

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 (repealed)

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(Consolidated version — [OJ No L 28 of 30. 1. 1997, p. 1^{\(1\)}](#)) (repealed)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 51 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas the provisions for coordination of national social security legislations fall within the framework of freedom of movement for workers who are nationals of Member States and should contribute towards the improvement of their standard of living and conditions of employment;

Whereas freedom of movement for persons, which is one of the cornerstones of the Community, is not confined to employed persons but also extends to self-employed persons in the framework of the freedom of establishment and the freedom to supply services;

Whereas the considerable differences existing between national legislations as regards the persons to whom they apply make it preferable to establish the principle that the Regulation applies to all persons insured under social security schemes for employed persons and for self-employed persons or by virtue of pursuing employment or self-employment;

Whereas it is necessary to respect the special characteristics of national social security legislations and to draw up only a system of coordination;

Whereas it is necessary, within the framework of that coordination, to guarantee within the Community equality of treatment under the various national legislations to workers living in the Member States and their dependants and their survivors;

Whereas the provisions for coordination must guarantee that workers moving within the Community and their dependants and their survivors retain the rights and the advantages acquired and in the course of being acquired;

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), Introductory Text.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

Whereas these objectives must be attained in particular by aggregation of all the periods taken into account under the various national legislations for the purpose of acquiring and retaining the right to benefits and of calculating the amount of benefits, and by the provision of benefits for the various categories of persons covered by the Regulation regardless of their place of residence within the Community;

Whereas employed persons and self-employed persons moving within the Community should be subject to the social security scheme of only one single Member State in order to avoid overlapping of national legislations applicable and the complications which could result therefrom;

Whereas the instances in which a person should be subject simultaneously to the legislation of two Member States as an exception to the general rule should be as limited in number and scope as possible;

Whereas with a view to guaranteeing the equality of treatment of all workers occupied on the territory of a Member State as effectively as possible, it is appropriate to determine as the legislation applicable, as a general rule, that of the Member State in which the person concerned pursues employment of self-employment;

Whereas in certain situations which justify other criteria of applicability, it is possible to derogate from this general rule;

Whereas certain benefits foreseen under national laws may fall simultaneously within social security and social assistance, because of the personal scope of their application, their objectives and their manner of application, it is necessary to lay down a system of coordination, which takes into account the special characteristics of the benefits concerned, that should be included in the Regulation in order to protect the interests of migrant workers in accordance with the provisions of the Treaty;

Whereas such benefits should be granted, in respect of persons falling within the scope of this Regulation, solely in accordance with the legislation of the country of residence of the person concerned or of the members of his or her family, with such aggregation of periods of residence completed in any other Member State as is necessary and without discrimination on grounds of nationality;

Whereas it is necessary to lay down specific rules, in particular in the field of sickness and unemployment, for frontier workers and seasonal workers, taking account of the specific nature of their situation;

Whereas in the field of sickness and maternity benefits, it is necessary to guarantee the protection of persons living or staying in a Member State other than the competent Member State;

Whereas the specific position of pension claimants and pensioners and the members of their families calls for the provisions governing sickness insurance to be adapted to their situation;

Whereas for invalidity benefits a system of coordination should be drawn up which respects the specific characteristics of national legislations; whereas it is therefore necessary to make a distinction between legislations under which the amount of invalidity benefit is independent of

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the length of insurance and legislations under which the amount depends on the aforementioned length;

Whereas the differences between the schemes in the Member States call for the adoption of rules of coordination which are applicable in the case of aggravation of invalidity;

Whereas it is expedient that a system for the award of old-age benefits and survivors benefits be worked out where the employed or self-employed person has been subject to the legislation of one or more Member States;

Whereas there is a need to determine the amount of a pension calculated in accordance with the method used for aggregation and pro rata calculation and guaranteed by Community law where the application of national legislation, including provisions concerning reduction, suspension or withdrawal, is less favourable than the aforementioned method;

Whereas, to protect migrant workers and their survivors against an excessively stringent application of the national provisions concerning reduction, suspension or withdrawal, it is necessary to include provisions laying down strict rules for the application of these provisions;

Whereas, in respect of benefits for accidents at work and occupational diseases, it is necessary, for the purpose of affording protection, that rules be laid down covering the situation of persons residing or staying in a Member State other than the competent Member State;

Whereas it is necessary to lay down specific provisions for death grants;

Whereas, in order to secure mobility of labour under improved conditions, it is necessary henceforth to ensure closer coordination between the unemployment insurance schemes and the unemployment assistance schemes of all the Member States;

Whereas it is therefore particularly appropriate, in order to facilitate search for employment in the various Member States, to grant to an unemployed worker, for a limited period, the unemployment benefits provided for by the legislation of the Member State to which he was last subject;

Whereas, with a view to determining the legislation applicable to family benefits, the criterion of employment ensures equal treatment between all workers subject to the same legislation;

Whereas, in order to avoid unwarranted overlapping of benefits, there is a need to provide for rules of priority in the case of overlapping of the right to family benefits under the legislation of the competent State and under the legislation of the country of residence of the members of the family;

Whereas the legislations of the Member States differ from each other and are specific in nature, it is considered necessary to draw up specific rules for the coordination of the national schemes providing benefits for dependent children of pensioners and for orphans;

Whereas it is necessary to establish an Administrative Commission consisting of a government representative from each of the Member States, charged in particular with dealing with all administrative questions or questions of interpretation arising from the provisions of this Regulation, and to further cooperation between the Member States;

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Whereas it is desirable, within the framework of an Advisory Committee, to have the representatives of workers and employers examine the issues treated by the Administrative Commission;

Whereas it is necessary to lay down special provisions which correspond to the special characteristics of the national legislations in order to facilitate the application of the rules of coordination,

HAS ADOPTED THIS REGULATION:

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(1) See appendix.

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