

Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self employed persons, to self-employed persons and to their families moving within the Community (Consolidated version — OJ No L 28 of 30. 1. 1997, p. 1See annex B. ) (repealed)

#### TITLE IV

### IMPLEMENTATION OF THE SPECIAL PROVISIONS OF THE REGULATION RELATING TO THE VARIOUS CATEGORIES OF BENEFITS

#### CHAPTER 3

### INVALIDITY, OLD-AGE AND DEATH (PENSIONS)

#### *Submission and investigation of claims for benefits*

#### *Article 35 (11)*

**Applications for invalidity benefits where an employed person or a self-employed person has been subject only to the legislations mentioned in part A of Annex IV to the Regulation and also in the case referred to in Article 40 (2) of the Regulation**

1 In order to receive benefits under Articles 37, 38 and 39 of the Regulation, including the cases referred to in Articles 40 (2), 41 (1) and 42 (2) of the Regulation, an employed or self-employed person shall submit a claim either to the institution of the Member State to whose legislation he was subject at the time of occurrence of the incapacity for work followed by invalidity or the aggravation of such invalidity, or to the institution of the place of residence, which shall then forward the claim to the first institution, indicating the date on which it was submitted; this date shall be regarded as the date of the submission of the claim to the first institution. However, if sickness insurance cash benefits have been granted, the date on which such cash benefits ceased to be granted must, where appropriate, be regarded as the date of submission of the pension claim.

2 In the case referred to in Article 41 (1) (b) of the Regulation, the institution with which the employed or self-employed person was last insured shall notify the amount and the operative date of the benefits due under the legislation which it administers to the institution initially responsible for payment of the benefits. With effect from that date, the benefits due prior to the aggravation of the invalidity shall be cancelled or reduced to an amount not exceeding the supplement referred to in Article 41 (1) of the Regulation.

3 The provisions of paragraph 2 shall not apply in the case referred to in Article 41 (1) (d) of the Regulation. In this case, the institution with which the claimant was last insured shall apply to the Netherlands institution in order to ascertain the amount due from that institution.

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### Article 36

#### **Claims for old-age and survivors' benefits (excluding orphans' benefits) and invalidity benefits in cases not referred to in Article 35 of the implementing Regulation**

1 In order to receive benefits under Articles 40 to 51 of the Regulation, except in the cases referred to in Article 35 of the implementing Regulation, the person concerned shall submit a claim to the institution of the place of residence in accordance with the procedure provided for by the legislation administered by that institution. If the employed or self-employed person has not been subject to that legislation, the institution of the place of residence shall forward the claim to the institution of the Member State to whose legislation he was last subject, indicating the date on which the claim was submitted. That date shall be regarded as the date on which the claim was submitted to the latter institution.

2 Where a claimant resides in the territory of a Member State to whose legislation the employed or self-employed person has not been subject, he may submit his claim to the institution of the Member State to whose legislation the employed or self-employed person was last subject.

3 Where a claimant resides in the territory of a State which is not a Member State, he shall submit his claim to the competent institution of that Member State to whose legislation the employed or self-employed person was last subject.

Should the claimant submit his claim to the institution of the Member State of which he is a national, the latter shall forward such claim to the competent institution.

4 A claim for benefits sent to the institution of one Member State shall automatically involve the concurrent award of benefits under the legislation of all the Member States in question whose conditions the claimant satisfies except where, under Article 44 (2) of the Regulation, the claimant asks for postponement of any old-age benefits to which he would be entitled under the legislation of one or more Member States.

### Article 37

#### **Documents and information which should accompany claims to the benefits referred to in article 36 of the implementing Regulation**

The submission of the claims referred to in Article 36 of the implementing Regulation shall be subject to the following rules:

- (a) the claim must be accompanied by the required supporting documents and must be made on the form provided for by the legislation:
  - (i) of the Member State on whose territory the claimant resides, in the case referred to in Article 36 (1);
  - (ii) of the Member State to which the employed or self-employed person was last subject, in the cases referred to in Article 36 (2) and (3);
- (b) the accuracy of the information supplied by the claimant must be established by official documents attached to the claim form, or confirmed by the competent bodies of the Member State in whose territory the claimant resides;

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- (c) the claimant must indicate, in so far as is possible, either the institution or institutions administering insurance in respect of invalidity, old-age or death (pensions) of any Member State with which the employed or self-employed person has been insured, or in the case of an employed person the employer or employers for whom he has worked in the territory of any Member State, by producing any employment certificates which he may have in his possession;
- (d) if, under Article 44 (2) of the Regulation, the claimant asks for the postponement of the award of any old-age benefits to which he would be entitled under the legislation of one or more member States he must specify the legislation under which he is claiming benefits.

#### *Article 38*

#### **Certified statements of the members of the family to be taken into account when establishing the amount of the benefit**

1 In order to receive benefits under the provisions of Article 39 (4) or 47 (3) of the Regulation, the claimant shall submit a certified statement relating to the members of his family, his children excepted, who are residing in the territory of a Member State other than in which the institution responsible for the award of benefits is situated.

This certified statement shall be issued by the sickness insurance institution of the place of residence of the members of the family, or by another institution designated by the competent authority of the Member State in whose territory they are resident. The provisions of the second and third subparagraphs of Article 25 (2) of the implementing Regulation shall apply by analogy.

In place of the certified statement provided for in the first subparagraph, the institution responsible for the award of benefits may require the claimant to supply recent civil status documents relating to the members of his family, his children excepted, who are residing in the territory of a Member State other than the State in which the said institution is situated.

2 In the case referred to in paragraph 1, if the legislation administered by the institution concerned requires that the members of the family should live under the same roof as the pensioner, the fact that the said members of the family who do not satisfy that condition are nevertheless mainly dependent on the claimant must be established by documents proving the regular transmission of part of the claimant's earnings.

#### *Article 39 (11)*

#### **Investigation of applications for invalidity benefits where an employed person or a self-employed person has been subject only to the legislations mentioned in part A of Annex IV to the Regulation**

1 If an employed or self-employed person has submitted a claim for invalidity benefits, and the institution establishes that the provisions of Article 37 (1) of the Regulation apply, that institution shall, where necessary, obtain from the institution with which the person concerned was last insured a certified statement of the periods of insurance completed by him under the legislation administered by the last institution.

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2 Where it is necessary to take into account periods of insurance previously completed under the legislation of any other Member State in order to satisfy the conditions of the legislation of the competent State, the provisions of paragraph 1 shall apply by analogy.

3 In the case referred to in Article 39 (3) of the Regulation, the institution which has investigated the claimant's case shall forward his file to the institution with which the person concerned was last insured.

4 Articles 41 to 50 of the implementing Regulation shall not apply to the investigation of claims referred to in paragraphs 1, 2 and 3.

#### *Article 40*

### **Determination of the degree of invalidity**

In order to determine the degree of invalidity, the institution of the Member State shall take into consideration the documents and medical reports and the information of an administrative nature obtained by the institution of any other Member State. Each institution shall, however, retain the right to have the claimant examined by a doctor of its own choice except where the provisions of Article 40 (4) of the Regulation apply.

*Investigation of claims for benefits in respect of invalidity, old age and survivors in the cases referred to in Article 36 of the implementing Regulation*

#### *Article 41*

### **Determination of the investigating institutions**

1 Claims for benefit shall be investigated by the institution to which they have been sent or forwarded in accordance with the provisions of Article 36 of the implementing Regulation. This institution is hereinafter referred to as the 'investigating institution'.

2 The investigating institution shall forthwith notify claims for benefits to all the institutions concerned on a special form, so that the claims may be investigated simultaneously and without delay by all these institutions.

#### *Article 42*

### **Forms to be used for the investigation of claims for benefits**

1 When investigating claims for benefits the investigating institution shall use a form which will include, in particular, a statement and a summary of the periods of insurance or residence completed by the employed or self-employed person under the legislation of all the Member States concerned.

2 These forms, when forwarded to the institution of any other Member State, shall take the place of supporting documents.

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### Article 43

#### **Procedure to be followed by the institution concerned in the investigation of a claim**

1 The investigating institution shall enter on the form provided for in Article 42 (1) of the implementing Regulation the periods of insurance or residence completed under the legislation which it administers and it shall forward a copy of that form to the institution administering insurance in respect of invalidity, old-age or death (pensions) of any Member State with which the employed or self-employed person has been insured enclosing, where appropriate, any employment certificates produced by the claimant.

2 Where only one other institution is involved, that institution shall complete the said form by indicating:

- a the periods of insurance or residence completed under the legislation which it administers;
- b the amount of benefit which the claimant could claim in respect of those periods of insurance or residence only;
- c the theoretical amount and the actual amount of benefits calculated in accordance with the provisions of Article 46 (2) of the Regulation.

The form, thus completed, shall be returned to the investigating institution.

If a right to benefits is acquired taking into account only the periods of insurance or residence completed under the legislation administered by the institution of the second Member State, and if the amount of benefit corresponding to those periods can be determined without delay, whereas the calculation procedure referred to in subparagraph (c) requires an appreciably longer period of time, the form shall be returned to the investigating institution with the information referred to in subparagraphs (a) and (b); the information referred to in subparagraph (c) shall be forwarded to the investigating institution as soon as possible.

3 If two or more other institutions are involved, each one of those institutions shall complete the said form by indicating the periods of insurance or residence completed under the legislation which it administers, and shall return it to the investigating institution.

If a right to benefits is acquired taking into account only the periods of insurance or residence completed under the legislation administered by one or more of those institutions, and if the amount of benefit corresponding to those periods can be determined without delay, the investigating institution shall be simultaneously notified of that amount and of the periods of insurance or residence; if the determination of the said amount involves some delay, the investigating institution shall be notified of that amount as soon as it has been determined.

On receipt of all the forms giving information concerning periods of insurance or residence and, where appropriate, the amount or amounts due under the legislation of one or more of the Member States concerned, the investigating institution shall forward a copy of the forms thus completed to each of the institutions concerned which shall specify thereon the theoretical amount and the actual amount of the benefits, calculated in accordance with the provisions of Article 46 (2) of the Regulation, and shall return the form to the investigating institution.

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4 As soon as the investigating institution, upon receipt of the information referred to in paragraphs 2 or 3, establishes the fact that the provisions of Article 40 (2) or 48 (2) or (3) of the Regulation should be applied, it shall inform the other institutions concerned accordingly.

5 In the case provided for in Article 37 (d) of the implementing Regulation, the institutions of the Member States to whose legislation the claimant has been subject but to which he has applied for postponement of the award of the benefits shall enter on the form provided for in Article 42 (1) of the implementing Regulation only the periods of insurance or residence completed by the claimant under the legislation which they administer.

#### *Article 44*

### **Institution empowered to take a decision relating to the degree of invalidity**

1 Subject to the provisions of paragraphs 2 and 3, only the investigating institution shall be empowered to take the decision referred to in Article 40 (4) of the Regulation concerning the degree of invalidity of the claimant. It shall take such a decision as soon as it is in a position to determine whether, taking account, where appropriate, of the provisions of Article 45 of the Regulation, the conditions for entitlement fixed by the legislation which it administers are fulfilled. It shall notify such decision forthwith to the other institutions concerned.

2 If, taking account of the provisions of Article 45 of the Regulation, the conditions for entitlement, other than those relating to the degree of invalidity, laid down by the legislation administered by the investigating institution are not fulfilled, that institution shall immediately notify the competent institution in respect of invalidity of the other Member State to whose legislation the employed or self-employed person was last subject. This institution shall, if the conditions for entitlement laid down by the legislation which it administers are fulfilled, be empowered to take the decision relating to the degree of invalidity of the claimant; it shall forthwith notify that decision to the other institutions concerned.

3 Where necessary, the matter may have to be referred back, under the same conditions, to the competent institution in respect of invalidity of the Member State to whose legislation the employed or self-employed person was first subject.

#### *Article 45*

### **Provisional payment of benefits and advance payments of benefits**

1 If the investigating institution establishes that the claimant is entitled to benefits under the legislation which it administers without having recourse to periods of insurance or residence completed under the legislation of other Member States, it shall pay such benefits immediately on a provisional basis.

2 If the claimant is not entitled to benefits under paragraph 1 but, from information supplied to the investigating institution pursuant to Article 43 (2) or (3) of the implementing Regulation, it transpires that a right to benefits is acquired under the legislation of another Member State taking into account only the periods of insurance or residence completed under that legislation, the institution which administers the said legislation shall pay such benefits on a provisional basis as soon as the investigating institution has informed it of its obligation to do so.

3 If, in the case referred to in paragraph 2, a right to benefits is acquired under the legislation of more than one Member State, taking into account only those periods of insurance or residence completed under each one of those legislations, the payment of benefits on a

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provisional basis shall be the responsibility of the institution which in the first place informed the investigating institution of the existence of such a right; it shall be the duty of the investigating institution to inform the other institutions concerned.

4 The institution required to pay benefits under paragraph 1, 2 or 3 shall forthwith inform the claimant of the fact, drawing his attention explicitly to the provisional nature of the measure taken and to the fact that it is not open to appeal.

5 If no benefit is payable to the claimant on a provisional basis under paragraph 1, 2 or 3, but it transpires from information received that a right is acquired under Article 46 (2) of the Regulation, the investigating institution shall pay him an appropriate recoverable advance, the amount of which shall be as close as possible to the amount he will probably be awarded under Article 46 (2) of the Regulation.

6 Two Member States or the competent authorities or those member States may agree to apply other methods of payment of benefits on a provisional basis in cases where only the institutions of those States are concerned. Any such agreements which are concluded on this subject shall be notified to the Administrative Commission.

#### *Article 46 (11)*

#### **Amounts due for periods of voluntary insurance or optional continued insurance, which must not be taken into consideration under Article 15 (1) (b) of the implementing Regulation.**

For the calculation of the theoretical amount and of the actual amount of the benefit in accordance with Article 46 (2) (a) and (b) of the Regulation, the rules laid down in Article 15 (1), (b), (c) and (d) of the implementing Regulation shall be applicable.

The amount actually due, calculated in accordance with Article 46 (2) of the Regulation, shall be increased by the amount which corresponds to the periods of voluntary or optional continued insurance, which have not been taken into account under Article 15 (1) (b) of the implementing Regulation. This increase shall be calculated in accordance with the provisions of the Member State's legislation under which the periods of voluntary insurance or of optional continued insurance have been completed.

The comparison referred to in Article 46 (3) of the Regulation must be made bearing the aforesaid increase in mind.

#### *Article 47 (11)*

#### **Calculation of the amounts due corresponding to the periods of voluntary or optional continued insurance**

In accordance with the legislation it applies, the institution of each Member State shall calculate the amount corresponding to the periods of voluntary or optional continued insurance which, under Article 46a (3) (c) of the Regulation, is not subject to the provisions for withdrawal, reduction or suspension of another Member State.

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### *Article 48 (11)*

#### **Notification to the claimant of the decisions of the institutions**

1 The final decision taken by each of the institutions concerned shall be notified to the investigating institution. Each of these decisions must specify the grounds and time-limits for appeal provided for by the legislation in question. When all these decisions have been received, the investigating institution shall communicate them to the claimant in his own language by means of a summarized statement to which the aforesaid decisions shall be appended. Periods allowed for appeals shall commence only on the date of receipt of the summarized statement by the claimant.

2 On dispatch to the claimant of the summarized statement provided for in paragraph 1, the investigating institution shall simultaneously forward a copy to each one of the institutions concerned, enclosing with it a copy of the decisions of the other institutions.

### *Article 49 (11)*

#### **Recalculation of benefits**

1 For the purpose of implementing Article 43 (3) and (4), Article 49 (2) and (3) and Article 51 (2) of the Regulation, the provisions of Article 45 of the implementing Regulation shall apply *mutatis mutandis*.

2 In the event of recalculation, withdrawal or suspension of a benefit, the institution which has taken such a decision shall immediately notify the person concerned and each of the institutions on which the person concerned has a claim, if necessary through the good offices of the investigating institution. The decision must specify the grounds and time-limits for appeal provided for by the legislation in question. Periods allowed for appeals shall commence only on the date of receipt of the decision by the person concerned.

### *Article 50*

#### **Measures designed to accelerate the award of benefits**

- 1
- a (i) Where an employed or self-employed person who is a national of one Member State becomes subject to the legislation of another Member State, the competent institution in respect of pensions of the latter Member State shall, using all the means at its disposal and at the time of registration of the person concerned, forward to the body designated by the competent authority of that same Member State, all information relating to the identification of the person concerned and the name of the said competent institution and the insurance number allotted by the latter
  - (ii) Moreover, the competent institution referred to in subparagraph (i) shall also, as far as possible, forward to the body designated under the provisions of subparagraph (i) any other information which may facilitate and accelerate the award of the pensions.



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- (iii) Such information shall be forwarded, under conditions fixed by the Administrative Commission, to the body designated by the competent authority of the Member State concerned.
  - (iv) For the implementation of the provisions of subparagraphs (i), (ii) and (iii), stateless persons and refugees shall be deemed to be nationals of the member State to whose legislation they were first subject.
- b The institutions concerned shall, at the request of the person concerned or of the institution with which he is currently insured, draw up his insurance history starting not later than one year before the date on which he will reach pensionable age.
- 2 The Administrative Commission shall fix the methods for implementing the provisions of paragraph 1.

#### *Administrative checks and medical examinations*

##### *Article 51*

- 1 When a person in receipt of benefits, in particular:
- a invalidity benefits;
  - b old-age benefits awarded in the event of unfitness for work;
  - c old-age benefits awarded to elderly unemployed persons;
  - d old-age benefits awarded in the event of cessation of a professional or trade activity;
  - e survivors' benefits awarded in the event of invalidity or unfitness for work;
  - f benefits awarded on condition that the means of the recipient do not exceed a prescribed limit,

is staying or residing in the territory of a Member State other than the State in which the institution responsible for payment is situated, administrative checks and medical examinations shall be carried out, at the request of that institution, by the institution of the place of stay or residence of the recipient in accordance with the procedures laid down by the legislation administered by the latter institution. The institution responsible for payment shall, however, reserve the right to have the recipient examined by a doctor of its own choice.

2 If it is established that the recipient referred to in paragraph 1 is employed or self-employed or has means in excess of the prescribed limit while receiving benefits, the institution of the place of stay or residence shall send a report to the institution responsible for payment which has requested the check or examination. This report shall indicate in particular the nature of the employment or self-employment pursued by the person concerned, the amount of earnings or means which he has had during the last complete quarter, the normal earnings obtained in the same area by an employed person or a self-employed person at the same level as the person concerned in the occupation which he followed before becoming an invalid over a reference period to be determined by the institution responsible for payment and, where appropriate, the opinion of a medical expert on the state of health of the person concerned.

##### *Article 52*

When, after suspension of the benefits which he was receiving, the person concerned recovers his right to benefits whilst residing in the territory of a Member State other than the competent State, the institutions concerned shall exchange all relevant information with a view to the resumption of the provision of the said benefits.

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## *Payment of benefits*

### *Article 53*

#### **Method of payment of benefits**

1 If the institution responsible for payment in a Member State does not pay directly to persons entitled to benefits who are residing in the territory of another Member State the benefits due to them, such benefits shall be paid, at the request of the institution responsible for payment, by the liaison body of the latter Member State or by the institution of the place of residence of the said persons entitled to benefits in accordance with the procedure, provided for in Articles 54 to 58 of the implementing Regulation; if the institution responsible for payment pays the benefits directly to the persons entitled thereto, it shall notify the institution of the place of residence of this fact. The payment procedure to be applied by the institution of the Member-States is listed in Annex 6.

2 Two or more Member States or the competent authorities of those States may agree on other procedures for the payment of benefits in cases where the competent institutions of those Member States are the only ones concerned. Any agreements concluded on this subject shall be notified to the Administrative Commission.

3 The provisions of agreements relating to the payment of benefits which apply on the day preceding the entry into force of the Regulation shall continue to apply provided that they are listed in Annex 5.

### *Article 54*

#### **Notification to the paying body of the detailed schedule of payments to be made**

The institution responsible for payment of benefits shall send to the liaison body of the Member State in whose territory the person entitled to benefits is residing, or to the institution of the place of residence (both hereinafter called 'the paying body'), in duplicate, a detailed schedule of payments to be made which should reach the paying body not later than 20 days before the date on which those benefits become due.

### *Article 55*

#### **Payment of amounts due into the account of the paying body**

1 Ten days before the date on which the benefits fall due, the institution responsible for payment shall pay, in the currency of the member State in whose territory it is situated, the sum necessary for the payments specified in the schedule provided for in Article 54 of the implementing Regulation. Payment shall be made through the National Bank or through another bank of the Member State in whose territory the institution responsible for payment is situated, into an account opened in the name of the national Bank or of another bank of the member State in whose territory the paying body is situated, in favour of that body. Such payment shall discharge all liability. The institution responsible for payment shall, at the same time, send notification of payment to the paying body.

2 The bank into whose account payment has been made shall credit the paying body with the exchange value of the payment in the currency of the Member State in whose territory that body is situated.

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3 The names and registered offices or places of business of the banks referred to in paragraph 1 are listed in Annex 7.

#### *Article 56*

### **Payment of amounts due by the paying body to persons entitled to benefits**

1 The payments specified in the schedule provided for in Article 54 of the implementing Regulation shall be paid to the person entitled to benefits by the paying body on behalf of the institution responsible for payment. Such payments shall be made according to the procedure laid down by the legislation administered by the paying body.

2 As soon as the paying body or any other body designated by it learns of any circumstance justifying the suspension or withdrawal of benefits, it shall discontinue all payment. Such shall also be the case when the person entitled to benefits transfers his residence to the territory of another State.

3 The paying body shall advise the institution responsible for payment of benefits of the reason for any non-payment. In the event of the death of the person entitled to benefits or of his spouse, or in the case of the re-marriage of a widow or widower, the paying body shall notify the said institution of the date thereof.

#### *Article 57*

### **Settlement of accounts in respect of the payment referred to in Article 56 of the implementing Regulation**

1 The accounts in respect of the payments referred to in Article 56 of the implementing Regulation shall be settled at the end of each payment period in order to determine amounts actually paid to persons entitled to benefits or to their legal or authorized representatives as well as amounts unpaid.

2 The total amount, expressed in figures and in words in the currency of the Member State in whose territory the institution responsible for payment is situated, shall be certified as being in accordance with the payments made by the paying body and endorsed with the signature of that body's representative.

3 The paying body shall guarantee that the payments so determined have been properly made.

4 The difference between the sums paid by the institution responsible for payment, expressed in the currency of the Member State in whose territory that institution is situated, and the value, expressed in the same currency, of the payments accounted for by the paying body shall be entered against the sums to be paid subsequently under the same heading by the institution responsible for payment.

#### *Article 58*

### **Recovery of expenses incurred in the payment of benefits**

The expenses incurred in the payment of benefits, particularly postal and bank charges, may be recovered from the recipients by the paying body under the conditions provided for by the legislation administered by that body.

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### *Article 59*

#### **Notification of transfer of residence of the person entitled to benefits**

When a person entitled to benefits due under the legislation of one or more Member States transfers his residence from the territory of one State to that of another State, he shall notify this fact to the institution or institutions responsible for the payment of such benefits and to the paying body.

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