

Council Regulation (EC) 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 (8) (9) (10) (11) (Consolidated version — OJ No L 28 of 30. 1. 1997, p. 1 See appendix.) (repealed)

TITLE I

GENERAL PROVISIONS

Article 1 (10) (15)

Definitions

For the purpose of this Regulation:

- (a) *employed person* and *self-employed person* mean respectively:
- (i) [^{F1}any person who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed or self-employed persons or by a special scheme for civil servants;]
 - (ii) any person who is compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this Regulation, under a social security scheme for all residents or for the whole working population, if such person:
 - can be identified as an employed or self-employed person by virtue of the manner in which such scheme is administered or financed, or,
 - failing such criteria, is insured for some other contingency specified in Annex I under a scheme for employed or self-employed persons, or under a scheme referred to in (iii), either compulsorily or on an optional continued basis, or, where no such scheme exists in the Member State concerned, complies with the definition given in Annex I;
 - (iii) any person who is compulsorily insured for several of the contingencies covered by the branches dealt with in this Regulation, under a standard social security scheme for the whole rural population in accordance with the criteria laid down in Annex I;
 - (iv) any person who is voluntarily insured for one or more of the contingencies covered by the branches dealt with in this Regulation, under a social security scheme of a Member State for employed or self-employed persons or for all residents or for certain categories of residents:
 - if such person carries out an activity as an employed or self-employed person, or
 - if such person has previously been compulsorily insured for the same contingency under a scheme for employed or self-employed persons for the same Member State;

Status: Point in time view as at 05/05/2005. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), Article 1 (10) (15). (See end of Document for details)

- (b) *frontier worker* means any employed or self-employed person who pursues his occupation in the territory of a Member State and resides in the territory of another Member State to which he returns as a rule daily or at least once a week; however, a frontier worker who is posted elsewhere in the territory of the same or another Member State by the undertaking to which he is normally attached, or who engages in the provision of services elsewhere in the territory of the same or another Member State, shall retain the status of frontier worker for a period not exceeding four months, even if he is prevented, during that period, from returning daily or at least once a week to the place where he resides;
- (c) *seasonal worker* means any employed person who goes to the territory of a Member State other than the one in which he is resident to do work there of a seasonal nature for an undertaking or an employer of that State for a period which may on no account exceed eight months, and who stays in the territory of the said State for the duration of this work; work of a seasonal nature shall be taken to mean work which, being dependent on the succession of the seasons, automatically recurs each year;
- (ca) [^{F2}*student* means any person other than an employed or self-employed person or a member of his family or survivor within the meaning of this Regulation who studies or receives vocational training leading to a qualification officially recognised by the authorities of a Member State, and is insured under a general social security scheme or a special social security scheme applicable to students;]
- (d) *refugee* shall have the meaning assigned to it in Article 1 of the Convention of the Status of Refugees, signed at Geneva on 28 July 1951;
- (e) *stateless person* shall have the meaning assigned to it in Article 1 of the Convention on the Status of Stateless Persons, signed in New York on 28 September 1954;
- (f) (i) *member of the family* means any person defined or recognized as a member of the family or designated as a member of the household by the legislation under which benefits are provided or, in the cases referred to in Articles 22 (1) (a) and 31, by the legislation of the Member State in whose territory such person resides; where, however, the said legislations regard as a member of the family or a member of the household only a person living under the same roof as the [^{F2}employed or self-employed person or student], this condition shall be considered satisfied if the person in question is mainly dependent on that person. [^{F3}Where the legislation of a Member State does not enable members of the family to be distinguished from the other persons to whom it applies, the term “ member of the family” shall have the meaning given to it in Annex I];
- (ii) where, however, the benefits concerned are benefits for disabled persons granted under the legislation of a Member State to all nationals of that State who fulfil the prescribed conditions, the term ‘member of the family’ means at least the spouse of an [^{F2}employed or self-employed person or student] and the children of such person who are either minors or dependent upon such person;
- (g) *survivor* means any person defined or recognized as such by the legislation under which the benefits are granted; where, however, the said legislation regards as a survivor only a person who was living under the same roof as the deceased, this condition shall be considered satisfied if such person was mainly dependent on the deceased;

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- (h) *residence* means habitual residence;
- (i) *stay* means temporary residence;
- (j) *legislation* means in respect of each Member State statutes, regulations and other provisions and all other implementing measures, present or future, relating to the branches and schemes of social security covered by Article 4 (1) and (2) or those special non-contributory benefits covered by Article 4 (2a).

The term excludes provisions of existing or future industrial agreements, whether or not they have been the subject of a decision by the authorities rendering them compulsory or extending their scope. However, in so far as such provisions:

- (i) serve to put into effect compulsory insurance imposed by the laws and regulations referred to in the preceding subparagraph; or
- (ii) set up a scheme administered by the same institution as that which administers the schemes set up by the laws and regulations referred to in the preceding subparagraph,

the limitation on the term may at any time be lifted by a declaration of the Member State concerned specifying the schemes of such a kind to which this Regulation applies. Such a declaration shall be notified and published in accordance with the provisions of Article 97.

The provisions of the preceding subparagraph shall not have the effect of exempting from the application of this Regulation the schemes to which Regulation No 3 applied.

The term 'legislation' also excludes provisions governing special schemes for self-employed persons the creation of which is left to the initiatives of those concerned or which apply only to a part of the territory of the Member State concerned, irrespective of whether or not the authorities decided to make them compulsory or extend their scope. The special schemes in question are specified in Annex II;

- (ja) [F¹“special scheme for civil servants” means any social security scheme which is different from the general social security scheme applicable to employed persons in the Member States concerned and to which all, or certain categories of, civil servants or persons treated as such are directly subject;]
- (k) *social security convention* means any bilateral or multilateral instrument which binds or will bind two or more Member States exclusively, and any other multilateral instrument which binds or will bind at least two Member States and one or more other States in the field of social security, for all or part of the branches and schemes set out in Article 4 (1) and (2), together with agreements, of whatever kind, concluded pursuant to the said instruments;
- (l) *competent authority* means, in respect of each Member State, the Minister, Ministers or other equivalent authority responsible for social security schemes throughout or in any part of the territory of the State in question;
- (m) *Administrative Commission* means the commission referred to in Article 80;
- (n) *institution* means, in respect of each Member State, the body or authority responsible for administering all or part of the legislation;
- (o) *competent institution* means:

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- (i) the institution with which the person concerned is insured at the time of the application for benefit;
 - or
 - (ii) the institution from which the person concerned is entitled or would be entitled to benefits if he or a member or members of his family were resident in the territory of the Member State in which the institution is situated; or
 - (iii) the institution designated by the competent authority of the member State concerned; or
 - (iv) in the case of a scheme relating to an employer's liability in respect of the benefits set out in Article 4 (1), either the employer or the insurer involved or, in default thereof, a body or authority designated by the competent authority of the Member State concerned;
- (p) *institution of the place of residence* and *institution of the place of stay* means respectively the institution which is competent to provide benefits in the place where the person concerned resides and the institution which is competent to provide benefits in the place where the person concerned is staying, under the legislation administered by that institution or, where no such institution exists, the institution designated by the competent authority of the Member State in question;
- (q) *competent State* means the Member State in whose territory the competent institution is situated;
- (r) *periods of insurance* means periods of contribution or period of employment or self-employment as defined or recognized as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance; [F¹periods completed under a special scheme for civil servants are also considered as periods of insurance;]
- (s) *periods of employment* and *periods of self-employment* means periods so defined or recognized by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or of self-employment; [F¹periods completed under a special scheme for civil servants are also considered as periods of employment;]
- (sa) *periods of residence* means periods as defined or recognized as such by the legislation under which they were completed or considered as completed;
- (t) *benefits* and *pensions* mean all benefits and pensions, including all elements thereof payable out of public funds, revalorization increases and supplementary allowances, subject to the provisions of Title III, as also lump-sum benefits which may be paid in lieu of pensions, and payments made by way of reimbursement of contributions;
- (i) the term *family benefits* means all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4 (1) (h), excluding the special childbirth or adoption allowances referred to in Annex II;
 - (ii) *family allowances* means periodical cash benefits granted exclusively by reference to the number and, where appropriate, the age of members of the family;

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- (v) *death grants* means any once-for-all payment in the event of death exclusive of the lump-sum benefits referred to in subparagraph (t).

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Textual Amendments

- F1** Inserted by [Council Regulation \(EC\) No 1606/98 of 29 June 1998](#).
F2 Inserted by [Council Regulation \(EC\) No 307/1999 of 8 February 1999](#).
F3 Inserted by [Council Regulation \(EC\) No 1290/97 of 27 June 1997](#).

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