

## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EC) No 307/1999  
of 8 February 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 with a view to extending them to cover students**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(1)</sup>, submitted after consultation of the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

- (1) Whereas point (c) of Article 3 of the Treaty lays down that the activities of the Community shall include, as provided in the Treaty, the abolition, as between Member States, of obstacles to the free movement of persons;
- (2) Whereas Article 7a of the Treaty provides that the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;
- (3) Whereas with a view to establishing the free movement of employed and self-employed persons and removing the obstacles that would, in the field of social security, result from the application of national legislation only, the Council, on the basis of Articles 51 and 235 of the Treaty, adopted Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and members of their families moving within the Community <sup>(4)</sup> and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 <sup>(5)</sup>;
- (4) Whereas, moreover, the scope of the Regulation (EEC) No 1408/71 should be extended to include, in principle, the special schemes covering students;
- (5) Whereas, in the social security field, the application of national legislation alone does not afford sufficient protection for students moving within the Community; whereas, in order to make the free movement of persons fully effective, the social security schemes applicable to them should be coordinated;

<sup>(1)</sup> OJ C 46, 20. 2. 1992, p. 1.

<sup>(2)</sup> OJ C 94, 13. 4. 1992, p. 326.

<sup>(3)</sup> OJ C 98, 21. 4. 1992, p. 4.

<sup>(4)</sup> OJ L 149, 5. 7. 1971, p. 2. Regulation as last amended by Regulation (EC) No 1606/98 (OJ L 209, 25. 7. 1998, p. 1).

<sup>(5)</sup> OJ L 74, 27. 3. 1972, p. 1. Regulation as last amended by Regulation (EC) No 1606/98 (OJ L 209, 25. 7. 1998, p. 1).

- (6) Whereas, for reasons of equity, specific rules applicable to employed and self-employed persons should be applied to students; whereas those rules, for the sake of simplicity and clarity, should supplement the provisions already in force for employed and self-employed persons and members of their families;
- (7) Whereas it is necessary to adapt Regulations (EEC) No 1408/71 and (EEC) No 574/72 as necessary for their provisions to apply to students moving within the Community, taking account of the specific situation of those persons, the special features of the schemes under which they are insured, and the benefits to which they are entitled;
- (8) Whereas, although the specific nature of the situation relating to students may not have enabled rules to be laid down to determine which legislation is applicable, it is nevertheless desirable, as far as possible, to prevent the persons concerned from being subject to a double levy of contributions, or acquiring dual rights to benefits;
- (9) Whereas the adaptations to be made to the enacting terms of Regulation (EEC) No 1408/71 require adaptation of Annex VI thereto;
- (10) Whereas the specific situation of Luxembourg, where all students who study abroad are entitled to health care, justifies such students being automatically exempted from the requirement to join a health insurance scheme in the country in which they pursue their studies;
- (11) Whereas, because of the specific situation of students, it has not been possible to set up a comprehensive system for the coordination of the social security rights of students at Community level, in particular in respect of invalidity benefits; whereas social security benefits available to students vary greatly between Member States particularly with regard to special non-contributory benefits designed to help towards the additional costs arising from the care and mobility needs of disabled people; whereas the Court of Justice of the European Communities has recognised that the detailed rules for granting certain benefits are closely linked to a particular economic and social context; whereas a limited derogation from the rules on the coordination of periods applied by Article 10a(2) of Regulation (EEC) No 1408/71 is therefore justified;
- (12) Whereas the Treaty has not provided the necessary powers to take appropriate measures within the field of social security for students, and therefore having recourse to Article 235, in addition to Article 51, is justified;
- (13) Whereas this Regulation applies without prejudice to the conditions laid down by Directive 93/96/EEC<sup>(1)</sup> for the right of residence for students,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 1408/71 is hereby amended as follows:

1. Article 1 is hereby amended as follows:

(a) the following point shall be added after point (c):

‘(ca) “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;’

<sup>(1)</sup> OJ L 317, 18. 12. 1993, p. 59.

(b) in points (f), (i) and (ii), the words 'employed or self-employed person' shall be replaced by the words 'employed or self-employed person or student';

2. Article 2 shall be replaced by the following:

*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.;
3. in Article 9a, in the German text, the words 'der Arbeitnehmer oder Selbständige' shall be replaced by the words 'die Person';
4. in Article 10(2), the words 'as an employed or self-employed person' shall be deleted;
5. Article 22c shall be deleted;
6. in Chapter 1 of Title III, the following Section shall be added:

*'Section 5a*

**Persons who study or receive vocational training and members of their families**

*Article 34a*

**Special provisions for students and members of their families**

The provisions of Article 18, Article 19, Article 22(1)(a) and (c), the second subparagraph of Article 22(2), Article 22(3), Article 23, Article 24 and of Sections 6 and 7 shall apply by analogy to students and to members of their families, as appropriate.

*Article 34b*

**Common provisions**

A person, as referred to in Article 22(1) and (3) and in Article 34a, who stays in a Member State other than the competent State to study there or receive vocational training leading to a qualification officially recognised by the authorities of a Member State, and the members of his family accompanying him during his stay, shall be covered by the provisions of Article 22(1)(a) for any conditions necessitating benefits during the stay in the territory of the Member State where such person is studying or in training.;

7. in Article 35(3), the words 'shall apply neither to employed or self-employed persons nor to the members of their families' shall be replaced by 'shall not apply to persons';
8. in Chapter 4 of Title III, the following Section shall be added:

*'Section 5*

**Students**

*Article 63a*

The provisions of Sections 1 to 4 shall apply by analogy to students.;

9. the following Article shall be inserted:

*'Article 66a*

**Students**

The provisions of Articles 64 to 66 shall apply by analogy to students and the members of their family.';

10. the following Article shall be inserted:

*'Article 76a*

**Students**

The provisions of Article 72 shall apply by analogy to students.';

11. the following Article shall be inserted:

*'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.';
12. Annex VI shall be amended as follows:

- (a) in section 'D. SPAIN' the following point shall be added:

'9. The Spanish special scheme for students ("Seguro Escolar") is not based, for the recognition of benefits, on completion of periods of insurance, employment and residence as those expressions are defined in Article 1(r), (s) and (sa) of the Regulation. The Spanish institutions cannot therefore issue the relevant certificates for the purposes of aggregating periods.

Nevertheless, the Spanish special scheme for students will apply to students who are nationals of other Member States and who are studying in Spain, under the same conditions as students of Spanish nationality.';

- (b) in section 'I. LUXEMBOURG', the following point shall be added:

'8. Persons covered by a health insurance scheme in the Grand Duchy of Luxembourg who pursue their studies in another Member State are exempted from the requirement to join as a student under the legislation of the country where they study.';

(c) in section 'O. UNITED KINGDOM' the following point shall be added:

'21. In the case of either students or the members of the family or survivors of a student, Article 10a(2) of the Regulation shall not apply to benefits intended solely as specific protection for the disabled.'

*Article 2*

Article 120 of Regulation (EEC) No 574/72 shall be replaced by the following:

*Article 120*

*Persons who study or receive vocational training*

The provisions of this Regulation, with the exception of Articles 10 and 10a, shall apply, where appropriate, by analogy to students.'

*Article 3*

This Regulation shall enter into force on the first day of the third month following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 February 1999.

*For the Council*

*The President*

O. LAFONTAINE

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