

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 10 June 1974

Proposal for a

COUNCIL REGULATION (EEC)

amending Article 107 of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

When the proposal for Council Regulation (EEC) No 574/72 was being drafted, it was considered preferable, for the sake of clarity and to ensure uniform implementation, to bring together in one single article all questions concerning the conversion of one currency into another for the calculation, payment or refund of benefits.

Thus, Article 107(1) of Council Regulation (EEC) No 574/72 lists all the provisions of Council Regulation (EEC) No 1408/71 and of Council Regulation (EEC) No 574/72 for the purposes of which the conversion of amounts shown in different national currencies is effected at the official par values declared by the national monetary authorities and recognized by the International Monetary Fund. Article 107(2) provides that in all other cases the conversion is made at the rate of exchange actually used at the time of payment.

These mechanisms, taken over from the previous Regulations Nos 3 and 4 and the Decisions taken by the Administrative Commission in pursuance of these Regulations, remained valid while these Regulations were in force.

The international monetary system that existed when Article 107 was being drafted was based on the Bretton Woods Agreement which provided for fixed but adjustable gold parities and exchange rates with very narrow fluctuation margins. However, this system has been drastically changed since the Washington Agreements of 18 December 1971. Apart from the official gold parities - which no longer correspond to market exchange rates - each country now notifies a "central rate" which is less legally binding and easier to alter than official par values. Moreover, fluctuation margins have been widened and, in some cases, abolished.

In order to maintain among them stable monetary relations, the Member States introduced in April 1972 a Community exchange system with as its prominent feature a narrowing of the fluctuation margins of Community currencies (2.25 per cent instead of 4.5 per cent under the Washington Agreements). However, the Pound Sterling (United Kingdom and Ireland) began to float on 23 June 1972, followed by the Italian Lira on 13 February 1973 and the French Franc on 19 January 1974. In addition, the German Mark was revalued on 11 March and again on 29 June 1973 and the Dutch Guilder on 17 September 1973.

As a result, Article 107 of Regulation No 574/72 had already been overtaken by events when that Regulation was adopted. Social security benefits in the different currencies ceased to be of equal value wherever conversions were effected at par value and one or more currencies deviated substantially on the market.

In order to remedy the inconsistencies arising from this situation, the competent authorities of several Member States took the initiative of applying transitional provisions pending a revision of Article 107 of Council Regulation (EEC) No 574/72.

The proposal for a Regulation presented herewith amends Article 107 in such a manner as to relate it closer to monetary realities.

Where two currencies whose difference between the market exchange rate and the rate that corresponds to their de facto parity ratio (i.e. the central rate or the par value declared to the International Monetary Fund) may not exceed a margin of 2.25 per cent, the conversion is to be made by reference to that de facto parity.

In the case of two currencies whose difference between the market exchange rate and the rate that corresponds to their de facto parity ratio may exceed a margin of 2.25 per cent, the conversion is to be made by reference to an exchange rate calculated by the Commission on the basis of the arithmetic mean of the exchange rates of these currencies recorded on each of the two national foreign exchange markets.

Article 1(2) of the proposed Regulation, which lays down the exchange rates to be used in the latter case, has in its entirety been taken over from Article 1(3) of Decision No 3542/73/ESCS of the Commission of 19 December 1973, published in the Official Journal of the European Communities No L 361 of 29 December 1973.

The rates to be used in the Member States for the purposes of the provisions listed in paragraph 1 (which have been strictly confined to cases involving calculation of benefits, excluding cases relating to reimbursement) are to be based on rates recorded in April for those to be applied from 1 July following, and on rates recorded in October for those taking effect on 1 January following.

Whenever rates fixed in accordance with paragraph 1 fluctuate by more than 10 per cent, the Administrative Commission will examine whether the substantial fluctuations that have occurred are likely to persist or whether they are merely accidental and, on that basis, decide whether the reference period ought to be changed.

The exchange rates to be used - that is, those calculated by the Commission for the purposes of Article 107 of Regulation No 574/72 exclusively - will be published in the Official Journal of the European Communities during the last month but one preceding the month from the first day of which they will be applicable. This will enable the social security institutions of the Member States to make the necessary calculations and to issue the corresponding orders for payment in time so as to ensure that the persons concerned will receive them by the first days of the new period of application.

Paragraph 6 is, as regards its substance, identical to the present Article 107(2) of Regulation No 574/72.

Paragraph 3 provides that the Administrative Commission is to fix the dates to be taken into account for determining the exchange rates to be used in the cases referred to in paragraph 1; these are administrative implementing provisions similar to those which the Administrative Commission adopted under the former Regulations Nos 3 and 4.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAVING REGARD to the Treaty establishing the European Economic Community, and in particular Articles 2, 7 and 51 thereof;

HAVING REGARD to Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community¹, last amended by Regulation (EEC) No 2), and in particular Article 97 thereof;

HAVING REGARD to Regulation (EEC) No 574/72 of the Council of 21 March 1972³ fixing the procedure for implementing the aforementioned Regulation (EEC) No 1408/71, last amended by Regulation (EEC) No 2),

HAVING REGARD to the proposal from the Commission drawn up after consultation with the Administrative Commission on Social Security for Migrant Workers;

HAVING REGARD to the Opinion of the European Parliament;

HAVING REGARD to the Opinion of the Economic and Social Committee;

WHEREAS the abovementioned Regulations (EEC) Nos 1408/71 and 574/72 entered into force on 1 October 1972 and have been applicable in the new Member States since 1 April 1973;

WHEREAS the international monetary situation has changed since the aforementioned Regulations were adopted;

WHEREAS the determination of rates of conversion between currencies for the purposes of Article 107(1) of Regulation (EEC) No 574/72 of 21 March 1972 should be based as closely as possible upon monetary realities; whereas Article 107 of the said Regulation should therefore be amended,
HAS ADOPTED THIS REGULATION:

1) OJ No L 149, 5 July 1971, p. 2.

2) OJ No

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

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Article 1

Article 107 of Regulation (EEC) No 574/72 shall be amended as follows:

Currency conversion

1. For the purposes of the provisions listed hereinafter, the rate of conversion into a national currency of amounts shown in another national currency shall be determined in accordance with the provisions of subparagraphs (a), (b), (c) and (d) below:
provisions of the Regulation: Article 12(2), (3) and (4), the last sentence of Article 19(1)(b), the last sentence of Article 22(1)(ii), the penultimate sentence of Article 25(1)(b), Article 41(1)(c) and (d), Article 46(3) and (4), Article 50, the last sentence of Article 52(b), the last sentence of Article 55(1)(ii), the first subparagraph of Article 70(1) and the penultimate sentence of Article 71(1)(b)(ii);
provisions of the Implementing Regulation: Article 34(1) and Article 119(2).

Methods of determining conversion rates:

- a) in the case of two currencies whose difference between the market exchange rate and the rate that corresponds to their de facto parity ratio may not exceed a margin of 2.25 per cent, this de facto parity in force on the last business day of the reference period specified in subparagraph (c) shall be used;
- b) in the case of two currencies whose difference between the market exchange rate and the rate that corresponds to their de facto parity ratio may exceed a margin of 2.25 per cent, an exchange rate shall be used calculated by the Commission on the basis of the arithmetic mean of the exchange rates of these currencies recorded on each of the two national foreign exchange markets during the reference period specified in subparagraph (c);
- c) the reference period shall be the month of April for exchange rates to be used from 1 July following, and the month of October for exchange rates to be used from 1 January following;
- d) the de facto parity, as currently understood, means the central rate or the par value declared to the International Monetary Fund.

2. The exchange rates to be used for the purposes of subparagraph 1(b) above shall be as follows:
 - a) for the Belgian Franc and the Luxembourg Franc: the average official rates quoted on each business day on the Brussels exchange;
 - b) for the Deutsche Mark: the average official rates quoted on each business day on the Frankfurt exchange;
 - c) for the French Franc: the average official rates quoted on each business day on the Paris exchange;
 - d) for the Italian Lira: the average of the average official rates quoted on each business day on the Rome and Milan exchanges;
 - e) for the Dutch Guilder: the average official rates quoted on each business day on the Amsterdam exchange;
 - f) for the United Kingdom Pound and the Irish Pound: the average rates on each business day at midday on the exchange markets of the two Member States concerned, in London and Dublin respectively;
 - g) for the Danish Kroner: the average official rates quoted at midday at the meeting presided over at Copenhagen on each business day by the National Bank of Denmark.
3. The date to be taken into account for determining the exchange rates to be used in the cases referred to in paragraph 1 shall be fixed by the Administrative Commission on a proposal from the Audit Board.
4. Whenever the rates fixed in accordance with paragraph 1 fluctuate by more than 10 per cent, the Administrative Commission may alter the reference period specified in paragraph 1(c).
5. The exchange rates to be used for the purposes of the provisions of paragraph 1 shall be published in the Official Journal of the European Communities in the course of the last month but one preceding the month from the first day of which they are to take effect.
6. In cases not covered by paragraph 1, the conversion shall be made at the rate of exchange actually applicable at the time of payment, both when paying benefits and when making reimbursements.

Article 2

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

It shall be applicable as from 1 July 1974. It shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, on

For the Council,

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