

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 ) (repealed)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) [<sup>F1</sup>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;

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- (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) [<sup>F2</sup>*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 [<sup>F2</sup>employed or self-employed person or student], this condition shall be considered satisfied if the person in question is mainly dependent on that person. [<sup>F3</sup>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 [<sup>F2</sup>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) [F<sup>1</sup>“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; [F<sup>1</sup>periods 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; [F<sup>1</sup>periods 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](#).

*]<sup>F2</sup>Article 2*

**Persons covered**

1 This Regulation shall apply to employed or self-employed persons and to students who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States, as well as to the members of their families and their survivors.

2 This Regulation shall apply to the survivors of employed or self-employed persons and of students who have been subject to the legislation of one or more Member States, irrespective of the nationality of such persons, where their survivors are nationals of one of the Member States, or stateless persons or refugees residing within the territory of one of the Member States.]

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**Textual Amendments**

- F2** Inserted by [Council Regulation \(EC\) No 307/1999 of 8 February 1999](#).

*Article 3*

**Equality of treatment**

1 Subject to the special provisions of this Regulation, persons]<sup>F4</sup> resident in the territory of one of the Member States] to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of the State.

2 The provisions of paragraph 1 shall apply to the right to elect members of the organs of social security institutions or to participate in their nomination, but shall not affect the legislative provisions of any Member State relating to eligibility or methods of nomination of persons concerned to those organs.

3 Save as provided in Annex III, the provisions of social security conventions which remain in force pursuant to Article 7 2. (c)]<sup>F4</sup> and the provisions of conventions concluded pursuant to Article 8 (1),] shall apply to all persons to whom this Regulation applies.

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**Textual Amendments**

- F4** Deleted by [Regulation \(EC\) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations \(EEC\) 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](#)

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Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

#### Article 4 (10)

#### Matters covered

1 This Regulation shall apply to all legislation concerning the following branches of social security:

- a sickness and maternity benefits;
- b invalidity benefits, including those intended for the maintenance or improvement of earning capacity;
- c old-age benefits;
- d survivors' benefits;
- e benefits in respect of accidents at work and occupational diseases;
- f death grants;
- g unemployment benefits;
- h family benefits.

2 This Regulation shall apply to all general and special social security schemes, whether contributory or non-contributory, and to schemes concerning the liability of an employer or shipowner in respect of the benefits referred to in paragraph 1.

[<sup>F5</sup>2a This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement has characteristics both of the social security legislation referred to in paragraph 1 and of social assistance.

‘Special non-contributory cash benefits’ means those:

- a which are intended to provide either:
  - (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1, and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;
  - or
  - (ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned,
- and
- b where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone;
- and
- c which are listed in Annex IIa.]

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2b This Regulation shall not apply to the provisions in the legislation of a Member State concerning special non-contributory benefits, referred to in Annex II, Section III, the validity of which is confined to part of its territory.

3 The provisions of Title III of this Regulation shall not, however, affect the legislative provisions of any Member State concerning a shipowner's liability.

4 This Regulation shall not apply to social and medical assistance, to benefit schemes for victims of war or its consequences<sup>[F6]</sup>.

#### Textual Amendments

**F5** Substituted by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

**F6** Deleted by Council Regulation (EC) No 1606/98 of 29 June 1998.

#### Article 5 (10)

#### Declarations by the Member States on the scope of this Regulation

The Member States shall specify the legislation and schemes referred to in Article 4 (1) and (2), the special non-contributory benefits referred to in Article 4 (2a), the minimum benefits referred to in Article 50 and the benefits referred to in Articles 77 and 78 in declarations to be notified and published in accordance with Article 97.

#### Article 6

#### Social security conventions replaced by this Regulation.

Subject to the provisions of Articles 7, 8 and 46 (4) this Regulation shall, as regards persons and matters which it covers, replace the provisions of any social security convention binding either;

- (a) two or more Member States exclusively, or
- (b) at least two Member States and one or more other States, where settlement of the cases concerned does not involve any institution of one of the latter States.

#### Article 7

#### International provisions not affected by this Regulation

- 1 This Regulation shall not affect obligations arising from:
  - a any convention adopted by the International Labour Conference which, after ratification by one or more Member States, has entered into force;
  - b the European Interim Agreements on Social Security of 11 December 1953 concluded between the Member States of the Council of Europe.
- 2 The provisions of Article 6 notwithstanding, the following shall continue to apply:

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- a the provision of the Agreements of 27 July 1950 and 30 November 1979 concerning social security for Rhine boatmen;
- b the provisions of the European Convention of 9 July 1956 concerning social security for workers in international transport;
- [<sup>F5</sup>c certain provisions of social security conventions entered into by the Member States before the date of application of this Regulation provided that they are more favourable to the beneficiaries or if they arise from specific historical circumstances and their effect is limited in time if these provisions are listed in Annex III.]

#### Textual Amendments

- F5** Substituted by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

### Article 8

#### Conclusion of conventions between Member States

- 1 Two or more Member States may, as need arises, conclude conventions with each other based on the principles and in the spirit of this Regulation.
- 2 Each Member State shall notify, in accordance with the provisions of Article 97 (1), any convention concluded with another member State under the provisions of paragraph 1.

### Article 9

#### Admission to voluntary or optional continued insurance

- 1 The provisions of the legislation of any Member State which make admission to voluntary or optional continued insurance conditional upon residence in the territory of that State shall not apply to persons resident in the territory of another Member State, provided that at some time in their past working life they were subject to the legislation of the first State as employed or as self-employed persons.
- 2 Where under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of periods of insurance, the periods of insurance or residence completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State.

#### [<sup>F5</sup>Article 9a

#### Prolongation of the reference period

If the legislation of a Member State subordinates recognition of entitlement to a benefit to the completion of a minimum period of insurance during a determined period preceding the contingency insured against (reference period) and lays down that periods during which benefits were paid under the legislation of that Member State or



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periods devoted to child-rearing in the territory of that Member State shall extend this reference period, the periods during which invalidity or old age pensions or sickness, unemployment, industrial accidents at work or occupational disease benefits were paid under the legislation of another Member State and periods devoted to child-rearing in the territory of another Member State shall also extend this reference period.]

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#### **Textual Amendments**

- F5** Substituted by [Regulation \(EC\) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations \(EEC\) 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 \(EEC\) No 574/72 laying down the procedure for implementing Regulation \(EEC\) No 1408/71.](#)

### *Article 10*

#### **Waiving of residence clauses — Effect of compulsory insurance on reimbursement of contributions**

1 Save as otherwise provided in this Regulation invalidity, old-age or survivors' cash benefits, pension for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.

The first subparagraph shall also apply to lump-sum benefits granted in cases of remarriage of a surviving spouse who was entitled to a survivors' pension.

2 Where under the legislation of a Member State reimbursement of contributions is conditional upon the person concerned having ceased to be subject to compulsory insurance, this condition shall not be considered satisfied as long as the person concerned is subject to compulsory insurance [<sup>F7</sup>x] under the legislation of another Member State.

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#### **Textual Amendments**

- F7** Deleted by [Council Regulation \(EC\) No 307/1999 of 8 February 1999.](#)

### *Article 10a (10)*

#### **Special non-contributory benefits**

[<sup>F51</sup> The provisions of Article 10 and of Title III shall not apply to the special non-contributory cash benefits referred to in Article 4(2a). The persons to whom this Regulation applies shall receive these benefits exclusively in the territory of the Member State in which they reside and under the legislation of that State, in so far as these benefits are mentioned in Annex IIa. Benefits shall be paid by, and at the expense of, the institution of the place of residence.]

2 The institution of a Member State under whose legislation entitlement to benefits covered by paragraph 1 is subject to the completion of periods of employment, self-employment

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or residence shall regard, to the extent necessary, periods of employment, self-employment or residence completed in the territory of any other Member State as periods completed in the territory of the first Member State.

3 Where entitlement to a benefit covered by paragraph 1 but granted in the form of a supplement is subject, under the legislation of a Member State, to receipt of a benefit covered by Article 4 (1) (a) to (h), and no such benefit is due under that legislation, any corresponding benefit granted under the legislation of any other Member State shall be treated as a benefit granted under the legislation of the first Member State for the purposes of entitlement to the supplement.

4 Where the granting of a disability or invalidity benefit covered by paragraph 1 is subject, under the legislation of a Member State, to the condition that the disability or invalidity should be diagnosed for the first time in the territory of that Member State, this condition shall be deemed to be fulfilled where such diagnosis is made for the first time in the territory of another Member State.

#### **Textual Amendments**

- F5** Substituted by [Regulation \(EC\) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations \(EEC\) 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 \(EEC\) No 574/72 laying down the procedure for implementing Regulation \(EEC\) No 1408/71.](#)

#### *Article 11*

#### **Revalorization of benefits**

Rules for revalorization provided by the legislation of a Member State shall apply to benefits due under that legislation taking into account the provisions of this Regulation.

#### *Article 12 (9) (11)*

#### **Prevention of overlapping of benefits**

1 This Regulation can neither confer nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance. However, this provision shall not apply to benefits in respect of invalidity, old age, death (pensions) or occupational disease which are awarded by the institutions of two or more Member States, in accordance with the provisions of Articles 41, 43 2. and (3), 46, 50 and 51 or Article 60 (1) (b).

2 Save as otherwise provided in this Regulation, the provisions of the legislations of a Member State governing the reduction, suspension or withdrawal of benefits in cases of overlapping with other social security benefits or any other form of income may be invoked even where such benefits were acquired under the legislation of another Member State or where such income was acquired in the territory of another Member State.

3 The provisions of the legislation of a Member State for reduction, suspension or withdrawal of benefit in the case of a person in receipt of invalidity benefits or anticipatory old-age benefits pursuing a professional or trade activity may be invoked against such person even though he is pursuing his activity in the territory of another Member State.

4 An invalidity pension payable under Netherlands legislation shall, in case where the Netherlands institution is bound under the provisions of Article 57 (5) or 60 (29) (b) to contribute also to the cost of benefits for occupational disease granted under the legislation of another Member State, be reduced by the amount payable to the institution of the other Member State which is responsible for granting the benefits for occupational disease.

## TITLE II

### DETERMINATION OF THE LEGISLATION APPLICABLE

#### *Article 13 (9)*

##### **General rules**

[<sup>F1</sup> Subject to Articles 14c and 14f, persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.]

2 Subject to Articles 14 to 17:

- a a person employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State;
- b a person who is self-employed in the territory of one Member State shall be subjected to the legislation of that State even if he resides in the territory of another Member State;
- c a person employed onboard a vessel flying the flag of a Member State shall be subject to the legislation of the State;
- d civil servants and persons treated as such shall be subject to the legislation of the Member State to which the administration employing them is subject;
- e a person called up or recalled for service in the armed forces, or for civilian service, of a Member State shall be subject to the legislation of that State. If entitlement under that legislation is subject to the completion of periods of insurance before entry into or after release from such military or civilian service, periods of insurance completed under the legislation of any other Member State shall be taken into account, to the extent necessary, as if they were periods of insurance completed under the legislation of the first State. The employed or self-employed person called up or recalled for service in the armed forces or for civilian service shall retain the status of employed or self-employed person;
- f a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the foregoing subparagraphs or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.

#### **Textual Amendments**

**F1** Inserted by [Council Regulation \(EC\) No 1606/98 of 29 June 1998](#).

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## Article 14

### Special rules applicable to persons, other than mariners, engaged in paid employment

Article 13 (2) (a) shall apply subject to the following exceptions and circumstances:

1. (a) A person employed in the territory of a Member State by a undertaking to which he is normally attached who is posted by that undertaking to the territory of another Member State to perform work there for that undertaking shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed 12 months and that he is not sent to replace another person who has completed his term of posting.
- (b) If the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds 12 months, the legislation of the first Member State shall continue to apply until the completion of such work, provided that the competent authority of the Member State in whose territory the person concerned is posted or the body designated by that authority gives its consent; such consent must be requested before the end of the initial 12-month period. Such consent cannot, however, be given for a period exceeding 12 months.
2. A person normally employed in the territory of two or more Member States shall be subject to the legislation determined as follows:
  - (a) A person who is a member of the travelling or flying personnel of an undertaking which, for hire or reward or on its own account, operates international transport services for passengers or goods by rail, road, air or inland waterway and has its registered office or place of business in the territory of a Member State shall be subject to the legislation of the latter State, with the following restrictions:
    - (i) where the said undertaking has a branch or permanent representation in the territory of a Member State other than that in which it has its registered office or place of business, a person employed by such branch or permanent representation shall be subject to the legislation of the Member State in whose territory such branch or permanent representation is situated;
    - (ii) where a person is employed principally in the territory of the Member State in which he resides, he shall be subject to the legislation of that State, even if the undertaking which employs him has no registered office or place of business or branch or permanent representation in that territory.
  - (b) A person other than that referred to in (a) shall be subject:
    - (i) to the legislation of the Member State in whose territory he resides, if he pursues his activity partly in that territory or if he is attached to several undertakings or several employers who have their registered offices or places of business in the territory of different Member States;

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- (ii) to the legislation of the Member State in whose territory is situated the registered office or place of business of the undertaking or individual employing him, if he does not reside in the territory of any of the Member States where he is pursuing his activity.
3. A person who is employed in the territory of one Member State by an undertaking which has its registered office or place of business in the territory of another Member State and which straddles the common frontier of these States shall be subject to the legislation of the Member State in whose territory the undertaking has its registered office or place of business.

#### *Article 14a*

### **Special rules applicable to persons, other than mariners, who are selfemployed**

Article 13 (2) (b) shall apply subject to the following exceptions and circumstances:

1.
  - (a) A person normally self-employed in the territory of a Member State and who performs work in the territory of another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of the work does not exceed 12 months.
  - (b) If the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds 12 months, the legislation of the first Member State shall continue to apply until the completion of such work, provided that the competent authority of the Member State in whose territory the person concerned has entered to perform the work in question or the body appointed by that authority gives its consent; such consent must be
2. A person normally self-employed in the territory of two or more Member States shall be subject to the legislation of the Member State in whose territory he resides if he pursues any part of his activity in the territory of that Member State. If he does not pursue any activity in the territory of the Member State in which he resides, he shall be subject to the legislation of the Member State in whose territory he pursues his main activity. The criteria used to determine the principal activity are laid down in the Regulation referred to in Article 98.
3. A person who is self-employed in an undertaking which has its registered office or place of business in the territory of one Member State and which straddles the common frontier of two Member States shall be subject to the legislation of the Member State in whose territory the undertaking has its registered office or place of business.
4. If the legislation to which a person should be subject in accordance with paragraph 2 or 3 does not enable that person, even on a voluntary basis, to join a pension scheme, the person concerned shall be subject to the legislation of the other Member State which would apply apart from these particular provisions, or should the legislations of two or more Member States apply in this way, he shall be subject to the legislation decided on by common agreement amongst the Member States concerned or their competent authorities.

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*Status: Point in time view as at 02/01/2007.*

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

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### *Article 14b*

#### **Special rules application to mariners**

Article 13 (2) (c) shall apply subject to the following exceptions and circumstances:

1. A person employed by an undertaking to which he is normally attached, either in the territory of a Member State or on board a vessel flying the flag of a Member State, who is posted by that undertaking on board a vessel flying the flag of another Member State to perform work there for that undertaking shall, subject to the conditions provided in Article 14 (1), continue to be subject to the legislation of the first Member State.
2. A person normally self-employed, either in the territory of a Member State or on board a vessel flying the flag of a Member State and who performs work on his own account on board a vessel flying the flag of another Member State shall, subject to the conditions provided in Article 14a (1), continue to be subject to the legislation of the first Member State.
3. A person who, while not being normally employed at sea, performs work in the territorial waters or in a port of a Member State on a vessel flying the flag of another Member State within those territorial waters or in that port, but is not a member of the crew of the vessel, shall be subject to the legislation of the first Member State.
4. A person employed on board a vessel flying the flag of a Member State and remunerated for such employment by an undertaking or a person whose registered office or place of business is in the territory of another Member State shall be subject to the legislation of the latter State if he is resident in the territory of that State; the undertaking or person paying the remuneration shall be considered as the employer for the purpose of the said legislation.

### *Article 14c (5)*

#### **Special rules applicable to persons who are simultaneously employed in the territory of one Member State and self-employed in the territory of another Member State**

A person who is simultaneously employed in the territory of one Member State and self-employed in the territory of another Member State shall be subject:

- (a) save as otherwise provided in subparagraph (b) to the legislation of the Member State in the territory of which he is engaged in paid employment or, where he pursues such an activity in the territory of two or more Member States, to the legislation determined in accordance with Article 14 (2) or (3);
- (b) in the cases mentioned in Annex VII:
  - to the legislation of the Member State in the territory of which he is engaged in paid employment, that legislation having been determined in accordance with the provisions of Article 14 (2) or (3), where he pursues such an activity in the territory of two or more Member States,
  - and
  - to the legislation of the Member State in the territory of which he is self-employed, that legislation having been determined in accordance with

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Article 14a (2), (3) or (4), where he pursues such an activity in the territory of two or more Member States.

*Article 14d (5)*

**Miscellaneous provisions**

[<sup>F1</sup> The person referred to in Article 14(2) and (3), Article 14a(2), (3) and (4), Article 14c(a) and Article 14e shall be treated, for the purposes of application of the legislation laid down in accordance with these provisions, as if he pursued all his professional activity or activities in the territory of the Member State concerned.]

2 The person referred to in Article 14c (b) shall be treated, for the purposes of determining the rates of contributions to be charged to self employed workers under the legislation of the Member State in whose territory he is self-employed, as if he pursued his paid employment in the territory of the Member State concerned.

3 The provisions of the legislation of a Member State under which a pensioner who is pursuing a professional or trade activity is not subject to compulsory insurance in respect of such activity shall also apply to a pensioner whose pension was acquired under the legislation of another Member State, unless the person concerned expressly asks to be so subject by applying to the institution designated by the competent authority of the first Member State and named in Annex 10 to the Regulation referred to in Article 98.

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**Textual Amendments**

**F1** Inserted by [Council Regulation \(EC\) No 1606/98 of 29 June 1998](#).

*[<sup>F1</sup>Article 14e*

**Special rules applicable to persons insured in a special scheme for civil servants who are simultaneously employed and/or self-employed in the territory of one or more other Member States**

A person who is simultaneously employed as a civil servant or a person treated as such and insured in a special scheme for civil servants in one Member State and who is employed and/or self-employed in the territory of one or more other Member States shall be subject to the legislation of the Member State in which he is insured in a special scheme for civil servants.

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**Textual Amendments**

**F1** Inserted by [Council Regulation \(EC\) No 1606/98 of 29 June 1998](#).

*Status: Point in time view as at 02/01/2007.*

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

### *Article 14f*

#### **Special rules applicable to civil servants simultaneously employed in more than one Member State and insured in one of these States in a special scheme**

A person who is simultaneously employed in two or more Member States as a civil servant or person treated as such and insured in at least one of those Member States in a special scheme for civil servants shall be subject to the legislation of each of these Member States.]

#### **Textual Amendments**

**F1** Inserted by [Council Regulation \(EC\) No 1606/98 of 29 June 1998](#).

### *Article 15*

#### **Rules concerning voluntary insurance or optional continued insurance**

1 Articles 13 to 14d shall not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches referred to in Article 4, there exists in any Member State only a voluntary scheme of insurance.

2 Where application of the legislations of two or more Member States entails overlapping of insurance:

- under a compulsory insurance scheme and one or more voluntary or optional continued insurance schemes, the person concerned shall be subject exclusively to the compulsory insurance scheme;
- under two or more voluntary or optional continued insurance schemes, the person concerned may join only the voluntary or optional continued insurance scheme for which he has opted.

3 However, in respect of invalidity, old age and death (pensions), the person concerned may join the voluntary or optional continued insurance scheme of a Member State, even if he is compulsorily subject to the legislation of another Member State, to the extent that such overlapping is explicitly or implicitly admitted in the first Member State.

### *Article 16*

#### **Special rules regarding persons employed by diplomatic missions and consular posts, and auxiliary staff of the European Communities**

1 The provisions of Article 13 (2) (a) shall apply to persons employed by diplomatic missions and consular posts and to the private domestic staff of agents of such missions or posts.

2 However, employed persons covered by paragraph 1 who are nationals of the Member State which is the accrediting or sending State may opt to be subject to the legislation of that State. Such right of option may be renewed at the end of each calendar year and shall not have retrospective effect.



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3 Auxiliary staff of the European Communities may opt to be subject to the legislation of the Member State in whose territory they are employed, to the legislation of the Member State to which they were last subject or to the legislation of the Member State whose nationals they are, in respect of provisions other than those relating to family allowances, the granting of which is governed by the conditions of employment applicable to such staff. This right of option, which may be exercised once only, shall take effect from the date of entry into employment.

*Article 17 (9)*

### **Exceptions to Articles 13 to 16**

Two or more Member States, the competent authorities of these States or the bodies designated by these authorities may by common agreement provide for exceptions to the provisions of Articles 13 to 16 in the interest of certain categories of persons or of certain persons.

*Article 17a (9)*

### **Special rules concerning recipients of pensions due under the legislation of one or more Member State**

The recipient of a pension due under the legislation of a Member State or of pensions due under the legislation of several Member States who resides in the territory of another Member State may at his request be exempted from the legislation of the latter State provided that he is not subject to that legislation because of the pursuit of an occupation.

## TITLE III

### **SPECIAL PROVISIONS RELATING TO THE VARIOUS CATEGORIES OF BENEFITS**

#### CHAPTER I

#### **SICKNESS AND MATERNITY**

##### Section 1

#### **Common provisions**

*Article 18*

#### **Aggregation of periods of insurance, employment or residence**

1 The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of periods of insurance, employment or residence shall, to the extent necessary, take account of periods of insurance, employment or residence completed under the legislation of any other Member State as if they were periods completed under the legislation which it administers.

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2 The provisions of paragraph 1 shall apply to seasonal workers, even in respect of periods prior to any break in insurance exceeding the period allowed by the legislation of the competent State, provided, however, that the person concerned has not ceased to be insured for a period exceeding four months.

## Section 2

### **Employed or self-employed persons and members of their families**

#### *Article 19*

#### **Residence in a Member State other than the competent State — General rules**

1 An employed or self-employed person residing in the territory of a Member State other than the competent State, who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, shall receive in the State in which he is resident:

- a benefits in kind provided on behalf of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation administered by that institution as though he were insured with it;
- b cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.

2 The provisions of paragraph 1 shall apply by analogy to members of the family who reside in the territory of a Member State other than the competent State in so far as they are not entitled to such benefits under the legislation of the State in whose territory they reside.

Where the members of the family reside in the territory of a Member State under whose legislation the right to receive benefits in kind is not subject to condition of insurance or employment, benefits in kind which they receive shall be considered as being on behalf of the institution with which the employed or self-employed person is insured, unless the spouse or the person looking after the children pursues a professional or trade activity in the territory of the said Member State.

#### *Article 20*

#### **Frontier workers and members of their families — Special rules**

A frontier worker may also obtain benefits in the territory of the competent State. Such benefits shall be provided by the competent institution in accordance with the provisions of the legislation of that State, as though the person concerned were resident in that State. Members of his family may receive benefits under the same conditions; however, receipt of such benefits shall, except in urgent cases, be conditional upon an agreement between the States concerned or between the competent authorities of those States or, in its absence, on prior authorization by the competent institution.

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## Article 21

### Stay in or transfer of residence to the competent State

1 The employed or self-employed person referred to in Article 19 (1) who is staying in the territory of the competent State shall receive benefits in accordance with the provisions of the legislation of that State as though he were resident there, even if he has already received benefits for the same case of sickness or maternity before his stay.

2 Paragraph 1 shall apply by analogy to the members of the family referred to in Article 19 (2).

However, where the latter reside in the territory of a Member State other than the one in whose territory the employed or self-employed person resides, benefits in kind shall be provided by the institution of the place of stay on behalf of the institution of the place of residence of the persons concerned.

3 Paragraphs 1 and 2 shall not apply to frontier workers and the members of their families.

4 An employed or self-employed person and members of his family referred to in Article 19 who transfer their residence to the territory of the competent State shall receive benefits in accordance with the provisions of the legislation of that State even if they have already received benefits for the same case of sickness or maternity before transferring their residence.

## Article 22

### Stay outside the competent State — Return to or transfer of residence to another Member State during sickness or maternity — Need to go to another Member State in order to receive appropriate treatment

1 An employed or self-employed person who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, and:

- (a) [<sup>F8</sup>whose condition requires benefits in kind which become necessary on medical grounds during a stay in the territory of another Member State, taking into account the nature of the benefits and the expected length of the stay;]
  - (b) who, having become entitled to benefits chargeable to the competent institution, is authorized by that institution to return to the territory of the Member State where he resides, or to transfer his residence to the territory of another Member State;
- or
- (c) who is authorized by the competent institution to go to the territory of another Member State to receive there the treatment appropriate to his condition,

shall be entitled:

- (i) to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence in accordance with the provisions of the legislation which it administers, as though he were insured with it; the length of the period during which

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benefits are provided shall be governed, however, by the legislation of the competent State;

- (ii) to cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers. However, by agreement between the competent institution and the institution of the place of stay or residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.

[<sup>F9</sup>1a The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require, for practical reasons, a prior agreement between the person concerned and the institution providing the care;]

2 The authorization required under paragraph 1 (b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or the receipt of medical treatment.

The authorization required under paragraph 1 (c) may not be refused where the treatment in question is among the benefits provided for by the legislation of the Member State on whose territory the person concerned resided and where he cannot be given such treatment within the time normally necessary for obtaining the treatment in question in the Member State of residence taking account of his current state of health and the probable course of the disease.

3 [<sup>F8</sup>Paragraphs 1, 1a and 2 shall apply by analogy to members of the family of an employed or self-employed person.]

However, for the purpose of applying paragraph 1 (a) and (c) (i) to the members of the family referred to in Article 19 (2) who reside in the territory of a Member State other than the one in whose territory the employed or self-employed person resides:

- a benefits in kind shall be provided on behalf of the institution of the Member State in whose territory the members of the family are residing by the institution of the place of stay in accordance with the provisions of the legislation which it administers as if the employed or self-employed person were insured there. The period during which benefits are provided shall, however, be that laid down under the legislation of the Member State in whose territory the members of the family are residing;
- b the authorization required under paragraph 1 (c) shall be issued by the institution of the Member State in whose territory the members of the family are residing.

4 The fact that the provisions of paragraph 1 apply to an employed or self-employed person shall not affect the right to benefit of members of his family.

#### Textual Amendments

- F8** Substituted by [Regulation \(EC\) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council 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 Council Regulation \(EEC\) No 574/72 laying down the procedure for implementing Regulation \(EEC\) No 1408/71, in respect of the alignment of rights and the simplification of procedures \(Text with relevance for the EEA and for Switzerland\).](#)
- F9** Inserted by [Regulation \(EC\) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council 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 Council Regulation \(EEC\) No 574/72 laying down the procedure for implementing](#)

*Status: Point in time view as at 02/01/2007.*

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

Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures (Text with relevance for the EEA and for Switzerland).

### *[<sup>F8</sup>Article 22a*

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

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

#### **Textual Amendments**

- F8** Substituted by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council 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 Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures (Text with relevance for the EEA and for Switzerland).

### *[<sup>F10</sup>Article 22b (15)*

#### **[<sup>F10</sup>Employment in a Member State other than the competent State — Stay in the State of employment]**

#### **Textual Amendments**

- F10** Deleted by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council 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 Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures (Text with relevance for the EEA and for Switzerland).

### *[<sup>F7</sup>Article 22c*

#### **Textual Amendments**

- F7** Deleted by Council Regulation (EC) No 307/1999 of 8 February 1999.

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### Article 23 (a)

#### Calculation of cash benefits

1 The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on average earnings or on average contributions, shall determine such average earnings or contributions exclusively by reference to earnings or contributions completed under the said legislation.

[<sup>F11</sup>2a The provisions of paragraphs 1 and 2 shall also apply where the legislation applied by the competent institution provides for a specific reference period and this period coincides, where appropriate, with the whole or part of the periods completed by the person concerned under the legislation of one or more other Member States.]

3 The competent institution of a Member State under whose legislation the amount of cash benefits varies with the number of members of the family, shall also take into account the members of the family of the person concerned who are resident in the territory of another Member State as if they were resident in the territory of the competent State.

#### Textual Amendments

**F11** Inserted by [Regulation \(EC\) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations \(EEC\) 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 \(EEC\) No 574/72 laying down the procedure for implementing Regulation \(EEC\) No 1408/71.](#)

### Article 24

#### Substantial benefits in kind

1 Where the right of an employed or self-employed person or a member of his family to a prosthesis, a major appliance or other substantial benefits in kind has been recognized by the institution of a Member State before he becomes insured with the institution of another Member State, the said employed or self-employed person shall receive such benefits at the expense of the first institution, even if they are granted after he becomes insured with the second institution.

2 The Administrative Commission shall draw up the list of benefits to which the provisions of paragraph 1 apply.

### Section 3

#### Unemployed persons and members of their families

### Article 25

[<sup>F8</sup>1 An unemployed person who was formerly employed or self-employed and to whom the provisions of Article 69(1) or Article 71(1)(b)(ii), second sentence apply and who satisfies the conditions laid down in the legislation of the competent State for entitlement to benefits in kind and cash benefits, taking account where necessary of the provisions of Article 18, shall receive for the period of time referred to in Article 69(1)(c):

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

- a benefits in kind which become necessary on medical grounds for this person during his stay in the territory of the Member State where he is seeking employment, taking account of the nature of the benefits and the expected length of the stay. These benefits in kind shall be provided on behalf of the competent institution by the institution of the Member State in which the person is seeking employment, in accordance with the provisions of the legislation which the latter institution administers, as if he were insured with it;
  - b cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers. However, by agreement between the competent institution and the institution of the Member State in which the unemployed person seeks employment, benefits may be provided by the latter institution on behalf of the former institution in accordance with the provisions of the legislation of the competent State. Unemployment benefits under Article 69(1) shall not be granted for the period during which cash benefits are received.
- 1a Article 22(1a) shall apply by analogy.]
- 2 A totally unemployed person who was formerly employed and to whom the provisions of Article 71 (1) (a) (ii) or the first sentence of Article 71 (1) (b) (ii) apply, shall receive benefits in kind and in cash in accordance with the provisions of the legislation of the Member State in whose territory he resides, as though he had been subject to that legislation during his last employment, taking account where appropriate of the provisions of Article 18; the cost of such benefits shall be met by the institution of the country of residence.
- 3 Where an unemployed person satisfies the conditions of the legislation of the Member State which is responsible for the cost of unemployment benefits for entitlement to sickness and maternity benefits, taking account where appropriate of the provisions of Article 18, the members of his family shall receive these benefits, irrespective of the Member State in whose territory they reside or are staying. Such benefits shall be provided:
- (i) with regard to the benefits in kind, by the institution of the place of residence or stay in accordance with the provisions of the legislation which it administers, on behalf of the competent institution of the Member State which is responsible for the cost of unemployment benefits;
  - (ii) with regard to cash benefits, by the competent institution of the Member State which is responsible for the cost of unemployment benefits, in accordance with the legislation which it administers.
- 4 Without prejudice to any provisions of the legislation of a Member State which permit an extension of the period during which sickness benefits may be granted, the period provided for in paragraph 1 may, in cases of force majeure, be extended by the competent institution within the limit fixed by the legislation administered by that institution.

#### **Textual Amendments**

- F8** Substituted by [Regulation \(EC\) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council 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 Council Regulation \(EEC\) No 574/72 laying down the procedure for implementing Regulation \(EEC\) No 1408/71, in respect of the alignment of rights and the simplification of procedures \(Text with relevance for the EEA and for Switzerland\).](#)

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### *Article 25a (12)*

#### **Contributions payable by wholly unemployed persons**

The institution which is responsible for granting benefits in kind and cash benefits to the unemployed persons referred to in Article 25 (2) and which belongs to a Member State whose legislation provides for deduction of contributions payable by unemployed persons to cover sickness and maternity benefits shall be authorized to make such deductions in accordance with the provisions of its legislation.

### Section 4

#### **Pension claimants and members of their families**

### *Article 26*

#### **Right to benefits in kind in cases of cessation of the right to benefits from the institution which was last competent**

1 An employed or self-employed person, members of his family or his survivors who, during the investigation of a claim for pension, cease to be entitled to benefits in kind under the legislation of the Member State last competent, shall nevertheless receive such benefits under the following conditions: benefits in kind shall be provided in accordance with the provisions of the legislation of the Member State in whose territory the person or persons concerned reside, provided that they are entitled to such benefits under that legislation or would be entitled to them under the legislation of another Member State if they were residing in the territory of that State, taking account where appropriate of the provisions of Article 18.

2 A pension claimant who is entitled to benefits in kind under the legislation of a Member State which obliges the person concerned to pay sickness insurance contributions himself during the investigation of his pension claim shall cease to be entitled to benefits in kind at the end of the second month for which he has not paid the contributions due.

3 Benefits in kind provided in accordance with the provisions of paragraph 1 shall be chargeable to the institution which has collected contributions in accordance with the provisions of paragraph 2; where no contributions are payable under the provisions of paragraph 2, the institution responsible for the cost of the benefits in kind after awarding the pension in accordance with the provisions of Article 28 shall refund the amount of the benefits provided to the institution of the place of residence.



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## Section 5

### **Pensioners and members of their families**

#### *Article 27*

#### **Pensions payable under the legislation of several States where there is a right to benefits in the country of residence**

A pensioner who is entitled to draw pensions under the legislation of two or more Member States, of which one is that of the Member State in whose territory he resides, and who is entitled to benefits under the legislation of the latter Member State, taking account where appropriate of the provisions of Article 18 and Annex VI, shall, with the members of his family, receive such benefits from the institution of the place of residence and at the expense of that institution as though the person concerned were a pensioner whose pension was payable solely under the legislation of the latter Member State.

#### *Article 28*

#### **Pensions payable under the legislation of one or more States, in cases where there is no right to benefits in the country of residence**

1 A pensioner who is entitled to a pension under the legislation of one Member State or to pensions under the legislation of two or more Member States and who is not entitled to benefits under the legislation of the Member State in whose territory he resides shall nevertheless receive such benefits for himself and for members of his family, in so far as he would, taking account where appropriate of the provisions of Article 18 and Annex VI, be entitled thereto under the legislation of the Member State or of at least one of the Member States competent in respect of pensions if he were resident in the territory of such State. The benefits shall be provided under the following conditions:

- a benefits in kind shall be provided on behalf of the institution referred to in paragraph 2 by the institution of the place of residence as though the person concerned were a pensioner under the legislation of the State in whose territory he resides and were entitled to such benefits;
- b cash benefits shall, where appropriate, be provided by the competent institution as determined by the rules of paragraph 2, in accordance with the legislation which it administers. However, upon agreement between the competent institution and the institution of the place of residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.

2 In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution as determined according to the following rules:

- a where the pensioner is entitled to the said benefits under the legislation of a single Member State, the cost shall be borne by the competent institution of that State;
- b where the pensioner is entitled to the said benefits under the legislation of two or more Member States, the cost thereof shall be borne by the competent institution of the Member State to whose legislation the pensioner has been subject for the longest period of time; should the application of this rule result in several institutions being responsible

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for the cost of benefits the cost shall be borne by the institution administering the legislation to which the pensioner was last subject.

#### *Article 28a*

#### **Pensions payable under the legislation of one or more of the Member States other than the country of residence where there is a right to benefits in the latter country**

Where the pensioner entitled to a pension under the legislation of one Member State, or to pensions under the legislations of two or more Member States, resides in the territory of a Member State under whose legislation the right to receive benefits in kind is not subject to conditions of insurance or employment, nor is any pension payable, the cost of benefits in kind provided to him and to members of his family shall be borne by the institution of one of the Member States competent in respect of pensions, determined according to the rules laid down in Article 28 (2), to the extent that the pensioner and members of his family would have been entitled to such benefits under the legislation administered by the said institution if they resided in the territory of the Member State where that institution is situated.

#### *Article 29*

#### **Residence of members of the family in a State other than the one in which the pensioner resides — Transfer of residence to the State where the pensioner resides**

1 Members of the family of a pensioner entitled to a pension under the legislation of one Member State or to pensions under the legislation of two or more Member States who reside in the territory of a Member State other than the one in which the pensioner resides shall, where he is entitled to benefits under the legislation of one Member State, receive benefits as though the pensioner were resident in the same territory as themselves. Benefit shall be provided under the following conditions:

- [<sup>F12</sup>a benefits in kind shall be provided by the institution of the place of residence of the members of the family in accordance with the provisions of the legislation which that institution administers, the cost being borne by the institution determined in accordance with the provisions of Article 27 or Article 28(2); if the place of residence is situated in the competent Member State, benefits in kind shall be provided, and the cost borne, by the competent institution;]
- b cash benefits shall, where appropriate, be provided by the competent institution as determined by the provisions of Article 27 or 28 (2), in accordance with the provisions of the legislation which it administers. However, upon agreement between the competent institution and the institution of the place of residence of the members of the family, such benefits may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.

2 Members of the family referred to in paragraph 1 who transfer their residence to the territory of the Member State where the pensioner resides, shall receive:

- a benefits in kind under the provisions of the legislation of that State, even if they have already received benefits for the same case of sickness or maternity before transferring their residence;
- b cash benefits provided where appropriate by the competent institution determined by the provisions of Article 27 or 28 (2), in accordance with the legislation which it administers. However, upon agreement between the competent institution and the

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institution of the place of residence of the pensioner, such benefits may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.

**Textual Amendments**

**F12** Inserted by [Council Regulation \(EC\) No 1223/98 of 4 June 1998](#).

*Article 30*

**Substantial benefits in kind**

The provisions of Article 24 shall apply by analogy to pensioners.

*[<sup>F8</sup> Article 31*

**Stay of a pensioner and/or members of his family in a Member State other than the State in which they reside**

1 A pensioner entitled to a pension or pensions under the legislation of one Member State or to pensions under the legislation of two or more Member States who is entitled to benefits under the legislation of one of those States shall, with members of his family who are staying in the territory of a Member State other than the State in which they reside, receive:

- a benefits in kind which become necessary on medical grounds during a stay in the territory of the Member State other than the State of residence, taking into account the nature of the benefits and the expected length of the stay. These benefits in kind shall be provided by the institution of the place of stay, in accordance with the provisions of the legislation which it administers, on behalf of the institution of the place of residence of the pensioner or of the members of his family;
- b cash benefits provided, where appropriate, by the competent institution as determined by Article 27 or 28(2), in accordance with the provisions of the legislation which it administers. However, upon agreement between the competent institution and the institution of the place of stay, these benefits may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.

2 Article 22(1a) shall apply by analogy.]

**Textual Amendments**

**F8** Substituted by [Regulation \(EC\) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council 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 Council Regulation \(EEC\) No 574/72 laying down the procedure for implementing Regulation \(EEC\) No 1408/71, in respect of the alignment of rights and the simplification of procedures \(Text with relevance for the EEA and for Switzerland\)](#).

*Article 32 (15)*

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*Status: Point in time view as at 02/01/2007.*

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

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### Article 33 (7)

#### Contributions payable by pensioners

1 The institution of a Member State which is responsible for payment of a pension and which administers legislation providing for deductions from pensions in respect of contributions for sickness and maternity shall be authorized to make such deductions, calculated in accordance with the legislation concerned, from the pension payable by such institution, to the extent that the cost of the benefits under Article 27, 28, 28a, 29, 31 and 32 is to be borne by an institution of the said Member State.

2 Where, in the cases referred to in Article 28a, the acquisition of benefits in respect of sickness and maternity is subject to the payment of contributions or similar payments under the legislation of a Member State in whose territory the pensioner in question resides, by virtue of such residence, these contributions shall not be payable.

### Article 34

#### General provisions

1 For the purposes of Articles 28, 28a, 29 and 31, a pensioner who is in receipt of two or more pensions due under the legislation of a single Member State shall be regarded as a pensioner entitled to draw a pension under the legislation of one Member State, within the meaning of these provisions.

2 Articles 27 to 33 shall not apply to a pensioner or to members of his family who are entitled to benefits under the legislation of a Member State as a result of pursuing a professional or trade activity. In such a case, the person concerned shall, for the purposes of the implementation of this chapter, be considered as an employed or self-employed person or as a member of an employed or self-employed person's family.

### [<sup>F2</sup>Section 5a

#### Persons who study or receive vocational training and members of their families

### [<sup>F8</sup>Article 34a

#### Special provisions for students and members of their families

Articles 18, 19, 22(1)(a) and (c) and (1a), 22(2), second subparagraph, 22(3), 23 and 24 and sections 6 and 7 shall apply by analogy to students and the members of their families as required.]

#### Textual Amendments

- F8** Substituted by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council 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 Council Regulation (EEC) No 574/72 laying down the procedure

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for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures (Text with relevance for the EEA and for Switzerland).

*F10* Article 34b

[*F10* **Common provisions**]

**Textual Amendments**

**F10** Deleted by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council 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 Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures (Text with relevance for the EEA and for Switzerland).

Section 6

**Miscellaneous provisions**

*Article 35*

**Scheme applicable where there are a number of schemes in the country of residence or stay — Previous illness — Maximum period during which benefits are granted**

1 Subject to paragraph 2, where the legislation of the country of stay or residence contains several sickness or maternity insurance schemes, the provisions applicable under Article 19, 21 (1), 22, 25, 26, 28 (1), 29 (1) or 31 shall be those of the scheme covering manual workers in the steel industry. Where, however, the said legislation includes a special scheme for workers in mines and similar undertakings, the provisions of such scheme shall apply to that category of workers and members of their families provided the institution of the place of stay or residence to which application is made is competent to administer such scheme.

*F42* .....

3 Where, under the legislation of a Member State, the granting of benefits is conditional upon the origin of the illness, that conditions [*F2*shall not apply to persons] to whom this Regulation applies, regardless of the Member State in whose territory they reside.

4 Where the legislation of a Member State fixes a maximum period for the granting of benefits, the institution which administers that legislation may, where appropriate, take account of the period during which the benefits have already been provided by the institution of another Member State for the same case of sickness or maternity.

**Textual Amendments**

**F2** Inserted by Council Regulation (EC) No 307/1999 of 8 February 1999.

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

**F4** Deleted by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

## Section 7

### Reimbursement between institutions

#### *Article 36 (15)*

1 Benefits in kind provided in accordance with the provisions of this chapter by the institution of one Member State on behalf of the institution of another Member State shall be fully refunded.

2 The refunds referred to in paragraph 1 shall be determined and made in accordance with the procedure provided for by the implementing Regulation referred to in Article 98, either on production of proof of actual expenditure or on the basis of lump-sum payments.

In the latter case, the lump-sum payments shall be such as to ensure that the refund is as close as possible to actual expenditure.

3 Two or more Member States, or the competent authorities of those States, may provide for other methods of reimbursement or may waive all reimbursement between institutions under their jurisdiction.

## CHAPTER 2 (11)

### INVALIDITY

## Section 1

### **Employed persons or self-employed persons subject only to legislation under which the amount of invalidity benefits is independent of the duration of the periods of insurance**

#### *Article 37 (11)*

### General provisions

1 An employed person or a self-employed person who has been successively or alternately subject to the legislation of two or more Member States and who has completed periods of insurance exclusively under legislation according to which the amount of invalidity benefits is independent of the duration of periods of insurance shall receive benefits in accordance with Article 39. This Article shall not affect pension increases or supplements in respect of children, granted in accordance with Chapter 8.

2 Annex VI, part A, lists legislations of the kind mentioned in paragraph 1 which are in force in the territory of each of the Member States concerned.

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### *Article 38 (11)*

#### **Consideration of periods of insurance or of residence completed under the legislation to which an employed person or a self-employed person was subject for the acquisition, retention or recovery of the right to benefits**

1 Where the legislation of a Member State makes the acquisition, retention or recovery of the right to benefits, under a scheme which is not a special scheme within the meaning of paragraph 2 or 3, subject to the completion of periods of insurance or of residence, the competent institution of that Member State shall take account, where necessary, of the periods of insurance or of residence completed under the legislation of any other Member State, be it under a general scheme or under a special scheme and either as an employed person or as a self-employed person. For that purpose, it shall take account of these periods as if they had been completed under its own legislation.

2 Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in a occupation which is subject to a special scheme for employed persons or, where appropriate, in a specific employment, periods completed under the legislation of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing that, in the same occupation or, where appropriate, in the same employment.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing that, under the scheme applicable to manual or clerical workers, as the case may be, subject to the condition that the person concerned has been affiliated to one or other of these schemes.

3 Where the legislation of a Member State makes the granting of certain benefits conditional upon the period of insurance having been completed only in a occupation subject to a special scheme for self-employed persons, periods completed under the legislation of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing that, in the same occupation. The special schemes for self-employed persons referred to in this paragraph are listed in Annex IV, part B, for each Member State concerned.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing that, under the scheme applicable to manual or clerical workers, as the case may be, subject to the condition that the person concerned has been affiliated to one or other of these schemes.

### *Article 39 (11)(14)*

#### **Award of benefits**

1 The institution of a Member State whose legislation was applicable at the time when incapacity for work followed by invalidity occurred shall determine, in accordance with that legislation, whether the person concerned satisfies the conditions for entitlement to benefits, taking account, where appropriate, of Article 38.

*Status: Point in time view as at 02/01/2007.*

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2 A person who satisfies the conditions referred to in paragraph 1 shall receive the benefits only from the said institution, in accordance with the provisions of the legislation which it administers.

3 A person who is not entitled to benefits under paragraph 1 shall receive the benefits to which he is still entitled under the legislation of another Member State taking account, where appropriate, of Article 38.

4 If the legislation referred to in paragraph 2 or 3 provides that the amount of the benefits shall be determined taking into account the existence of members of the family other than the children, the competent institution shall also take into consideration those members of the family of the person concerned who are residing in the territory of another Member State, as if they were residing in the territory of the competent State.

5 If the legislation referred to in paragraph 2 or 3 lays down provisions for the reduction, suspension or withdrawal of benefits in the case of overlapping with other income or with benefits of a different kind within the meaning of Article 461 (2), Article 46a (3) and Article 46c (5) shall apply *mutatis mutandis*.

6 A wholly unemployed employee to whom Article 71 (1) (a) (ii) or the first sentence of Article 71 (1) (b) (ii) applies shall receive the invalidity benefits provided by the competent institution of the Member State in whose territory he resides, in accordance with the legislation which it administers, as though he had been subject to that legislation during his last employment, account being taken, where appropriate, of Article 38 and/or Article 25 (2). The institution of the country of residence shall be responsible for paying these benefits.

Where that institution applies legislation providing for deduction of contributions payable by unemployed persons to cover invalidity benefits, it shall be authorized to make such deductions in accordance with the provisions of its legislation.

If the legislation which that institution administers provides for the calculation of benefits to be based on wages or salaries, the institution shall take into account the wages or salaries received in the last country of employment and in the country of residence in accordance with the legislation which it administers. Where no wage or salary has been received in the country of residence, the competent institution shall refer, as necessary and in accordance with the rules laid down in its legislation, to the salaries received in the last country of employment.

## Section 2

**Employed persons or self-employed persons subject either only to legislation under which the amount of invalidity benefit depends on the duration of periods of insurance or residence or the legislation of this type and of the type referred to in Section 1**

### *Article 40 (11)*

#### **General provisions**

1 An employed person or a self-employed person who has been successively or alternately subject to the legislation of two or more Member States, of which at least one is not of the type referred to in Article 37 (1), shall receive benefits under the provisions of Chapter 3, which shall apply *mutatis mutandis*, taking into account the provisions of paragraph 4.



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2 However, an employed or self-employed person who suffers incapacity for work leading to invalidity while subject to a legislation listed in Annex IV, part A, shall receive benefits in accordance with the provisions of Article 37 (1) on the following conditions:

- that he satisfies the conditions of that legislation or other legislations of the same type, taking account where appropriate of Article 38, but without having recourse to periods of insurance completed under legislations not listed in Annex IV, part A, and
- that he does not satisfy the conditions required for the acquisition of the right to invalidity benefits under a legislation not listed in Annex IV, part A, and
- that he does not assert any claims to old-age benefits, account being taken of the second sentence of Article 44 (2).

3

a For the purpose of determining the right to benefits under the legislation of a Member State, listed in Annex IV, part A, which makes the granting of invalidity benefits conditional upon the person concerned having received cash sickness benefits or having been incapable or work during a specified period, where an employed person or a self-employed person who has been subject to that legislation suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, account shall be taken of the following, without prejudice to Article 37 (1):

- (i) any period during which, in respect of that incapacity for work, he has, under the legislation of the second Member State, received cash sickness benefits, or, in lieu thereof, continued to receive a wage or salary;
- (ii) any period during which, in respect of the invalidity which followed that incapacity for work, he has received benefits within the meaning of this Chapter 2 and of Chapter 3 that follows, of the Regulation granted in respect of invalidity under the legislation of the second Member State.

as if it were a period during which cash sickness benefits were paid to him under the legislation of the first Member State orduring which he was incapable or working within the meaning of that legislation.

b The right to invalidity benefits under the legislation of the first Member State shall be acquired either upon expiry of the preliminary period of compensation for sickness, as required by that legislation, or upon expiry of the preliminary period of incapacity of work as required by that legislation, but not before:

- (i) the date of acquisition of the right to invalidity benefits referred to in subparagraph (a) (ii) under the legislation of the second Member State,  
or
- (ii) the day following the last day on which the person concerned is entitled to cash sickness benefits under the legislation of the second Member State.

4 A decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State concerned, provided that the concordance between the legislation of these States on conditions relating to the degree of invalidity is acknowledged in Annex V.

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

### Section 3

#### Aggravation of invalidity

##### Article 41 (11)

1 In the case of aggravation of anin validity for which anemployed person or a self-employed person is receiving benefits under the legislation of a single Member State, the following provisions shall apply:

- a if the person concerned has not been subject to the legislation of another Member State since receiving benefits, the competent institution of the first State shall grant the benefits, taking theaggravation into account, in accordance with the provisions of the legislationwhich it administers;
- b if the person concerned has been subject to the legislation of one or more of the other Member States since receiving benefits, the benefits shall be granted to him, taking the aggravation into account, in accordance with Article 37 (1) or 40 (1) or (2), as appropriate;
- c if the total number of the benefit or benefits payable under subparagraph (b) is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously liable for payment, such institution shall pay him a supplement equal to the difference between the two amounts;
- d if, in the case referred to in subparagraph (b), the institution responsible for the initial incapacity is a Dutch institution, and if:
  - (i) the illness which caused the aggravation is the same as the one which gave rise to the granting of benefits under Dutch legislation,
  - (ii) this illness is an occupational disease within the meaning of the legislation of the Member State to which the person concerned was last subject and entitles him to payment of the supplement referred to in Article 60 (1) (b), and
  - (iii) the legislation or legislations to which the person concerned has been subject since receiving benefits is or are listed in Annex IV, part A,

the Dutch institution shall continue to provide the initial benefit after the aggravation occurs, and the benefit due under the legislation of the last Member State to which the person concerned was subject shall be reduced by the amount of the Dutch benefit;

- e if, in the case referred to in subparagraph (b), the person concerned is not entitled to benefits at the expense of an institution of another Member State, the competent institution of the first State shall grant the benefits, according to the provisions of the legislation of the State, taking into account the aggravation and, where appropriate, Article 38.

2 In the case of aggravation of anin validity for which anemployed person or a self-employed person is receiving benefits under the legislation of two or more Member States, the benefits shall be granted tohim, taking the aggravation into account, in accordance with Article 40 (1).

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*Status: Point in time view as at 02/01/2007.*

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## Section 4

### **Resumption of provision of benefits after suspension or withdrawal — Conversion of invalidity benefits into old-age benefits — Recalculation of benefits granted under Article 39**

#### *Article 42 (11)*

#### **Determination of the institution responsible for the provision of benefits where provision of invalidity benefits is resumed**

1 If provision of benefits is to be resumed after suspension, such provisions shall, without prejudice to Article 43, be the responsibility of the institution or institutions which were responsible for provision of the benefits at the time of their suspension.

2 If, after withdrawal of benefits, the condition of the person concerned warrants the granting of further benefits, they shall be granted in accordance with Article 37 (1) or Article 40 (1) or (2), as appropriate.

#### *Article 43 (11)*

#### **Conversion of invalidity benefits into old-age benefits — Recalculation of benefits granted under Article 39**

1 Invalidity benefits shall be converted into old-age benefits, where appropriate, under the condition laid down by the legislation or legislations under which they were granted, and in accordance with Chapter 3.

2 Where a person receiving invalidity benefits can establish a claim to old-age benefits under the legislation of one or more Member States, in accordance with Article 49, any institution which is responsible for providing invalidity benefits under the legislation of a Member State shall continue to provide such a person with the invalidity benefits to which he is entitled under the legislation which it administers until the provisions of paragraph 1 become applicable as regards that institution or so long as the person concerned fulfils the conditions for such benefits.

3 Where invalidity benefits granted in accordance with Article 39 under the legislation of a Member State are converted into old-age benefits and where the person concerned does not yet satisfy the conditions required by one or more national legislations to receive these benefits, the person concerned shall receive, from this or these Member States, from the date of the conversion, invalidity benefits granted in accordance with Chapter 3 as if that Chapter had been applicable at the time when his incapacity for work leading to invalidity occurred, until the person concerned satisfies the qualifying conditions for old-age benefit laid down by the national legislations concerned or, where such conversion is not provided for, as long as he has a right to invalidity benefits under the legislation or legislations concerned.

4 The invalidity benefits provided under Article 39 shall be recalculated pursuant to Chapter 3 as soon as the beneficiary satisfies the qualifying conditions for invalidity benefits laid down by a legislation not listed in Annex IV, part A, or as soon as he receives old-age benefits under the legislation of another Member State.

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

## [<sup>F1</sup>Section 5

### Persons covered by a special scheme for civil servants

#### Article 43a

1 The provisions of Articles 37, 38(1), 39 and Sections 2, 3 and 4 shall apply by analogy to persons covered by a special scheme for civil servants.

2 However, if the legislation of a Member State makes the acquisition, liquidation, retention or recovery of the rights to benefits under a special scheme for civil servants subject to the condition that all periods of insurance have been completed under one or more special schemes for civil servants in that Member State, or are regarded by the legislation of that Member State as equivalent to such periods, account shall be taken only of the periods which can be recognised under the legislation in that Member State.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for the receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing that, the scheme applicable to manual or clerical workers, as the case may be.

3 Where, under the legislation of a Member State, benefits are calculated on the basis of the last salary or salaries received during a reference period, the competent institution of that State shall take into account for the purposes of the calculation only those salaries, duly revalued, received during the period or periods for which the person concerned was subject to that legislation.]

## CHAPTER 3 (11)

### OLD AGE AND DEATH (PENSIONS)

#### Article 44 (11)

#### **General provisions for the award of benefits where an employed or selfemployed person has been subject to the legislation of two or more Member States**

1 The rights to benefits of an employed or self-employed person who has been subject to the legislation of two or more Member States, or of his survivors, shall be determined in accordance with the provisions of this Chapter.

2 Save as otherwise provided in Article 49, the processing of a claim for an award submitted by the person concerned shall have regard to all the legislations to which the employed or self-employed person has been subject. Exception shall be made to this rule if the person concerned expressly asks for postponement of the award of old-age benefits to which he would be entitled under the legislation of one or more Member States.

[<sup>F13</sup> This chapter shall not apply to increases in or supplements to pensions in respect of children or to orphans' pensions to be granted in accordance with the provisions of Chapter 8.]

#### **Textual Amendments**

**F13** Substituted by [Council Regulation \(EC\) No 1399/1999 of 29 April 1999 amending Regulation \(EEC\) No 1408/71 on the application of social security schemes to employed persons, to self-employed](#)

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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.

#### *Article 45 (11) (14)*

### **Consideration of periods of insurance or of residence completed under the legislations to which an employed person or self-employed person was subject, for the acquisition, retention or recovery of the right to benefits**

1 Where the legislation of a Member State makes the acquisition, retention or recovery of the right to benefits, under a scheme which is not a special scheme within the meaning of paragraph 2 or 3, subject to the completion of periods of insurance or of residence, the competent institution of that Member State shall take account, where necessary, of the periods of insurance or of residence completed under the legislation of any other Member State, be it under a general scheme or under a special scheme and either as an employed person or a self-employed person. For that purpose, it shall take account of these periods as if they had completed under its own legislation.

2 Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in an occupation which is subject to a special scheme for employed persons or, where appropriate, in a specific employment, periods completed under the legislation of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing that, in the same occupation or, where appropriate, in the same employment. If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing that, under the scheme applicable to manual or clerical workers, as the case may be, subject to the condition that the person has been affiliated to one or other of these schemes.

3 Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in an occupation subject to a special scheme for self-employed persons, periods completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing that, in the same occupation. The special schemes for self-employed persons referred to in this paragraph are listed in Annex IV, part B, for each Member State concerned. If, account having been taken of the periods referred to in this paragraph, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as the case may be, subject to the condition that the person concerned has been affiliated to one or other of these schemes.

4 The periods of insurance completed under a special scheme of a Member State shall be taken into account under the general scheme or, failing that, under the scheme applicable to manual or clerical workers, as the case may be, of another Member State for the acquisition, retention or recovery of the right to benefits, subject to the condition that the person concerned has been affiliated to one or other of these schemes, even if these periods have already been taken into account in the latter State under a scheme referred to in paragraph 2 or in the first sentence of paragraph 3.

5 Where the legislation of a Member State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the

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materialization of the risk, this condition shall be regarded as having been satisfied in the case of insurance under the legislation of another Member State, in accordance with the procedures provided in Annex VI for each Member State concerned.

6 A period of full employment of a worker to whom Article 81 (1) (a) (ii) or (b) (ii), first sentence, applies shall be taken into account by the competent institution of the Member State in whose territory the worker concerned resides in accordance with the legislation administered by that institution, as if that legislation applied to him during his last employment.

Where that institution applies legislation providing for deduction of contributions payable by unemployed persons to cover old age pensions and death, it shall be authorized to make such deductions in accordance with the provisions of its legislation.

If the period of full unemployment in the country of residence of the person concerned can be taken into account only if contribution periods have been completed in that country, this condition shall be deemed to be fulfilled if the contribution periods have been completed in another Member State.

#### *Article 46 (11)*

#### **Award of benefits**

1 Where the conditions required by the legislation of a Member State for entitlement to benefits have been satisfied without having to apply Article 45 or Article 40 (3), the following rules shall apply:

- a the competent institution shall calculate the amount of the benefit that would be due:
  - (i) on the one hand, only under the provisions of the legislation which it administers;
  - (ii) on the other hand, pursuant to paragraph 2;
- b the competent institution may, however, waive the calculation to be carried out in accordance with (a) (ii) if the result of this calculation, apart from differences arising from the use of round figures, is equal to or lower than the result of the calculation carried out in accordance with (a) (i), in so far as that institution does not apply any legislation containing rules against overlapping as referred to in Articles 46b and 46c or if the aforementioned institution applies a legislation containing rules against overlapping in the case referred to in Article 46c, provided that the said legislation lays down that benefits of a different kind shall be taken into consideration only on the basis of the relation of the periods of insurance or of residence completed under that legislation alone to the periods of insurance or of residence required by that legislation in order to qualify for full benefit entitlement.

Annex IV, part C, lists for each Member State concerned the cases where the two calculations would lead to a result of this kind.

2 Where the conditions required by the legislation of a Member State for entitlement to benefits are satisfied only after application of Article 45 and or Article 40 (3), the following rules shall apply:

- a the competent institution shall calculate the theoretical amount of the benefit to which the person concerned could lay claim provided all periods of insurance and/or of residence, which have been completed under the legislation of the Member States to which the employed person or self-employed person was subject, have been completed in the State in question under the legislation which it administers on the date of the award

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of the benefit. If, under this legislation, the amount of the benefit is independent of the duration of the periods completed, the amount shall be regarded as being the theoretical amount referred to in this paragraph;

- b the competent institution shall subsequently determine the actual amount of the benefit on the basis of the theoretical amount referred to in the preceding paragraph in accordance with the ratio of the duration of the periods of insurance or of residence completed before the materialization of the risk under the legislation which it administers to the total duration of the periods of insurance and of residence completed before the materialization of the risk under the legislations of all the Member States concerned.

3 The person concerned shall be entitled to the highest amount calculated in accordance with paragraphs 1 and 2 from the competent institution of each Member State without prejudice to any application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation under which this benefit is due.

Where that is the case, the comparison to be carried out shall relate to the amounts determined after the application of the said provisions.

4 When, in the case of invalidity, old-age or survivor's pensions, the total of the benefits due from the competent institutions of two or more Member States under the provisions of a multilateral social security convention referred to in Article 6 (b) does not exceed the total which would be due from such Member States under paragraphs 1 to 3, the person concerned shall benefit from the provisions of this Chapter.

#### *Article 46a (11)*

#### **General provisions relating to reduction, suspension or withdrawal applicable to benefits in respect of invalidity, old age or survivors under the legislations of the Member States**

1 For the purposes of the Chapter, overlapping of benefits of the same kind shall have the following meaning: all overlapping of benefits in respect of invalidity, old age and survivors calculated or provided on the basis of periods of insurance and/or residence completed by one and the same person.

2 For the purposes of this Chapter, overlapping of benefits of different kinds means all overlapping of benefits that cannot be regarded as being of the same kind within the meaning of paragraph 1.

3 The following rules shall be applicable for the application of provisions on reduction, suspension or withdrawal laid down by the legislation of a Member State in the case of overlapping of a benefit in respect of invalidity, old age or survivors with a benefit of the same kind or a benefit of a different kind or with other income:

- a account shall be taken of the benefits acquired under the legislation of another Member State or of other income acquired in another Member State only where the legislation of the first Member State provides for the taking into account of benefits or income acquired abroad;
- b account shall be taken of the amount of benefits to be granted by another Member State before deductions of taxes, social security contributions and other individual levies or deductions;
- c no account shall be taken of the amount of benefits acquired under the legislation of another Member State which are awarded on the basis of voluntary insurance or continued optional insurance;

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- d where provisions on reduction, suspension or withdrawal are applicable under the legislation of only one Member State on account of the fact that the person concerned receives benefits of a similar or different kind payable under the legislation of other Member States or other income acquired within the territory of other Member States, the benefit payable under the legislation of the first Member State may be reduced only within the limit of the amount of the benefits payable under the legislation or the income acquired within the territory of other Member States.

#### *Article 46b (11)*

#### **Special provisions applicable in the case of overlapping of benefits of the same kind under the legislation of two or more Member States**

1 The provisions on reduction, suspension or withdrawal laid down by the legislation of a Member State shall not be applicable to a benefit calculated in accordance with Article 46 (2).

2 The provisions on reduction, suspension or withdrawal laid down by the legislation of a Member State shall apply to a benefit calculated in accordance with Article 46 (1) (a) (i) only if the benefit concerned is:

- a a benefit, the amount of which is determined on the basis of a credited period deemed to have been completed between the date on which the risk materialized and a later date. In the latter case, the said provisions shall apply in the case of overlapping of such a benefit:

or

- b a benefit, the amount of which is determined on the basis of a credited period deemed to have been completed between the date on which the risk materialized and a later date. In the latter case, the said provisions shall apply in the case of overlapping of such a benefit:

- (i) either with a benefit of the same kind, except where an agreement has been concluded between two or more Member States providing that one and the same credited period may not be taken into account two or more times;
- (ii) or with a benefit of the type referred to in (a).

The benefits referred to in (a) and (b) and agreements are mentioned in Annex IV, part D.

#### *Article 46c (11)*

#### **Special provisions applicable in the case of overlapping of one or more benefits referred to in Article 46a (1) with one or more benefits of a different kind or with other income, where two or more Member States are concerned**

1 If the receipt of benefits of a different kind or other income entails the reduction, suspension or withdrawal of two or more benefits referred to in Article 46 (1) (a) (i), the amounts which would not be paid in strict application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation of the Member States concerned shall be divided by the number of benefits subject to reduction, suspension or withdrawal.

2 Where the benefit in question is calculated in accordance with Article 46 (2), the benefit or benefits of a different kind from other Member States or other income and all other elements provided for by the legislation of the Member State for the application of the provisions in the



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respect of reduction, suspension or withdrawal shall be taken into account in proportion to the periods of insurance and/or residence referred to in Article 46 (2) (b), and shall be used for the calculation of the said benefit.

3 If the receipt of benefits of a different kind or of other income entails the reduction, suspension or withdrawal of one or more benefits referred to in Article 46 (1) (a) (i), and of one or more benefits referred to in Article 46 (2), the following rules shall apply:

- a where in a case of a benefit or benefits referred to in Article 46 (1) (a) (i), the amounts which would not be paid in strict application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation of the Member States concerned shall be divided by the number of benefits subject to reduction, suspension or withdrawal;
- b where in a case of a benefit or benefits calculated in accordance with Article 46 (2), the reduction, suspension or withdrawal shall be carried out in accordance with paragraph 2.

4 Where, in the case referred to in paragraphs 1 and 3 (a), the legislation of a Member State provides that, for the application of provisions concerning reduction, suspension or withdrawal, account shall be taken of benefits of a different kind and/or other income and all other elements in proportion to the periods of insurance referred to in Article 46 (2) (b), the division provided for in the said paragraphs shall not apply in respect of that Member State.

5 All the abovementioned provisions shall apply *mutatis mutandis* where the legislation of one or more Member States provides that the right to a benefit cannot be acquired in the case where the person concerned is in receipt of a benefit of a different kind, payable under the legislation of another Member State, or of other income.

#### *Article 47 (11)*

#### **Additional provisions for the calculation of benefits**

1 For the calculation of the theoretical and pro rata amounts referred to in Article 46 (2), the following rules shall apply:

- a where the total length of the periods of insurance and of residence completed before the risk materialized under the legislations of all the Member States concerned is longer than the maximum period required by the legislation of one of these States for receipt of full benefit, the competent institution of that State shall take into consideration this maximum period instead of the total length of the periods completed; this method of calculation must not result in the imposition on that institution of the cost of a benefit greater than the full benefit provided for by the legislation which it administers. This provision shall not apply to benefits, the amount of which does not depend on the length of insurance;
- b the procedure for taking account of overlapping periods is laid down in the implementing Regulation referred to in Article 98;
- c where, under the legislation of a Member State, benefits are calculated on the basis of average earnings, an average contribution, an average increase or on the relation which existed, during the periods of insurance, between the claimant's gross earnings and the average gross earnings of all insured persons other than apprentices, such average figures or relations shall be determined by the competent institution of that State solely on the basis of the periods of insurance completed under the legislation of the said State, or the gross earnings received by the person concerned during those periods only;
- d where, under the legislation of a Member State, benefits are calculated on the basis of the amount of earnings, contributions or increases, the competent institution of the

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State shall determine the earnings, contributions and increases to be taken into account in respect of the periods of insurance or residence completed under the legislation of other Member States on the basis of the average earnings, contributions or increases recorded in respect of the periods of insurance completed under the legislation which it administers;

- e where, under the legislation of a Member State, benefits are calculated on the basis of standard earnings or a fixed amount, the competent institutions of that State shall consider the standard earnings or the fixed amount to be taken into account by it in respect of periods of insurance or residence completed under the legislations of other Member States as being equal to the standard earnings or fixed amount or, where appropriate, to the average of the standard earnings or the fixed amount corresponding to the periods of insurance completed under the legislation which it administers;
- f where, under the legislation of a Member State, benefits are calculated for some periods on the basis of the amount of earnings and, for other periods, on the basis of standard earnings or a fixed amount, the competent institution of that State shall, in respect of periods of insurance or residence completed under the legislations of other Member States, take into account the earnings or fixed amounts determined in accordance with the provisions referred to in (d) or (e) or, as appropriate, the average of these earnings or fixed amounts, where benefits are calculated on the basis of standard earnings or a fixed amount for all the periods completed under the legislation which it administers, the competent institution shall consider the earnings to be taken into account in respect of the periods of insurance or residence completed under the legislations of other Member States as being equal to the national earnings corresponding to the standard earnings or fixed amounts;
- g where, under the legislation of a Member State, benefits are calculated on the basis of average contributions, the competent institution shall determine that average by reference only to those periods of insurance completed under the legislation of the said State.

2 The provisions of the legislation of a Member State concerning the revalorization of the factors taken into account for the calculation of benefits shall apply, as appropriate, to the factors to be taken into account by the competent institution of that state, in accordance with paragraph 1, in respect of the periods of insurance or residence completed under the legislation of other Member States.

3 If, under the legislation of a Member State, the amount of benefits is determined taking into account the existence of members of the family other than children, the competent institution of that State shall also take into consideration those members of the family of the person concerned who are residing in the territory of another Member State as if they were residing in the territory of the competent State.

4 If the legislation which the competent institution of a Member State administers requires a salary to be taken into account for the calculation of benefits, where the first and second subparagraphs of Article 45 (6) have been applied, and if, in this Member State, only periods of full unemployment with benefit in accordance with Article 71 (1) (a) (ii) or the first sentence of Article 71 (1) (b) (ii) are taken into consideration for the payment of pensions, the competent institution of that Member State shall pay the pension on the basis of the salary it used as the reference for providing that unemployment benefit in accordance with the legislation which it administers.

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### *Article 48 (11)*

#### **Periods of insurance or of residence of less than one year**

1 Notwithstanding Article 46 (2), the institution of a Member State shall not be required to award benefits in respect of periods completed under the legislation it administers which are taken into account when the risk materializes, if:

- the duration of the said periods does not amount to one year, and
- taking only these periods into consideration, no right to benefit is acquired by virtue of the provisions of that legislation.

2 The competent institution of each of the Member States concerned shall take into account the periods referred to in paragraph 1, for the purposes of applying Article 46 (2) excepting subparagraph (b).

3 If the effect of applying paragraph 1 would be to relieve all the institutions of the Member States concerned of their obligations, benefits shall be awarded exclusively under the legislation of the last of those States whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with Article 45 (1) to (4) had been completed under the legislation of that State.

### *Article 49 (11) (15)*

#### **Calculation of benefits where the person concerned does not simultaneously satisfy the conditions laid down by all the legislations under which periods of insurance or of residence have been completed or when he has expressly requested a postponement of the award of old-age benefits**

1 If, at a given time, the person concerned does not satisfy the conditions laid down for the provisions of benefits by all the legislations of the Member States to which he has been subject, taking into account where appropriate Article 45 and/or Article 40 (3), but satisfies the conditions or one or more of them only, the following provisions shall apply:

- a each of the competent institutions administering a legislation whose conditions are satisfied shall calculate the amount of the benefit due, in accordance with Article 46;
- b however:
  - (i) if the person concerned satisfies the conditions of at least two legislations without having recourse to periods of insurance or residence completed under the legislations whose conditions are not satisfied, these periods shall not be taken into account for the purposes of Article 46 (2) unless taking account of the said periods makes it possible to determine a higher amount of benefit;
  - (ii) if the person concerned satisfies the conditions of one legislation only without having recourse to periods of insurance or residence completed under the legislations whose conditions are not satisfied, the amount of the benefit due shall, in accordance with Article 46 (1) (a) (i), be calculated only in accordance with the provisions of the legislation whose conditions are satisfied, taking account of the periods completed under that legislation only, unless taking account of the periods completed under the legislations whose conditions are not satisfied makes it possible, in accordance with Article 46 (1) (a) (ii), to determine a higher amount of benefit.

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The provisions of this paragraph shall apply *mutatis mutandis* where the person concerned has expressly requested the postponement of the award of old-age benefits, in accordance with the second sentence of Article 44 (2).

2 The benefit or benefits awarded under one or more of the legislations in question, in the case referred to in paragraph 1, shall be recalculated automatically in accordance with Article 46, as and when the conditions required by one or more of the other legislations to which the person concerned has been subject are satisfied, taking into account, where appropriate, Article 45 and taking into account once again, where appropriate, paragraph 1. This paragraph shall apply *mutatis mutandis* where a person requests the award of old-age benefits acquired under the legislation of one or more Member States which had until then been postponed in accordance with the second sentence of Article 44 (2).

3 A recalculation shall automatically be made in accordance with paragraph 1, without prejudice to Article 40 (2), where the conditions required by one or more of the legislations concerned are no longer satisfied.

#### *Article 50 (11)*

#### **Award of a supplement where the total of benefits payable under the legislations of the various Member States does not amount to the minimum laid down by the legislation of the State in whose territory the recipient resides**

A recipient of benefits to whom this Chapter applies may not, in the State in whose territory he resides and under whose legislation a benefit is payable to him, be awarded a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods of insurance or residence equal to all the periods of insurance taken into account for the payment in accordance with the preceding Articles. The competent institution of that State shall, if necessary, pay him throughout the period of his residence in its territory a supplement equal to the difference between the total of the benefits payable under this Chapter and the amount of the minimum benefit.

#### *Article 51 (11)*

#### **Revalorization and recalculation of benefits**

1 If, by reason of an increase in the cost of living or changes in the level of wages or salaries or other reasons for adjustment, the benefits of the States concerned are altered by a fixed percentage or amount, such percentage or amount must be applied directly to the benefits determined under Article 46, without the need for a recalculation in accordance with that Article.

2 On the other hand, if the method of determining benefits or the rules for calculating benefits should be altered, a recalculation shall be carried out in accordance with Article 46.

#### *Article 51a*

#### **Persons covered by a special scheme for civil servants**

1 The provisions of Article 44, Article 45(1), (5) and (6) and Articles 46 to 51 shall apply by analogy to persons covered by a special scheme for civil servants.

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2 However, if the legislation of a Member State makes the acquisition, liquidation, retention or recovery of the rights to benefits under a special scheme for civil servants subject to the condition that all periods of insurance have been completed under one or more special schemes for civil servants in that Member State, or are regarded by the legislation of that Member State as equivalent to such periods, account shall be taken only of the periods which can be recognised under the legislation in that Member State.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for the receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing that, the scheme applicable to manual or clerical workers, as the case may be.

3 Where, under the legislation of a Member State, benefits are calculated on the basis of the last salary or salaries received during a reference period, the competent institution of that State shall take into account for the purposes of the calculation only those salaries, duly revalued, received during the period or periods for which the person concerned was subject to that legislation.]

#### **Textual Amendments**

**F1** Inserted by [Council Regulation \(EC\) No 1606/98 of 29 June 1998](#).

## CHAPTER 4

### ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES

#### Section 1

#### **Right to benefits**

#### *Article 52*

#### **Residence in a Member State other than the competent State — General rules**

An employed or self-employed person who sustains an accident at work or contracts an occupational disease, and who is residing in the territory of a Member State other than the competent State, shall receive in the State in which he is residing:

- (a) benefits in kind, provided on behalf of the competent institution by the institutions of his place of residence in accordance with the provisions of the legislation which it administers as if he were insured with it;
- (b) cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers. However, by agreement between the competent institution and the institution of the place of residence, these benefits may be provided by the latter institution on behalf of the former in accordance with the legislation of the competent State.

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### Article 53

#### **Frontier workers — Special rule**

A frontier worker may also obtain benefits in the territory of the competent State. Such benefits shall be provided by the competent institution in accordance with the provisions of the legislation of that State, as if the person concerned were residing there.

### Article 54

#### **Stay in or transfer of residence to the competent State**

1 An employed or self-employed person covered by Article 52 who is staying in the territory of the competent State shall receive benefits in accordance with the provisions of the legislation of that State, even if he has already received benefits before his stay. This provision shall not, however, apply to frontier workers.

2 An employed or self-employed person covered by Article 52 who transfers his place of residence to the territory of the competent State shall receive benefits in accordance with the provisions of the legislation of that State, even if he has already received benefits before transferring his residence.

### Article 55

#### **Stay outside the competent State — Return to or transfer of residence to another Member State after sustaining an accident or contracting an occupational disease — Need to go to another Member State in order to receive appropriate treatment**

1 An employed or self-employed person who sustains an accident at work or contracts an occupational disease and:

- (a) who is staying in the territory of a Member State other than the competent State;  
or
- (b) who, after having become entitled to benefits chargeable to the competent institution, is authorized by that institution to return to the territory of the Member State where he is resident, or to transfer his place of residence to the territory of another Member State;  
or
- (c) who is authorized by the competent institution to go to the territory of another Member State in order to receive there the treatment appropriate to his condition;

shall be entitled:

- (i) to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence in accordance with the provisions of the legislation administered by that institution as though he were insured with it, the period during which benefits are provided shall, however, be governed by the legislation of the competent State;

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(ii) to cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of say or residence, those benefits may be provided by the latter institution on behalf of the former institution, in accordance with the legislation of the competent State.

2 The authorization required under paragraph 1 (b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or to the medical treatment being given.

The authorization required under paragraph 1 (c) may not be refused where the treatment in question cannot be given to the person concerned in the territory of the Member State in which he resides.

#### *Article 56*

### **Accidents while travelling**

An accident while travelling which occurs in the territory of a Member State other than the competent State shall be deemed to have occurred in the territory of the competent State.

#### *Article 57 (7)*

### **Benefits for an occupational disease where the person concerned has been exposed to the same risk in several Member States**

1 When a person who has contracted an occupational disease has, under the legislation of two or more Member States, pursued an activity which by its nature is likely to cause that disease, the benefits that he or his survivors may claim shall be awarded exclusively under the legislation of the last of those States whose conditions are satisfied, taking into account, where appropriate, paragraphs 2 to 5.

2 If, under the legislation of a Member State, the granting of benefits in respect of an occupational disease is subject to the condition that the disease in question was first diagnosed within its territory, such condition shall be deemed to be satisfied if the disease was first diagnosed in the territory of another Member State.

3 If, under the legislation of a Member State, the granting of benefits in respect of an occupational disease is subject to the condition that the disease in question was diagnosed within a specific time limit following cessation of the last activity which was likely to cause such a disease, the competent institution of that State, when checking the time at which such activity was pursued, shall take into account, to the extent necessary, similar activities pursued under the legislation of any other Member State, as if they had been pursued under the legislation of the first State.

4 If, under the legislation of a Member State, the granting of benefits in respect of an occupational disease is subject to the condition that an activity likely to cause the disease in question was pursued for a certain length of time, the competent institution of the State shall take into account, to the extent necessary, periods during which such activity was pursued under the legislation of any other Member State, as if it had been pursued under the legislation of the first State.

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5 In cases of sclerogenic pneumoconiosis, the cost of cash benefits, including pensions, shall be divided among the competent institutions of the Member States in whose territory the person concerned pursued an activity likely to cause the disease. This division shall be carried out on the basis of the ratio which the length of the periods of old-age insurance or residence referred to in Article 45 (1) completed under the legislation of each of the States bears to the total length of the periods of old-age insurance or residence completed under the legislation of all the States at the dates on which the benefits commenced.

6 The Council shall determine unanimously, on a proposal from the Commission, the occupational diseases to which the provisions of paragraph 5 shall be extended.

#### *Article 58*

### **Calculation of cash benefits**

1 The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on average earnings shall determine such average earnings exclusively by reference to earnings confirmed as having been paid during the periods completed under the said legislation.

2 The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on standard earnings shall take account exclusively of the standard earnings, or where appropriate, of the average of standard earnings for the periods completed under the said legislation.

3 The competent institution of a Member State whose legislation provides that the amount of cash benefits shall vary with the number of members in the family shall take into account also the members of the family of the person concerned who are residing in the territory of another Member State, as if they were residing in the territory of the competent State.

#### *Article 59*

### **Costs of transporting a person who has sustained an accident at work or is suffering from an occupational disease**

1 The competent institution of a Member State whose legislation provides for meeting the costs of transporting a person who has sustained an accident at work or is suffering from an occupational disease, either to his place of residence or to a hospital, shall meet such costs to the corresponding place in the territory of another Member State where the person resides, provided that that institution gives prior authorization for such transport, duly taking into account the reasons justifying it. Such authorization shall not be required in the case of a frontier worker.

2 The competent institution of a Member State whose legislation provides for the costs of transporting the body of a person killed in an accident at work to the place of burial shall, in accordance with the provisions of the legislation which it administers, meet such costs to the corresponding place in the territory of another Member State, where the person was residing at the time of the accident.



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## Section 2

### **Aggravation of an occupational disease for which the benefit has been awarded**

#### *Article 60 (7) (11)*

1 In the event of aggravation of an occupational disease for which an employed or self-employed person has received or is receiving benefit under the legislation of a Member State, the following rules shall apply:

- a if the person concerned has not, while in receipt of benefits, been engaged in an occupation under the legislation of another Member State likely to cause or aggravate the disease in question, the competent institution of the first Member State shall be bound to meet the cost of the benefits under the provisions of the legislation which it administers taking into account the aggravation;
- b if the person concerned, while in receipt of benefits, has pursued such an activity under the legislation of another Member State, the competent institution of the first Member State shall be bound to meet the cost of the benefits under the legislation which it administers without taking the aggravation into account. The competent institution of the second Member State shall grant a supplement to the person concerned, the amount of which shall be equal to the difference between the amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the legislation which it administers if the disease in question had occurred under the legislation of that Member State;
- c if, in the case covered by subparagraph (b), an employed or self-employed person suffering from sclerogenic pneumoconiosis or from a disease determined under Article 57 (6) is not entitled to benefits under the legislation of the second Member State, the competent institution of the first Member State shall be bound to provide benefits under the legislation which it administers, taking the aggravation into account. The competent institution of the second Member State shall, however, meet the cost of the difference between the amount of cash benefits, including pensions, due from the competent institution of the first Member State, taking the aggravation into account, and the amount of the corresponding benefits which were due prior to the aggravation;
- d the provisions for reduction, suspension or withdrawal laid down by the legislation of a Member State shall not apply to persons receiving benefits awarded by institutions of two Member States in accordance with subparagraph (b).

2 In the event of aggravation of an occupational disease giving rise to the application of the provisions of Article 57 (5), the following provisions shall apply:

- a the competent institution which granted the benefits in accordance with the provisions of Article 57 (1) shall be bound to provide benefits under the legislation which it administers taking the aggravation into account;
- b the cost of cash benefits, including pensions, shall continue to be divided between the institutions which shared the costs of former benefits in accordance with the provisions of Article 57 (5). Where, however, the person has again pursued an activity likely to cause or to aggravate the occupational disease in question, either under the legislation of one of the Member States in which he had already pursued an activity of the same nature or under the legislation of another Member State, the competent institution of such State shall meet the cost of the difference between the amount of benefits due, taking account of the aggravation, and the amount of benefits due prior to the aggravation.

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### Section 3

#### Miscellaneous provisions

##### Article 61

#### **Rules for taking into account the special features of certain legislations**

1 If there is no insurance against accidents at work or occupational diseases in the territory of the Member State in which the person concerned happens to be, or if such insurance exists but there is no institution responsible for providing benefits in kind, those benefits shall be provided by the institution of the place of stay or residence responsible for providing benefit in kind in the event of sickness.

2 Where the legislation of the competent State makes wholly cost-free benefits in kind conditional upon use of the medical service organized by the employer, benefits in kind provided in the cases referred to in Articles 52 and 55 (1) shall be deemed to have been provided by such a medical service.

3 Where the legislation of the competent State includes a scheme relating to the obligations of the employer, benefits in kind provided in the case referred to in Articles 52 and 55 (1) shall be deemed to have been provided at the request of the competent institution.

4 Where the nature of the scheme of the competent State relating to compensation for accidents at work is not that of compulsory insurance, the provision of benefits in kind shall be made directly by the employer or by the insurer involved.

5 Where the legislation of a Member State provides expressly or by implication that accidents at work or occupational diseases which have occurred or have been confirmed previously shall be taken into consideration in order to assess the degree of incapacity, to establish a right to any benefit, or to determine the amount of benefit, the competent institution of that Member State shall also take into consideration accidents at work or occupational diseases which have occurred or have been confirmed previously under the legislation of another Member State as if they had occurred or had been confirmed under the legislation which it administers.

6 Where the legislation of a Member State provides expressly or by implication that accidents at work or occupational diseases which have occurred or have been confirmed subsequently shall be taken into consideration in order to assess the degree of incapacity, to establish the right to any benefit, or to determine the amount of such benefit, the competent institution of that Member State shall also take into consideration accidents at work or occupational diseases which have occurred or have been confirmed subsequently under the legislation of another Member State, as if they had occurred or had been confirmed under the legislation which it administers, but only where:

(1) no compensation is due in respect of the accident at work or the occupational disease which had occurred or had been confirmed previously under the legislation which it administers;

and

(2) no compensation is due by virtue of the legislation of the other Member State under which the accident at work or the occupational disease occurred or was confirmed subsequently, account having been taken of the provisions of paragraph 5, in respect of that accident at work or that occupational disease.

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*Status: Point in time view as at 02/01/2007.*

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

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## *Article 62*

### **Scheme applicable where there are several schemes in the country of stay or residence — Maximum duration of benefits**

1 If the legislation of the country of stay or residence has several insurance schemes, the provisions applicable to employed or self-employed persons covered by Article 52 or 55 (1) shall be those of the scheme for manual workers in the steel industry. However, if that legislation includes a special scheme for workers in mines and similar undertakings, the provisions of that scheme shall apply to that category of workers where the institution of the place of stay or residence to which they submit their claim is competent to administer that scheme.

2 If the legislation of a Member State fixes a maximum period during which benefits may be granted, the institution which administers that legislation may take into account any period during which the benefits have already been provided by the institution of another Member State.

## Section 4

### **Reimbursements between institutions**

#### *Article 63*

1 The competent institution shall be obliged to reimburse the amount of benefits in kind provided on its behalf in accordance with the provisions of Articles 52 and 55 (1).

2 The reimbursements referred to in paragraph 1 shall be determined and made in accordance with the procedures laid down by the implementing Regulation referred to in Article 98, on proof of actual expenditure.

3 Two or more Member States, or the competent authorities of such States, may provide for other methods of reimbursement or waive reimbursement between the institutions coming under their jurisdiction.

## [<sup>F2</sup>Section 5

### **Students**

#### *Article 63a*

The provisions of Sections 1 to 4 shall apply by analogy to students.]

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*Status: Point in time view as at 02/01/2007.*

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

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## CHAPTER 5

### DEATH GRANTS

#### *Article 64*

#### **Aggregation of periods of insurance or residence**

The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to death grants subject to the completion of periods of insurance or residence shall take account, to the extent necessary, of periods of insurance or residence completed under the legislation of any other Member State as though they had been completed under the legislation which it administers.

#### *Article 65*

#### **Right to grants where death occurs in, or where the person entitled resides in, a Member State other than the competent State**

1 When an employed or self-employed person, a pensioner or a pension claimant, or a member of his family, dies in the territory of a Member State other than the competent State, the death shall be deemed to have occurred in the territory of the competent State.

2 The competent institution shall be obliged to award death grants payable under the legislation which it administers, even if the person entitled resides in the territory of a Member State other than the competent State.

3 The provisions of paragraphs 1 and 2 shall also apply when the death is the result of an accident at work or an occupational disease.

#### *Article 66*

#### **Provision of benefits in the event of the death of a pensioner who had resided in a Member State other than the one whose institution was responsible for providing benefits in kind**

In the event of the death of a pensioner who was entitled to a pension under the legislation of one Member State, or to pensions under the legislations of two or more Member States, when such pensioner was residing in the territory of a Member State other than the one whose institution was responsible for providing him with benefits in kind under the provisions of Article 28, the death grants payable under the legislation administered by that institution shall be provided by that institution at its own expense as though the pensioner had been residing in the territory of the Member State of that institution at the time of his death.

The provisions of the preceding paragraph shall apply by analogy to the members of the family of a pensioner.

*Status: Point in time view as at 02/01/2007.*

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

## *F<sup>2</sup>* Article 66a

### Students

The provisions of Articles 64 to 66 shall apply by analogy to students and the members of their family.]

#### Textual Amendments

**F2** Inserted by [Council Regulation \(EC\) No 307/1999 of 8 February 1999](#).

## CHAPTER 6

### UNEMPLOYMENT BENEFITS

#### Section 1

#### Common provisions

#### *Article 67*

#### **Aggregation of periods of insurance or employment**

1 The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of insurance shall take into account, to the extent necessary, periods of insurance or employment completed as an employed person under the legislation of any other Member State, as though they were periods of insurance completed under the legislation which it administers, provided, however, that the periods of employment would have been counted as periods of insurance had they been completed under that legislation.

2 The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of employment shall take into account, to the extent necessary, periods of insurance or employment completed as an employed person under the legislation of any other Member State, as though they were periods of employment completed under the legislation which it administers.

3 Except in the cases referred to in Article 71 (1) (a) (ii) and (b) (ii), application of the provisions of paragraphs 1 and 2 shall be subject to the condition that the person concerned should have completed lastly:

- in the case of paragraph 1, periods of insurance,
- in the case of paragraph 2, periods of employment,

in accordance with the provisions of the legislation under which the benefits are claimed.

4 Where the length of the period during which benefits may be granted depends on the length of periods of insurance or employment, the provisions of paragraph 1 or 2 shall apply, as appropriate.

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*Status: Point in time view as at 02/01/2007.*

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

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## Article 68

### Calculation of benefits

1 The competent institution of a Member State whose legislation provides that the calculation of benefits should be based on the amount of the previous wage or salary shall take into account exclusively the wage or salary received by the person concerned in respect of his last employment in the territory of that State. However, if the person concerned had been in his last employment in that territory for less than four weeks, the benefits shall be calculated on the basis of the normal wage or salary corresponding, in the place where the unemployed person is residing or staying, to an equivalent or similar employment to his last employment in the territory of another Member State.

2 The competent institution of a Member State whose legislation provides that the amount of benefits varies with the number of members of the family, shall take into account also members of the family of the person concerned who are residing in the territory of another Member State, as though they were residing in the territory of the competent State. This provision shall not apply if, in the country of residence of the members of the family, another person is entitled to unemployment benefits for the calculation of which the members of the family are taken into consideration.

## Section 2

### Unemployed persons going to a Member State other than the competent State

## Article 69

### Conditions and limits for the retention of the right to benefits

1 An employed or self-employed person who is wholly unemployed and who satisfies the conditions of the legislation of a Member State for entitlement to benefits and who goes to one or more other Member States in order to seek employment there shall retain his entitlement to such benefits under the following conditions and within the following limits:

- a Before his departure, he must have been registered as a person seeking work and have remained available to the employment services of the competent State for at least four weeks after becoming unemployed. However, the competent services or institutions may authorize his departure before such time has expired.
- b He must register as a person seeking work with the employment services of each of the Member States to which he goes and be subject to the control procedure organized therein. This condition shall be considered satisfied for the period before registration if the person concerned registered within seven days of the date when he ceased to be available to the employment services of the State he left. In exceptional cases, this period may be extended by the competent services or institutions.
- c Entitlement to benefits shall continue for a maximum period of three months from the date when the person concerned ceased to be available to the employment services of the State which he left, provided that the total duration of the benefits does not exceed the duration of the period of benefits he was entitled to under the legislation of that State. In the case of a seasonal worker such duration shall, moreover, be limited to the period remaining until the end of the season for which he was engaged.

*Status: Point in time view as at 02/01/2007.*

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

2 If the person concerned returns to the competent State before the expiry of the period during which he is entitled to benefits under the provisions of paragraph 1 (c), he shall continue to be entitled to benefits under the legislation of that State; he shall lose all entitlement to benefits under the legislation of the competent State if he does not return there before the expiry of that period. In exceptional cases, this time limit may be extended by the competent services or institutions.

3 The provisions of paragraph 1 may be invoked only once between two periods of employment.

F<sup>4</sup> .....

**Textual Amendments**

**F4** Deleted by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

*Article 70*

**Provision of benefits and reimbursements**

1 In the cases referred to in Article 69 (1), benefits shall be provided by the institution of each of the States to which an unemployed person goes to seek employment.

The competent institution of the Member State to whose legislation an employed or self-employed person was subject at the time of his last employment shall be obliged to reimburse the amount of such benefits.

2 The reimbursements referred to in paragraph 1 shall be determined and made in accordance with the procedure laid down by the implementing Regulation referred to in Article 98, on proof of actual expenditure, or by lump sum payments.

3 Two or more Member States, or the competent authorities of those States, may provide for other methods of reimbursement or payment, or may waive all reimbursement between the institutions coming under their jurisdiction.

Section 3

**Unemployed persons who, during their last employment, were residing in a Member State other than the competent State**

*Article 71*

1 An unemployed person who was formerly employed and who, during his last employment, was residing in the territory of a Member State other than the competent State shall receive benefits in accordance with the following provisions:

- a (i) A frontier worker who is partially or intermittently unemployed in the undertaking which employs him, shall receive benefits in accordance with the provisions of the legislation of the competent State as if he were residing in

*Status: Point in time view as at 02/01/2007.*

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

the territory of that State; these benefits shall be provided by the competent institution.

- (ii) A frontier worker who is wholly unemployed shall receive benefits in accordance with the provisions of the legislation of the Member State in whose territory he resides as though he had been subject to that legislation while last employed; these benefits shall be provided by the institution of the place of residence at its own expense.
- b (i) An employed person, other than a frontier worker, who is partially, intermittently or wholly unemployed and who remains available to his employer or to the employment services in the territory of the competent State shall receive benefits in accordance with the provisions of the legislation of that State as though he were residing in its territory; these benefits shall be provided by the competent institution.
- (ii) An employed person, other than a frontier worker, who is wholly unemployed and who makes himself available for work to the employment services in the territory of the Member State in which he resides, or who returns to that territory, shall receive benefits in accordance with the legislation of that State as if he had last been employed there; the institution of the place of residence shall provide such benefits at its own expense. However, if such an employed person has become entitled to benefits at the expense of the competent institution of the Member State to whose legislation he was last subject, he shall receive benefits under the provisions of Article 69. Receipt of benefits under the legislation of the State in which he resides shall be suspended for any period during which the unemployed person may, under the provisions of Article 69, make a claim for benefits under the legislation to which he was last subject.

2 An unemployed person may not claim benefits under the legislation of the Member State in whose territory he resides while he is entitled to benefits under the provisions of paragraph 1 (a) (i) or (b) (i).

#### [<sup>F1</sup>Section 4

### **Persons covered by a special scheme for civil servants**

#### *Article 71a*

1 The provisions of Sections 1 and 2 shall apply by analogy to persons covered by a special unemployment scheme for civil servants.

2 The provisions of Section 3 shall not apply to persons covered by a special unemployment scheme for civil servants. An unemployed person who is covered by a special unemployment scheme for civil servants, who is partially or wholly unemployed, and who, during his last employment, was residing in the territory of a Member State other than the competent State, shall receive benefits in accordance with the provisions of the legislation of the competent State as if he were residing in the territory of that State; these benefits shall be provided by the competent institution, at its expense.]



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*Status: Point in time view as at 02/01/2007.*

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

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## CHAPTER 7 (8)

### FAMILY BENEFITS

#### *Article 72 (8)*

#### **Aggregation of periods of insurance, employment or self-employment**

Where the legislation of a Member State makes acquisition of the right to benefits conditional upon completion of periods of insurance, employment or self-employment, the competent institution of that State shall take into account for this purpose, to the extent necessary, periods of insurance, employment or self-employment completed in any other Member State, as if they were periods completed under the legislation which it administers.

#### *Article 72a (9) (14)*

#### **Employed persons who have become fully unemployed**

An employed person who has become fully unemployed and to whom Article 71 (1) (a) (ii) or (b) (ii), first sentence, apply shall, for the members of his family residing in the territory of the same Member State as he, receive family benefits in accordance with the legislation of the State, as if he had been subject to that legislation during his last employment, taking account, where appropriate, of the provisions of Article 72. These benefits shall be provided by, and at the expense of, the institution of the place of residence.

Where that institution applies legislation providing for deduction of contributions payable by unemployed persons to cover family benefits, it shall be authorized to make such deductions in accordance with the provisions of its legislation.

#### *Article 73 (8)*

#### **Employed or self-employed persons the members of whose families reside in a Member State other than the competent State**

An employed or self-employed person subject to the legislation of a Member State shall be entitled, in respect of the members of his family who are residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI.

#### *Article 74 (8)*

#### **Unemployed persons the members of whose families reside in a Member State other than the competent State**

An unemployed person who was formerly employed or self-employed and who draws unemployment benefits under the legislation of a Member State shall be entitled, in respect of the members of his family residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI.

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*Status: Point in time view as at 02/01/2007.*

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

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### Article 75 (8)

#### Provisions of benefits

1 Family benefits shall be provided, in the cases referred to in Article 73, by the competent institution of the State to the legislation of which the employed or self-employed person is subject and, in the cases referred to in Article 74, by the competent institution of the State under the legislation of which an unemployed person who was formerly employed or self-employed receives unemployment benefits. They shall be provided in accordance with the provisions administered by such institutions, whether or not the natural or legal person to whom such benefits are payable is residing or staying in the territory of the competent State or in that of another Member State.

2 However, if the family benefits are not used by the person to whom they should be provided for the maintenance of the members of the family, the competent institution shall discharge its legal obligations by providing the said benefits to the natural or legal person actually maintaining the members of the family, at the request of, and through the agency of, the institution of their place of residence or of the designated institution or body appointed for this purpose by the competent authority of the country of their residence.

3 Two or more Member States may agree, in accordance with the provisions of Article 8, that the competent institution shall provide the family benefits due under the legislation of those States or of one of those States to the natural or legal person actually maintaining the members of the family, either directly or through the agency of the institution of their place of residence.

### Article 76 (8)

#### Rules or priority in cases of overlapping entitlement to family benefits under the legislation of the competent State and under the legislation of the Member State of residence of the members of the family

1 Where, during the same period, for the same family member and by reason of carrying on an occupation, family benefits are provided for by the legislation of the Member State in whose territory the members of the family are residing, entitlement to the family benefits due in accordance with the legislation of another Member State, if appropriate under Article 73 or 74, shall be suspended up to the amount provided for in the legislation of the first Member State.

2 If an application for benefits is not made in the Member States in whose territory the members of the family are residing, the competent institution of the other Member State may apply the provisions of paragraph 1 as if benefits were granted in the first Member State.

### <sup>F2</sup>Article 76a

#### Students

The provisions of Article 72 shall apply by analogy to students.]

#### Textual Amendments

**F2** Inserted by [Council Regulation \(EC\) No 307/1999 of 8 February 1999](#).

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*Status: Point in time view as at 02/01/2007.*

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## CHAPTER 8

### BENEFITS FOR DEPENDENT CHILDREN OF PENSIONERS AND FOR ORPHANS

#### *Article 77*

##### **Dependent children of pensioners**

1 The term ‘benefits’, for the purposes of this Article, shall mean family allowances for persons receiving pensions for old age, invalidity or an accident at work or occupational disease, and increases or supplements to such pensions in respect of the children of such pensioners, with the exception of supplements granted under insurance schemes for accidents at work and occupational diseases.

2 Benefits shall be granted in accordance with the following rules, irrespective of the Member State in whose territory the pensioner or the children are residing:

- a to a pensioner who draws a pension under the legislation of one Member State only, in accordance with the legislation of the Member State responsible for the pension;
- b to a pensioner who draws pensions under the legislation of more than one Member State:

- (i) in accordance with the legislation of whichever of these States he resides in provided that, taking into account, where appropriate, the provisions of Article 79 (1) (a), a right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State;

or

- ii) in other cases in accordance with the legislation of the Member State to which he has been subject for the longest period of time, provided that, taking into account, where appropriate, the provisions of Article 79 (1) (a), a right to one of the benefits referred to in paragraph 1 is acquired under such legislation; if no right to benefit is acquired under that legislation, the conditions for the acquisition of such right under the legislations of the other Member States concerned shall be examined in decreasing order of the length of periods of insurance or residence completed under the legislation of those Member States.

#### *Article 78*

##### **Orphans**

[<sup>F13</sup>1 The term ‘benefits’, for the purposes of this Article, means family allowances and, where appropriate, supplementary or special allowances for orphans.]

2 Orphans' benefits shall be granted in accordance with the following rules, irrespective of the Member State in whose territory the orphan or the natural or legal person actually maintaining him is resident:

- a for the orphan of a deceased employed or self-employed person who was subject to the legislation of one Member State only in accordance with the legislation of that State;
- b for the orphan of a deceased employed or self-employed person who was subject to the legislation of several Member States:

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- (i) in accordance with the legislation of the Member State in whose territory the orphan resides provided that, taking into account, where appropriate, the provisions of Article 79 (1) (a), a right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State;
- (ii) in other cases in accordance with the legislation of the Member State to which the deceased had been subject for the longest period of time, provided that, taking into account, where appropriate, the provisions of Article 79 (1) (a), the right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State; if no right is acquired under that legislation, the conditions for the acquisition of such right under the legislations of the other Member States shall be examined in decreasing order of the length of periods of insurance or residence completed under the legislation of those Member States.

However, the legislation of the Member State applicable in respect of provisions of the benefits referred to in Article 77 for a pensioner's children shall remain applicable after the death of the said pensioner in respect of the provisions of the benefits to his orphans.

#### Textual Amendments

**F13** Substituted by [Council Regulation \(EC\) No 1399/1999 of 29 April 1999 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.](#)

#### <sup>F14</sup>Article 78a

Orphans' pensions, except those granted under insurance schemes for accidents at work and occupational diseases, shall be treated as 'benefits' within the scope of Article 78(1) if the deceased was at any time covered by a scheme which provides only family allowances or supplementary or special allowances for orphans. These schemes are listed in Annex VIII.]

#### Textual Amendments

**F14** Inserted by [Council Regulation \(EC\) No 1399/1999 of 29 April 1999 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.](#)

#### Article 79 (7)

#### Provisions common to benefits for dependent children of pensioners and for orphans

1 Benefits, within the meaning of Articles <sup>F13</sup>77, 78 and 78a, shall be provided in accordance with the legislation determined by applying the provisions of those Articles by the institution responsible for administering such legislation and at its expense as if the pensioner or the deceased had been subject only to the legislation of the competent State.

However:

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- a if that legislation provides that the acquisition, retention or recovery of the right to benefits shall be dependent on the length of periods of insurance, employment, self-employment or residence such length shall be determined taking into account, where appropriate, the provisions of Article 45 or, as the case may be, Article 72;
- b if that legislation provides that the amount of benefits shall be calculated on the basis of the amount of the pension, or shall depend on the length of periods of insurance the amount of these benefits shall be calculated on the basis of the theoretical amount determined in accordance with the provisions of Article 46 (2).

2 In a case where the effect of applying the rule laid down in Articles 77 (2) (b) (ii) and 78 (2) (b) (ii) would be to make several Member States competent, the length of the periods being equal, benefits within the meaning of Article [F1377, 78 or 78a], as the case may be, shall be granted in accordance with the legislation of the Member States to which the pensioner or the deceased was last subject.

3 The right to benefits due only under the national legislation or under the provisions of paragraph 2 and under Articles 77, 78 and 78a] shall be suspended if the children become entitled to family benefits or family allowances under the legislation of a Member State by virtue of the pursuit of a professional or trade activity. In such a case, the persons concerned shall be considered as members of the family of an employed or self-employed person.

#### Textual Amendments

- F13** Substituted by [Council Regulation \(EC\) No 1399/1999 of 29 April 1999 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.](#)

### *[F1 Article 79a*

#### **Provisions relating to benefits for orphans entitled to benefits under a special scheme for civil servants**

1 Notwithstanding the provisions of [F13 Article 78a], orphans' pensions drawn under a special scheme for civil servants shall be calculated in accordance with the provisions of Chapter 3.

2 Where, in a case provided for in paragraph 1, periods of insurance, employment, self-employment or residence have also been completed under a general scheme, then benefits due under that general scheme shall be paid in accordance with the provisions of Chapter 8 [F14 unless otherwise provided for in Article 44(3)]. Periods of insurance, self-employment or employment completed in accordance with the legislation of a special scheme for civil servants or periods which are regarded by the legislation of that Member State as equivalent to such periods, shall, where appropriate, be taken into account for the acquisition, retention or recovery of the rights to benefit in accordance with the legislation of that general scheme.]

#### Textual Amendments

- F1** Inserted by [Council Regulation \(EC\) No 1606/98 of 29 June 1998.](#)
- F13** Substituted by [Council Regulation \(EC\) No 1399/1999 of 29 April 1999 amending Regulation \(EEC\) No 1408/71 on the application of social security schemes to employed persons, to self-employed](#)

*Status: Point in time view as at 02/01/2007.*

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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.

**F14** Inserted by Council Regulation (EC) No 1399/1999 of 29 April 1999 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.

## TITLE IV

### ADMINISTRATIVE COMMISSION ON SOCIAL SECURITY FOR MIGRANT WORKERS

#### Article 80

##### Composition and working methods

1 There shall be attached to the Commission an Administrative Commission on Social Security for Migrant Workers (hereinafter called 'the Administrative Commission') made up of a government representative of each of the Member States, assisted, where necessary, by expert advisers. A representative of the Commission shall attend the meetings of the Administrative Commission in an advisory capacity.

2 The Administrative Commission shall be assisted in technical matters by the International Labour Office under the terms of the agreements concluded to that end between the European Community and the International Labour Organization.

3 The rules of the Administrative Commission shall be drawn up by mutual agreement among its members.

Decisions on questions of interpretation referred to in Article 81 (a) shall be unanimous. They shall be given the necessary publicity.

4 Secretarial services shall be provided for the Administrative Commission by the Commission.

#### Article 81

##### Tasks of the Administrative Commission

The Administrative Commission shall have the following duties:

- (a) to deal with all administrative questions and questions of interpretation arising from the provisions of this Regulation and subsequent Regulations, or from any agreement or arrangement concluded thereunder, without prejudice to the right of the authorities, institutions and persons concerned to have recourse to the procedures and tribunals provided for by the legislations of Member States, by this Regulation or by the Treaty;
- (b) to carry out all translations of documents relating to the implementation of this Regulation at the request of the competent authorities, institutions and tribunals of the Member States, and in particular translations of claims submitted by persons who may be entitled to benefit under the provisions of this Regulation;

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- (c) to foster and develop cooperation between Member States in social security matters, particularly in respect of health and social measures of common interest;
- (d) [<sup>F3</sup>to foster and develop cooperation between Member States by modernizing procedures for exchange of information, in particular by adapting the information flow between institutions for the purpose of telematic exchange, taking account of the development of data processing in each Member State. The main aim of such modernization shall be to expedite the award of benefits.]
- (e) to assemble the factors to be taken into consideration for drawing up accounts relating to the costs to be borne by the institutions of the Member States under the provisions of this Regulation and to adopt the annual accounts between the said institutions;
- (f) to undertake any other function coming within its competence under the provisions of this and of subsequent Regulations or any agreement or arrangement made thereunder;
- (g) to submit proposals to the Commission for working out subsequent Regulations and for the revision of this and subsequent Regulations.

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**Textual Amendments**

**F3** Inserted by [Council Regulation \(EC\) No 1290/97 of 27 June 1997](#).

TITLE V

**ADVISORY COMMITTEE ON SOCIAL SECURITY FOR MIGRANT WORKERS**

*Article 82 (B)*

**Establishment, composition and working methods**

1 An advisory Committee on Social Security for Migrant Workers (hereinafter called 'the Advisory Committee') is hereby established, with [<sup>F15</sup>162] members comprising, from each Member State:

- a two representatives of the government, of whom one at least must be a member of the Administrative Commission;
- b two representatives of trade unions;
- c two representatives of employers' organizations.

For each of the categories referred to above, an alternate member shall be appointed for each Member State.

2 Members of the Advisory Committee and their alternates shall be appointed by the Council which shall endeavour, when selecting representatives of trade unions and employers' organizations, to achieve an equitable representation on the Committee of the various sectors concerned.

The list of members and their alternates shall be published by the Council in the *Official Journal of the European Communities*.

3 The term of office for members and alternates shall be two years. Their appointments may be renewed. On expiry of their term of office, members and alternates shall remain in office until they are replaced or until their appointments are renewed.

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*Status: Point in time view as at 02/01/2007.*

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

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4 The Advisory Committee shall be chaired by a representative of the Commission. The chairman shall not vote.

5 The Advisory Committee shall meet at least once each year. It shall be convened by its chairman, either on his own initiative or on written application to him by at least one-third of the members. Such application must include concrete proposals concerning the agenda.

6 Acting on a proposal from its chairman, the Advisory Committee may decide, in exceptional circumstances, to take advice from any persons or representatives of organizations with extensive experience in social security matters. Furthermore, the Committee shall receive technical assistance from the International Labour Office under the same conditions as the Administrative Commission, under the terms of the agreement concluded between the European Community and the International Labour Organization.

7 The opinions and proposals of the Advisory Committee must state the reasons on which they are based. They shall be delivered by an absolute majority of the votes validly cast.

The Committee shall, by a majority of its members, draw up its rules of procedure which shall be approved by the Council, after receiving the opinion of the Commission.

8 Secretarial services shall be provided for the Advisory Committee by the Commission.

#### **Textual Amendments**

- F15** Substituted by [Council Regulation \(EC\) No 1791/2006 of 20 November 2006](#) adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions, by reason of the accession of Bulgaria and Romania.

### *Article 83*

#### **Tasks of the Advisory Committee**

The Advisory Committee shall be empowered, at the request of the Commission of the European Communities, of the Administrative Commission or on its own initiative:

- (a) to examine general questions or questions of principle and problems arising from the implementation of the Regulations adopted within the framework of the provisions of Article 51 of the Treaty;
- (b) to formulate opinions on the subject for the Administrative Commission and proposals for any revision of the Regulations.



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*Status: Point in time view as at 02/01/2007.*

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

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## TITLE VI

### MISCELLANEOUS PROVISIONS

#### *Article 84 (7)*

#### **Cooperation between competent authorities**

1 The competent authorities of Member States shall communicate to each other all information regarding:

- a measures taken to implement this Regulation:
- b changes in their legislation which are likely to affect the implementation of this Regulation.

2 For the purposes of implementing this Regulation, the authorities and institutions of Member States shall lend their good offices and act as though implementing their own legislation. The administrative assistance furnished by the said authorities and institutions shall, as a rule, be free of charge. However, the competent authorities of the Member States may agree to certain expenses being reimbursed.

3 The authorities and institutions of Member States may, for the purpose of implementing this Regulation, communicate directly with one another and with the persons concerned or their representatives.

4 The authorities, institutions and tribunals of one Member State may not reject claims or other documents submitted to them on the grounds that they are written in an official language of another Member State. They shall have recourse where appropriate to the provisions of Article 81 (b).

5

- a Where, under this Regulation or under the implementing Regulation referred to in Article 98, the authorities or institutions of a Member State communicate personal data to the authorities or institutions of another Member State, that communication shall be subject to the legal provisions governing protection of data laid down by the Member State providing the data.

Any subsequent transmission as well as the storage, alteration and destruction of the data shall be subject to the provisions of the legislation on data protection of the receiving Member State.

- b The use of personal data for purposes other than those of social security shall be subject to the approval of the person concerned or in accordance with the other guarantees provided for by national legislation.

#### *[<sup>F9</sup>Article 84a*

#### **Relations between the institutions and the persons covered by this Regulation.**

1 The institutions and persons covered by this Regulation shall have a duty of mutual information and cooperation to ensure the correct implementation of this Regulation.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall in this connection provide the

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*Status: Point in time view as at 02/01/2007.*

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persons concerned with any information required for exercising the rights conferred on them by this Regulation.

The persons concerned shall inform the institutions of the competent State and of the State of residence as soon as possible of any changes in their personal or family situation which affect their right to benefits under this Regulation.

2 Failure to respect the obligation of information referred to in paragraph 1, third subparagraph, may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Regulation.

3 In the event of difficulties in the interpretation or application of this Regulation which could jeopardise the rights of a person covered by it, the institution of the competent State or of the State of residence of the person involved shall contact the institution(s) of the Member State(s) concerned. If a solution cannot be found within a reasonable period, the authorities concerned may call on the Administrative Commission to intervene.]

#### **Textual Amendments**

- F9** Inserted by [Regulation \(EC\) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council 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 Council Regulation \(EEC\) No 574/72 laying down the procedure for implementing Regulation \(EEC\) No 1408/71, in respect of the alignment of rights and the simplification of procedures \(Text with relevance for the EEA and for Switzerland\).](#)

### *Article 85*

#### **Exemptions from or reductions of taxes — Exemption from authentication**

1 Any exemption from or reduction of taxes, stamp duty, notarial or registration fees provided for in the legislation of one Member State in respect of certificates or documents required to be produced for the purposes of the legislation of that State shall be extended to similar documents required to be produced for the purposes of the legislation of another Member State or of this Regulation.

2 All statements, documents and certificates of any kind whatsoever required to be produced for the purposes of this Regulation shall be exempt from authentication by diplomatic or consular authorities.

[<sup>F33</sup> An electronic message sent by an institution in conformity with the provisions of this Regulation and the implementing Regulation may not be rejected by any authority or institution of another Member State on the grounds that it was received by electronic means, once the receiving institution has declared its ability to receive electronic messages. Reproduction and recording of such messages shall be presumed to be a correct and accurate reproduction of the original document or recording of the information it relates to, unless there is proof to the contrary.

An electronic message shall be considered valid if the computer system on which the message is recorded contains the safeguards necessary in order to avoid any alteration, disclosure or access to the recording. It shall at any time be possible to reproduce

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*Status: Point in time view as at 02/01/2007.*

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the information recorded in a directly legible form. When an electronic message is transferred from one social security institution to another, appropriate security measures shall be taken in accordance with the relevant Community provisions.]

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**Textual Amendments**

**F3** Inserted by [Council Regulation \(EC\) No 1290/97 of 27 June 1997](#).

*Article 86 (14)*

**Claims, declarations or appeals submitted to an authority, institution or tribunal of a Member State other than the competent State**

1 Any claim, declaration or appeal which should have been submitted, in order to comply with the legislation of one Member State, within a specified period to an authority, institution or tribunal of that State shall be admissible if it is submitted within the same period to a corresponding authority, institution or tribunal of another Member State. In such a case the authority, institution, or tribunal receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or tribunal of the former State either directly or through the competent authorities of the Member State concerned. The date on which such claims, declarations or appeals were submitted to the authority, institution or tribunal of the second State shall be considered as the date of their submission to the competent authority, institution or tribunal.

2 Where a person entitled to do so under the legislation of a Member State has submitted to that State a claim for family benefits even though that State is not competent by priority right, the date on which that first application was made shall be considered as the date on which it was submitted to the competent authority, institution or tribunal, provided that a new application is submitted in the Member State which is competent by priority right by a person entitled to do so under the legislation of that State. The second application must be submitted within a period of one year after notification of the rejection of the first application or the cessation of payment of benefits in the first Member State.

*Article 87*

**Medical examinations**

1 Medical examinations provided for by the legislation of one Member State may be carried out at the request of the competent institution, in the territory of another Member State, by the institution of the place of stay or residence of the person entitled to benefits, under conditions laid down in the implementing Regulation referred to in Article 98 or, failing these, under conditions agreed upon between the competent authorities of the Member States concerned.

2 Medical examinations carried out under the conditions laid down in paragraph 1 shall be considered as having been carried out in the territory of the competent State.

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*Status: Point in time view as at 02/01/2007.*

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

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*Article 88*

**Transfers from one Member State to another of sums of money payable pursuant to this Regulation**

Where appropriate, money transfers effected in accordance with this Regulation shall be made in accordance with the relevant agreements in force between the Member States concerned at the time of transfer. Where no such agreements are in force between two Member States, the competent authorities of the said States or the authorities responsible for international payments shall, by mutual agreement, determine the measures necessary for effecting such transfers.

*Article 89*

**Special procedures for implementing certain legislations**

Special procedures for implementing the legislations of certain Member States are set out in Annex VI.

*Article 90 (8)*

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*Article 91*

**Contributions chargeable to employers or undertakings not established in the competent State**

An employer shall not be bound to pay increased contributions by reason of the fact that his place of business or the registered office or place of business of his undertaking is in the territory of a Member State other than the competent State.

*Article 92*

**Collection of contributions**

1 Contributions payable to an institution of one Member State may be collected in the territory of another Member State in accordance with the administrative procedure and with the guarantees and privileges applicable to the collection of contributions payable to the corresponding institution of the latter State.

2 The procedure for the implementation of the provisions of paragraph 1 shall be governed, in so far as is necessary, by the implementing Regulation referred to in Article 98 or by means of agreements between Member States. Such implementing procedures may also cover procedures for enforcing payment.

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*Status: Point in time view as at 02/01/2007.*

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

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### Article 93

#### **Rights of institutions responsible for benefits against liable third parties**

1 If a person receives benefits under the legislation of one Member State in respect of an injury resulting from an occurrence in the territory of another State, any rights of the institution responsible for benefits against a third party bound to compensate for the injury shall be governed by the following rules:

- a Where the institution responsible for benefits is, by virtue of the legislation which it administers, subrogated to the rights which the recipient has against the third party, such subrogation shall be recognized by each Member State.
- b Where the said institution has direct rights against the third party, such rights shall be recognized by each Member State.

2 If a person receives benefits under the legislation of one Member State in respect of an injury resulting from an occurrence in the territory of another Member State, the provisions of the said legislation which determine in which cases the civil liability of employers or of the persons employed by them is to be excluded shall apply with regard to the said person or to the competent institution.

The provisions of paragraph 1 shall also apply to any rights of the institution responsible for benefit against an employer or the persons employed by him in cases where their liability is not excluded.

3 Where, in accordance with the provisions of Article 36 (3) and/or Article 63 (3), two or more Member States or the competent authorities of those States have concluded an agreement to waive reimbursement between institutions under their jurisdiction, any rights arising against a liable third party shall be governed by the following rules:

- a Where the institution of the Member State of stay or residence awards benefits to a person in respect of an injury which was sustained within its territory, that institution, in accordance with the legislation which it administers, shall exercise the right to subrogation or direct action against the third party liable to provide compensation for the injury.
- b For the purpose of implementing (a):
  - (i) the person receiving benefits shall be deemed to be insured with the institution of the place of stay or residence,
  - and
  - (ii) that institution shall be deemed to be the debtor institution.
- c The provisions of paragraphs 1 and 2 shall remain applicable in respect of any benefits not covered by the waiver agreement referred to in this paragraph.

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*Status: Point in time view as at 02/01/2007.*

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

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## TITLE VII

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 94 (7) (8) (11) (12)*

#### **Transitional provisions for employed persons**

1 No right shall be acquired under this Regulation in respect of a period prior to 1 October 1972 or to the date of its application in the territory of the Member State concerned or in a part of the territory of that State.

2 All periods of insurance and, where appropriate, all periods of employment or residence completed under the legislation of a Member State before 1 October 1972 or before the date of its application in the territory of that Member State or in a part of the territory of that State shall be taken into consideration for the determination of rights acquired under the provisions of this Regulation.

3 Subject to the provisions of paragraph 1, a right shall be acquired under this Regulation even though it relates to a contingency which materialized prior to 1 October 1972 or to the date of its application in the territory of the Member State concerned or in a part of the territory of that State.

4 Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from 1 October 1972 or the date of its application in the territory of the Member State concerned or in a part of the territory of that State, provided that the rights previously determined have not given rise to a lump sum payment.

5 The rights of a person to whom a pension was awarded prior to 1 October 1972 or to the date of its application in the territory of the Member State concerned or in a part of the territory of that State may, on the application of the person concerned, be reviewed, taking into account the provisions of this Regulation. This provision shall also apply to the other benefits referred to Article 78.

6 If an application referred to in paragraph 4 or 5 is submitted within two years from 1 October 1972 or from the date of its application in the territory of the Member State concerned, 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.

The same provisions shall apply as regards the application of this Regulation in those territories which became a part of the Federal Republic of Germany on 3 October 1990 provided that the application referred to in paragraph 4 or 5 is submitted within two years of 1 June 1992.

7 If an application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period after 1 October 1972 or following the date of its application in the territory of the Member State concerned, rights which have not been forfeited or which are not time barred shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member state apply.

The same provisions shall apply as regards the application of this Regulation in those territories which became a part of the Federal Republic of Germany on 3 October 1990

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*Status: Point in time view as at 02/01/2007.*

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provided that the application referred to in paragraph 4 or 5 is submitted after two years have elapsed from 1 June 1992.

8 In case of sclerogenic pneumoconiosis, the provision of Article 57 (5) shall apply to cash benefits for an occupational disease the expense of which, in the absence of agreement between the institutions concerned, could not be divided between those institutions before 1 October 1972.

9 The family allowances received by employed persons employed in France or unemployed workers receiving unemployment benefits under French legislation in respect of the members of their families residing in another Member State on the date of 15 November 1989 shall continue to be paid at the rates, within the limits and according to the procedures applicable on that date as long as their amount exceeds that of the benefits that would be due as from the date of 16 November 1989 and as long as the persons concerned are subject to French legislation. Account shall not be taken of interruptions lasting less than one month nor of periods during which unemployment or sickness is drawn.

The procedure for implementing this paragraph and in particular the sharing of the cost of these allowances shall be determined by mutual agreement between the Member States concerned or by their competent authorities after the Administrative Commission has delivered an opinion.

10 The rights of persons to whom a pension was awarded prior to the entry into force of Article 45 (6) may be reviewed at their request subject to the provisions of Article 45 (6).

#### *Article 95 (6) (12)*

#### **Transitional provisions for self-employed persons**

1 No right shall be acquired under this Regulation in respect of a period prior to 1 July 1982 or to the date of its implementation in the territory of the Member State concerned or in a part of the territory of that State.

2 All insurance periods and, where appropriate, all periods of employments, of self-employment or of residence completed under the legislation of a Member State before 1 July 1982 or before the date of implementation of this Regulation in the territory of that Member State or in a part of the territory of that State shall be taken into consideration for the determination of rights acquired under this Regulation.

3 Subject to paragraph 1, a right shall be acquired under this Regulation even though it relates to a contingency which materialized prior to 1 July 1982 or to the date of implementation of this Regulation in the territory of the Member State concerned or in a part of the territory of that State.

4 Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from 1 July 1982 or from the date of implementation of this Regulation in the territory of the Member State concerned or in a part of the territory of that State, provided that the rights previously determined have not given rise to a lump-sum payment.

5 The rights of a person to whom a pension was awarded prior to 1 July 1982 or to the date of implementation of this Regulation in the territory of the Member State concerned or in a part of the territory of that State may, on the application of the person concerned, be reviewed,

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*Status: Point in time view as at 02/01/2007.*

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taking into account this Regulation. This provision shall also apply to the other benefits referred to in Article 78.

6 If an application referred to in paragraph 4 or 5 is submitted within two years of 1 July 1982 or of the date of implementation of this Regulation in the territory of the Member State concerned, 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.

The same provisions shall apply as regards the application of this Regulation in those territories which became a part of the Federal Republic of Germany on 4 October 1990 provided that the application referred to in paragraph 4 or 5 is submitted within two years of 1 June 1992.

7 If an application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period from 1 July 1982 or following the date of implementation of this Regulation in the territory of the Member State concerned, rights which have not been forfeited or are not barred by limitation shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.

The same provisions shall apply as regards the application of this Regulation in those territories which became a part of the Federal Republic of Germany on 3 October 1990 provided that the application referred to in paragraph 4 or 5 is submitted after two years have elapsed from 1 June 1992.

#### *Article 95a (11)*

#### **Transitional provisions for application of Regulation (EEC) No 1248/92 <sup>(1)</sup>**

1 Under Regulation (EEC) No 1248/92 no right shall be acquired for a period prior to 1 June 1992.

2 All insurance periods or periods of residence completed under the legislation of a Member State before 1 June 1992 shall be taken into consideration for the determination of rights to benefits pursuant to Regulation (EEC) No 1248/92.

3 Subject to paragraph 1, a right shall be acquired under Regulation (EEC) No 1248/92 even though relating to a contingency which materialized prior to 1 June 1992.

4 The rights of a person to whom a pension was awarded prior to 1 June 1992 may, on the application of the person concerned, be reviewed, taking into account the provisions of Regulation (EEC) No 1248/92.

5 If an application referred to in paragraph 4 is submitted within two years from 1 June 1992 the rights acquired under Regulation (EEC) No 1248/92 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.

6 If the application referred to in paragraph 4 is submitted after the expiry of the two-year period after 1 June 1992, rights which have not been forfeited or not barred by limitation shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.



*Article 95b (14)***Transitional provisions for application of Regulation (EEC) No 1247/92 <sup>(2)</sup>**

1 Regulation (EEC) No 1247/92 shall not provide any entitlement for periods prior to 1 June 1992.

2 The periods of residence and periods of employment or of selfemployment completed on the territory of a Member State before 1 June 1992 shall be taken into consideration for the determination of rights acquired under the provisions of Regulation (EEC) No 1247/92.

3 Subject to paragraph 1, a right shall be acquired pursuant to Regulation (EEC) No 1247/92 even where it relates to a contingency that occurred before 1 June 1992.

4 All special non-contributory benefits which have not been awarded or which have been suspended by reason of the nationality of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from 1 June 1992, provided that the rights previously determined have not given rise to a lump-sum payment.

5 The rights of persons to whom a pension was awarded prior to 1 June 1992, may, on the application of the persons concerned, be reviewed, taking account of the provisions of Regulation (EEC) No 1247/92.

6 If an application referred to in paragraph 4 or 5 is submitted within two years from 1 June 1992, the rights acquired pursuant to Regulation (EEC) No 1247/92 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 an application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period after 1 June 1992, rights which have not been forfeited or which are not time-barred shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.

8 The application of Article 1 of Regulation (EEC) No 1247/92 may not result in the withdrawal of benefits which are awarded before 1 June 1992 by the competent institutions of the Member State under Title III of Regulation (EEC) No 1408/71 to which Article 10 of the latter Regulation is applicable.

9 The application of Article 1 of Regulation (EEC) No 1247/92 may not result in the rejection of an application for a special noncontributory benefit awarded as a supplement to a pension, which was submitted by the person concerned who had satisfied the conditions for the award of this benefit before 1 June 1992, even where the person concerned resides on the territory of a Member State other than the competent Member State, provided that the application for the benefit is submitted within a period of five years starting from 1 June 1992.

10 Notwithstanding the provisions of paragraph 1, any special noncontributory benefit, granted as a supplement to a pension, which has not been awarded or which has been suspended by reason of the residence of the person concerned on the territory of a Member State other than the competent Member State shall, on the application of the person concerned, be awarded or resumed with effect from 1 June 1992, in the first case from the date on which the benefit should have been awarded, and in the second case on the date of suspension of the benefit.

11 Where special non-contributory benefits as referred to in Article 4 (2a) of Regulation (EEC) No 1408/71 may, during the same period and for the same person, be granted pursuant to Article 10a of that Regulation by the competent institution of the Member State in

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*Status: Point in time view as at 02/01/2007.*

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the territory of which that person is resident and pursuant to paragraphs 1 to 10 of this Article by the competent institution of another Member State, the person concerned may only aggregate those benefits up to the limit of the highest amount of the special benefit he could claim under one of the legislations in question.

12 The detailed rules of application of paragraph 11, and in particular the application, with regard to the benefits referred to in that paragraph, of the clauses for reduction, suspension or abolition provided for under the legislation of one or more Member States and the allocation of the differential additional amounts shall be set by decision of the Administrative Commission on Social Security for Migrant Workers and, where appropriate, by common accord of the Member States concerned or their competent authorities.

### *f<sup>1</sup>* Article 95c

#### **Transitional provisions for application of Regulation (EC) No 1606/98**

1 No rights shall be acquired under Regulation (EC) No 1606/98 <sup>(3)</sup> for any period prior to 25 October 1998.

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 25 October 1998 shall be taken into account for the determination of rights acquired in accordance with the provisions of Regulation (EC) No 1606/98.

3 Subject to the provisions of paragraph 1, a right shall be acquired under Regulation (EC) No 1606/98 even if it relates to a contingency arising prior to 25 October 1998.

4 Any benefit that has not been awarded or that 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 from 25 October 1998, provided that the rights for which benefits were previously awarded did not give rise to a lump-sum payment.

5 The rights of persons who prior to 25 October 1998, obtained the award of a pension may be reviewed at their request, account being taken of the provisions of Regulation (EC) No 1606/98. The provision shall also apply to the other benefits referred to in Articles 78 and 79 insofar as it applies to Articles 78 and 79a.

6 If the request referred to in paragraph 4 or 5 is lodged within two years from 25 October 1998, rights deriving from Regulation (EC) No 1606/98 shall be acquired from that date and the provisions of the legislation of any Member State on the forfeiture or lapse of rights may not be applied to the persons concerned.

7 If the request referred to in paragraph 4 or 5 is lodged after expiry of the period of two years following 25 October 1998, rights not forfeited or lapsed shall be acquired from the date of such request, subject to any more favourable provisions of the legislation of any Member State.]

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#### **Textual Amendments**

**F1** Inserted by [Council Regulation \(EC\) No 1606/98 of 29 June 1998](#).

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*Status: Point in time view as at 02/01/2007.*

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

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### *[<sup>F2</sup>Article 95d*

#### **Transitional provisions applicable to students**

1 No rights shall be acquired under this Regulation by students, members of their families or their survivors for any period prior to 1 May 1999.

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 1 May 1999 shall be taken into account 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 if it relates to a contingency arising prior to 1 May 1999.

4 Any benefit that has not been awarded or that 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 from 1 May 1999, provided that the rights for which benefits were previously awarded did not give rise to a lump-sum payment.

5 If the request referred to in paragraph 4 is lodged within two years from 1 May 1999, rights deriving from this Regulation in favour of students, members of their families and their survivors shall be acquired from that date and the provisions of the legislation of any Member State on the forfeiture or lapse of rights may not be applied to the persons concerned.

6 If the request referred to in paragraph 4 is lodged after expiry of the period of two years following 1 May 1999, rights not forfeited or lapsed shall be acquired from the date of such request, subject to any more favourable provisions of the legislation of any Member State.]

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#### **Textual Amendments**

**F2** Inserted by [Council Regulation \(EC\) No 307/1999 of 8 February 1999](#).

### *[<sup>F14</sup>Article 95e*

#### **Transitional provisions for application of Regulation (EC) No 1399/1999<sup>(4)</sup>**

1 Regulation (EC) No 1399/1999 shall be applicable to rights of orphans where the parent under whom the orphan is entitled died after 1 September 1999.

2 Any period of insurance or residence completed under the legislation of a Member State before 1 September 1999 shall be taken into account for the determination of rights acquired in accordance with Regulation (EC) No 1399/1999.

3 The rights of orphans where the parent under whom they are entitled died before 1 September 1999 may be reviewed at their request in accordance with Regulation (EC) No 1399/1999.

4 If the request referred to in paragraph 3 is lodged within two years from 1 September 1999, rights deriving from Regulation (EC) No 1399/1999 shall be acquired from that date and the provisions of any Member State on the forfeiture or lapse of rights may not be applied to the persons concerned.

*Status: Point in time view as at 02/01/2007.*

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

5 If the request referred to in paragraph 3 is lodged after expiry of the period of two years following 1 September 1999, rights not forfeited or lapsed shall be acquired from the date of such request, subject to any more favourable provisions of the legislation of any Member State.]

#### Textual Amendments

**F14** Inserted by Council Regulation (EC) No 1399/1999 of 29 April 1999 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.

#### *[<sup>F11</sup> Article 95f*

#### **Transitional provisions relating to Annex II, section I, under the headings ‘D. GERMANY’ and ‘R. AUSTRIA’.**

1 Annex II, section I, under the headings ‘D. GERMANY’ and ‘R. AUSTRIA’, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71<sup>(5)</sup>, shall not establish any entitlement for the period prior to 1 January 2005.

2 Any period of insurance and, where appropriate, any period of employment, self-employment or residence under the legislation of a Member State prior to 1 January 2005 shall be taken into consideration in determining acquired rights 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 that occurred prior to 1 January 2005.

4 Any benefit that has not been awarded or that 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 from 1 January 2005, 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 1 January 2005 may, on the application of the persons concerned, be reviewed, taking account of the provisions of this Regulation. This shall also apply to other benefits pursuant to Article 78.

6 If an application referred to in paragraph 4 or 5 is submitted within two years from 1 January 2005, 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 application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period after 1 January 2005, rights which have not been forfeited or barred by limitation shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.

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*Status: Point in time view as at 02/01/2007.*

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

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#### **Textual Amendments**

- F11** Inserted by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

#### *Article 95g*

Transitional provisions relating to the deletion, in Annex IIa, of the entry relating to the Austrian care allowance (Pflegegeld).

In the case of applications for care allowances under Austrian federal law (Bundespflegegeldgesetz) submitted not later than 8 March 2001 on the basis of Article 10a(3) of this Regulation, this provision shall continue to apply as long as the beneficiary of the care allowance continues to reside in Austria after 8 March 2001.]

#### **Textual Amendments**

- F11** Inserted by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

#### *Article 96*

##### **Agreements relating to reimbursement between institutions**

The Agreements concluded pursuant to Articles 36 (3), 63 (3) and 70 (3) before 1 July 1982 shall apply likewise to persons to whom the scope of the present Regulation was extended on that date, except in the event of an objection by one of the contracting Member States to these Agreements.

This objection shall be taken into account if the competent authority of that Member State informs the competent authority of the other Member State(s) concerned in writing before 1 October 1983. A copy of this communication shall be forwarded to the Administrative Commission.

#### *Article 97*

##### **Notification pursuant to certain provisions**

1 The notifications referred to in Articles 1 (j), 5 and 8 (2) shall be addressed to the president of the Council. They shall indicate the date of entry into force of the laws and schemes in question or, in the case of the notifications referred to in Article 1 (j), the date from which this Regulation shall apply to the schemes mentioned in the declarations of the Member States.

2 Notifications received in accordance with the provisions of paragraph 1 shall be published in the *Official Journal of the European Communities*.

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*Status: Point in time view as at 02/01/2007.*

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

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### *Article 98*

#### **Implementing Regulation**

A further Regulation shall lay down the procedure for implementing this Regulation.

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**Status:** Point in time view as at 02/01/2007.

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

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- (1) OJ No L 136, 19. 5. 1992, p. 7.
- (2) OJ No L 136, 19. 5. 1992, p. 1.
- (3) [<sup>F1</sup>OJ L 209, 25. 7. 1998, p. 1.]
- (4) [<sup>F14</sup>OJ L 164, 30.6.1999, p. 1.]
- (5) [<sup>F11</sup>OJ L 117, 4.5.2005, p. 1.]

#### Textual Amendments

- F1** Inserted by Council Regulation (EC) No 1606/98 of 29 June 1998.
- F11** Inserted by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.
- F14** Inserted by Council Regulation (EC) No 1399/1999 of 29 April 1999 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.

**Status:**

Point in time view as at 02/01/2007.

**Changes to legislation:**

There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed).