members of the family shall present to the institution at the place of stay a certificate stating that they are entitled to the said benefits. This certificate, which shall be provided by the institution of the place of residence of the members of the family, if possible prior to their leaving the territory of the Member State on which they reside, shall, in particular, indicate where appropriate the maximum period for granting benefits in kind, as laid down by the legislation of that Member State. If the members of the family do not present the said certificate, the institution at the place of stay shall contact the institution of the place of residence in order to obtain it.*

2. *The provisions of Article 17 (6, 7 and 9) of the implementing Regulation shall apply by analogy. In this case, the institution of*

the place of residence of the members of the family shall be considered the competent institution".

2 Annex 2 is amended as follows:

- a) In items 3 a) and 4 b) of the heading "K. AUSTRIA", the words "*Arbeitsamt (Employment Office)*" are replaced by the words "*Regionale Geschäftsstellen des Arbeitsmarktservice (Local Office of the Labour Market Service)*".

3 Annex 3 is amended as follows:

In items 4 and 5 b) of the heading "K. AUSTRIA", the words "*Arbeitsamt (Employment Office)*" are replaced by the words "*Regionale Geschäftsstellen des Arbeitsmarktservice (Local Office of the Labour Market Service)*".

4 Annex 4 is amended as follows:

In the heading "K. AUSTRIA":

- i) in item 2 a), the words "*Landesarbeitsamt Salzburg (Provincial Employment Office Salzburg), Salzburg*" are replaced by the words "*Landessgeschäftsstelle Salzburg des Arbeitsmarktservice (Regional Office of the Labour Market Service Salzburg), Salzburg*".
- ii) in item 2 b) and 3 b), the words "*Landesarbeitsamt Wien (Provincial Employment Office Vienna), Wien*" are replaced by the words "*Landessgeschäftsstelle Wien des Arbeitsmarktservice (Regional Office of the Labour Market Service Vienna), Wien*".

5 Annex 5 is amended as follows:

- a) In item "4. BELGIUM-FRANCE", the following item i) is added:

i) *The exchange of letters of 21 November 1994 and 8 February 1995 concerning the procedures for the settlement of reciprocal claims pursuant to Articles 93, 94, 95 and 96 of the implementing Regulation".*

- b) In item "23. DENMARK-AUSTRIA", the word "*none*" is replaced by the following text:

"Agreement of 13 February 1995 concerning the reimbursement of expenditure in the field of social security".

- c) In item "41. FRANCE-ITALY", the following item c) is added:

- "c) *The supplementary exchange of letters of 22 March and 15 April 1994 concerning the procedures for the settlement of reciprocal debts under the terms of Articles 93, 94, 95 and 96 of the implementing Regulation*".
- d) In item "82. ITALY-UNITED KINGDOM", the word "none" is replaced by the following text:
- "The exchange of letters of 1 and 16 February 1995 concerning Articles 36 (3) and 63 (3) of the Regulation (reimbursement or waiving of reimbursement of expenditure for benefits in kind) and Article 105 (2) of the implementing Regulation (waiving of reimbursement of the costs of administrative checks and medical examinations)"*.
- e) In item "97. AUSTRIA-UNITED KINGDOM", the following item should be added:
- "c) *Agreement of 30 November 1994 concerning the reimbursement of expenditure for social security benefits*".

Article 3

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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