

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 (repealed)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 III

SPECIAL PROVISIONS RELATING TO THE VARIOUS CATEGORIES OF BENEFITS

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.

[^{F13} 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

- F1** 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.](#)

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

Status: Point in time view as at 05/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11). (See end of Document for details)

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 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.

Status: Point in time view as at 05/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11). (See end of Document for details)

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 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

Status: Point in time view as at 05/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11). (See end of Document for details)

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;
- 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.

Status: Point in time view as at 05/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11). (See end of Document for details)

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 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:

Status: Point in time view as at 05/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11). (See end of Document for details)

- 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 reductionsuspension 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 provisions 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 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

Status: Point in time view as at 05/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11). (See end of Document for details)

- 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.

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.

Status: Point in time view as at 05/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11). (See end of Document for details)

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.

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).

Status: Point in time view as at 05/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11). (See end of Document for details)

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.

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

Status: Point in time view as at 05/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11). (See end of Document for details)

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

F2 Inserted by [Council Regulation \(EC\) No 1606/98 of 29 June 1998](#).

Status:

Point in time view as at 05/05/2005.

Changes to legislation:

There are currently no known outstanding effects for the Council Regulation (EC) No 1408/71 (repealed), CHAPTER 3 (11).