

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 (repealed)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 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.

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), TITLE VII. (See end of Document for details)

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 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

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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, 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 ⁽¹⁾

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.

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), TITLE VII. (See end of Document for details)

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 ⁽²⁾

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

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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 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.

[^{F1}Article 95c

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

1 No rights shall be acquired under Regulation (EC) No 1606/98 ⁽³⁾ 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.]

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), TITLE VII. (See end of Document for details)

Textual Amendments

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

f^{F2} 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.]

Textual Amendments

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

f^{F3} Article 95e

Transitional provisions for application of Regulation (EC) No 1399/1999⁽⁴⁾

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.

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), TITLE VII. (See end of Document for details)

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.

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

- F3** 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.

[^{F4}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⁽⁵⁾, 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

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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.

Textual Amendments

- F4** 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

- F4** 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.

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

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

Article 98

Implementing Regulation

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

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), TITLE VII. (See end of Document for details)

- (1) OJ No L 136, 19. 5. 1992, p. 7.
- (2) OJ No L 136, 19. 5. 1992, p. 1.
- (3) [^{F1}OJ L 209, 25. 7. 1998, p. 1.]
- (4) [^{F3}OJ L 164, 30.6.1999, p. 1.]
- (5) [^{F4}OJ L 117, 4.5.2005, p. 1.]

Textual Amendments

- F1** Inserted by Council Regulation (EC) No 1606/98 of 29 June 1998.
- F3** 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.
- F4** 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.

Status:

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

Changes to legislation:

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