

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 1

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

1. Article 3 shall be amended as follows:
 - (a) in paragraph 1, the words ‘resident in the territory of one of the Member States’ shall be deleted;
 - (b) in paragraph 3, the words ‘and the provisions of conventions concluded pursuant to Article 8(1)’ shall be deleted;
 2. Article 4(2a) shall be replaced by the following:
 - 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.;
3. Article 7(2)(c) shall be replaced by the following:
 - (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.;

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 647/2005 of the European Parliament and of the Council, Article 1. (See end of Document for details)

4. Article 9a shall be replaced by the following:

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 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.;

5. Article 10a(1) shall be replaced by the following:

1. 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.;

6. in Article 23, the following paragraph shall be inserted:

- 2a. The provisions of paragraphs 1 and 2 shall also apply where the legislation applied by the competent institution provides for a specific reference period and this period coincides, where appropriate, with the whole or part of the periods completed by the person concerned under the legislation of one or more other Member States.;

7. Article 35(2) shall be deleted;

8. Article 69(4) shall be deleted;

9. the following Articles shall be inserted:

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⁽¹⁾, 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

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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 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 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.

10. Annexes II, IIa, III, IV and VI shall be amended in accordance with Annex I to this Regulation.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 647/2005 of the European Parliament and of the Council, Article 1. (See end of Document for details)

(1) OJ L 117, 4.5.2005, p. 1.’

Changes to legislation:

There are currently no known outstanding effects for the Regulation (EC) No 647/2005 of the European Parliament and of the Council, Article 1.