

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

REGULATION (EC) No 647/2005 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) Certain amendments should be made to Regulations (EEC) No 1408/71⁽³⁾ and (EEC) No 574/72⁽⁴⁾, in order to take account of recent developments in the of the Court of Justice of the European Communities, to facilitate the application of those Regulations and to reflect changes in the social security legislation of the Member States.
- (2) In order to take account of recent developments in, the conclusions of judgments should be drawn, particularly in the cases of Johann Franz Duchon v Pensionsversicherungsanstalt der Angestellten⁽⁵⁾ and Office national de l'emploi v Calogero Spataro⁽⁶⁾.
- (3) The judgments in Friedrich Jauch v Pensionsversicherungsanstalt der Arbeiter and Ghislain Leclere, Alina Deaconescu v Caisse nationale des prestations familiales⁽⁷⁾, concerning the classification of special non-contributory cash benefits require, for reasons of legal safety, that the two cumulative criteria to be taken into account be specified so that such benefits can feature in Annex Ila to Regulation (EEC) No 1408/71. On this basis, there is a case for revising the Annex, taking into account legislative amendments in the Member States affecting this type of benefits, which are subject to specific coordination given their mixed nature. In addition, it is important to

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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, Introductory Text. (See end of Document for details)

specify the transitional provisions relating to the benefit which was the subject of the judgment in the Jauch case in order to protect the rights of beneficiaries.

- (4) On the basis of the case-law relating to the relationships between Regulation (EEC) No 1408/71 and the provisions of bilateral social security agreements, it is necessary to review Annex III to that Regulation. The entries in part A of Annex III are only justified in two cases: where they are more favourable to migrant workers⁽⁸⁾, or where they relate to specific and exceptional situations, usually linked to historical circumstances. In addition, it is not appropriate to accept entries in part B except where exceptional and objective situations justify a derogation from Article 3(1) of that Regulation and from Articles 12, 39 and 42 of the Treaty⁽⁹⁾.
- (5) In order to facilitate the application of Regulation (EEC) No 1408/71, there should be certain provisions concerning, on the one hand, civil servants and persons treated as such and, on the other, members of the travelling or flying personnel of an undertaking which operates international transport services for passengers or goods by rail, road, air or inland waterway, and also to specify the methods for determining the average amount to take into account in the context of Article 23 of that Regulation.
- (6) The revision of Annex IIa to Regulation (EEC) No 1408/71 will lead to the removal of some existing entries and, taking into account legislative amendments in some Member States, to the inclusion of certain new entries. In the latter case, it is then for these Member States to consider the need for transitional arrangements or bilateral solutions to address the situation of persons whose acquired rights may be affected as a consequence,

HAVE ADOPTED THIS REGULATION:

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- (1) [OJ C 80, 30.3.2004, p. 118.](#)
- (2) Opinion of the European Parliament of 11 March 2004 (not yet published in the Official Journal), Council Common Position of 15 November 2004 ([OJ C 38 E, 15.2.2005, p. 21](#)) and Position of the European Parliament of 8 March 2005 (not yet published in the Official Journal).
- (3) [OJ L 149, 5.7.1971, p. 2.](#) Regulation updated by Regulation (EC) No 118/97 ([OJ L 28, 30.1.1997, p. 1](#)), as last amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council ([OJ L 100, 6.4.2004, p. 1](#)) and repealed with effect from the date of entry into force of the implementing Regulation by Regulation (EC) No 883/2004 of the European Parliament and of the Council ([OJ L 166, 30.4.2004, p. 1](#)).
- (4) [OJ L 74, 27.3.1972, p. 1.](#) Regulation as last amended by Regulation (EC) No 631/2004.
- (5) Judgment in Case C-290/00 [2002] ECR I-3567.
- (6) Judgment in Case C-170/95 [1996] ECR I-2921.
- (7) Judgments in Case C-215/99 [2001] ECR I-1901 and Case C-43/99 [2001] ECR I-4265.
- (8) The principle of the most favourable treatment has been recalled by the ECJ in its Judgments in Case C-227/89 [1991] ECR I-323, Case C-475/93 [1995] ECR I-3813, Case C-75/99 [2000] ECR I-9399 and Case C-277/99 [2002] ECR I-1261.
- (9) Judgments in Case C-214/94 [1996] ECR I-2253, Case C-308/93 [1996] ECR I-2097 and Case C-55/00 [2002] ECR I-413.

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