

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 ) (repealed)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 II];
- (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).

#### 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](#).

### *F2* 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.]

#### 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.

#### 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>] 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.

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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.

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