

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 ) (repealed)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*Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), TITLE II.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

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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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### *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](#).

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### 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.

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.

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