

Update 2010



# The EU provisions on social security

Your rights when moving within the European Union



**50** YEARS of EU social security coordination



European Commission



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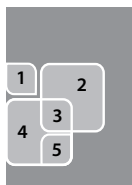
**European Commission**

Directorate-General for Employment, Social Affairs and Equal Opportunities  
Unit E.3

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## Why this guide?

This guide concerns all mobile people, that is people who move between member states of the European Union (EU) for work, study, retirement or even on a short holiday. It is about how their social security rights go with them as they move. The purpose is to provide easily understandable information about rights and obligations in the field of social security in situations concerning two or more states.

The national social security schemes vary considerably from one member state to another, and the EU provisions on social security coordination, although constantly evolving, are not intended to harmonise them. The purpose of these provisions is merely to prevent citizens from losing part or all of their social security rights when moving from one member state to another.

Your social security situation will not always remain the same when moving. Consequently, we recommend that you familiarise yourself with the appropriate chapters of this guide and, if necessary, contact the social security institution in your state of residence for further advice before moving.

Please note that this guide does not contain information on the social security schemes of the member states. Detailed information on national social security systems can be found through our website <http://ec.europa.eu/social-security-coordination>

Please keep in mind that, due to the complexity of EU rules on social security coordination and with regard to the aim and concise nature of this guide, the information given in individual chapters cannot always be exhaustive. In addition, EU law on social security is considerably influenced by the Court of Justice of the European Union case-law and is hence dynamic and developing through time. If in doubt, we recommend that you consult the websites listed at the end of this guide or contact the competent social security authorities in your member state.

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# 1. The EU provisions on social security coordination

## 1.1. Why do we need the EU provisions?

Without the European Union provisions on social security coordination, you would not be guaranteed sufficient protection when exercising your right to move and to stay freely within the European Union.

As a matter of fact, when moving you may be confronted with various issues concerning your social security rights, such as those listed below.

- ➡ Who pays my hospital bill in the case of an accident or sickness during a stay abroad?
- ➡ What about my pension rights if I have been employed in different member states?
- ➡ Which member state has to pay my unemployment benefits if I'm a frontier worker?
- ➡ Is it possible to continue receiving unemployment benefits when seeking a job in another member state?
- ➡ Which member state should pay my family benefits if my children reside in another member state than the one in which I work?
- ➡ Where should I pay social security contributions, in what language should I submit claims for benefits and what deadlines must I meet?

National social security legislations alone are not able to provide an answer to these questions: you would therefore run the risk of being insured twice, or not at all, or losing the social security benefit rights you have acquired without having the opportunity to build up new ones. This is why we need European provisions, applicable across the Union, for efficient and complete protection of rights guaranteed by statutory social security schemes.

## 1.2. What is EU social security coordination about?

The EU provisions on social security coordination do not replace national social security systems with a single European one. Such harmonisation is, from a political point of view, not possible as the social security systems of the member states are the result of long-standing traditions deeply rooted in national culture and preferences.

Rather than harmonising the national social security systems, the EU provisions provide for their coordination. Every member state is free to decide who is to be insured under its legislation, which benefits are granted and under what conditions, how these benefits are calculated and what contributions should be paid. The coordination provisions establish common rules and principles which have to be observed by all national authorities, social security institutions, courts and tribunals when applying national laws. By doing so, they ensure that the application of the different national legislations does not adversely affect persons exercising their right to move and to stay within member states.

In other words, a person who has exercised the right to move within Europe may not be placed in a worse position than a person who has always resided and worked in one single member state. This requires solutions to the following problems.

- ➔ In some member states, access to social security coverage is based on residence, whilst in others only persons exercising an occupational activity (and the members of their families) are insured. In order to avoid a situation where migrant workers are either insured in more than one member state or not at all, the coordination provisions determine which national legislation applies to a migrant worker in each particular case.
- ➔ Under national legislation, entitlement to benefits is sometimes conditional upon the completion of certain periods of insurance, employment or residence (depending on the member state and the type of benefit: 6 months, 1 year, 5 years, 10 years, or up to 15 years in some cases). The coordination provisions provide for the 'aggregation of periods'. This means that periods of insurance, employment or residence completed under the legislation of one member state are taken into account, when necessary, for the entitlement to a benefit under the legislation of another member state.

### EXAMPLE

What would happen to a migrant worker who becomes an invalid after having been covered for 4 years in a member state where an insurance period of at least 5 years is required for entitlement to invalidity benefits and then for 14 years in a member state where 15 years of insurance are required?

If the regulations did not exist, this worker, according to national law alone, would not be entitled to invalidity benefits in either of these states despite having been covered for a total of 18 years.

The EU provisions on social security do not introduce new types of benefit, nor do they abolish national legislation. Their only purpose is to protect European citizens working, residing or staying in another member state.

### REMARK

In this guide, we often use the terms 'residence' and 'stay': the place of 'residence' is where you normally live; the place of 'stay' is your temporary location.

## 2. The modernised EU social security coordination

European Union provisions on social security coordination have existed for the past 50 years, the rules constantly adapting to social and juridical developments. New Regulations (EC) Nos 883/2004 and 987/2009, or 'modernised EU social security coordination', are built on this valuable experience: they simplify and enhance the EU law, improving the rights of the persons concerned.

With the 'modernised EU social security coordination', the focus of these rules has shifted from facilitating the mobility of workers to enforcing the rights of all citizens, whether they work or not. These changes in social security coordination aim at making life easier for Europeans on the move.

'Modernised coordination' is a major advance in citizens' protection, and not only for the around 10.5 million Europeans living in different EU member states from the one in which they were born (about 2.1 % of the EU's total population). It will make life easier for the 250 000 people who have worked in more than one member state and need to export a part of their pension rights every year. It will also improve protection for the over 1 million people who cross EU borders for work every day.

### 2.1. Better information, better access to rights

Citizens are at the heart of the 'modernised coordination' and the new regulations place a special emphasis on the member states' duties towards them. Accordingly, member states must provide active assistance and information and meet concrete objectives of efficiency, rapid delivery and accessibility. In return, citizens must inform the institutions as soon as possible of any changes in their personal or family status affecting their rights to benefits.

To back-up this 'good administration' objective, the new rules require data to be exchanged electronically between institutions. This will be done through the so-called EESSI system (Electronic Exchange of Social Security Information) which will network the over 50 000 national institutions.

Former paper 'E-forms' will disappear, although some will be replaced by new portable documents (see list in Section 7). Citizens will also have access to the EESSI system through a directory, listing all the national and local institutions involved with social security coordination.

The protection of individuals moving in Europe is also improved by the new regulations. In order to follow the evolution of national legislations, they cover new rights such as paternity and pre-retirement benefits which were not provided for under the previous rules. Moreover, provisions concerning fields such as unemployment, medical insurance and family benefits have been simplified, which should make the regulations easier to interpret and reduce sources of conflicting views.

The new regulations also introduce the possibility for a citizen to have a temporary registration and access to benefits when member states' views diverge over which legislation should be applied. This guarantees that no one will be left without social security coverage while waiting for a member state's decision.

At the same time, a new dialogue and conciliation procedure between member states is provided for. When states have different views on the validity of a document or on which legislation should apply to a particular case, this procedure should allow them to reach a final agreement in a maximum time of six months.

The new regulations enter into force on 1 May 2010. From this date, all national institutions and bodies start to apply the new rules on social security coordination which are taken into account throughout this guide.

#### **IMPORTANT**

With regard to Iceland, Liechtenstein, Norway (EEA countries) and Switzerland, the new regulations will not apply until the agreements between the EU and those countries are modified in the light of the new regulations.

## 2.2. Transition from the old rules to the new ones

Special provisions have been adopted to make sure that citizens are not adversely affected by the transition to the new rules.

➔ Which rules will be applied to a claim submitted under the old rules?

In principle, once the new regulations enter into force they will be applied even to situations which arose before their date of application. However, where a claim was submitted under the old regulations, it should be governed by the rules applicable at the time of submission.

If you have been provided with a pension under the old rules, you may ask for a recalculation under the new ones. In any case, such recalculation may not imply a reduction in the amount of the benefit awarded.

➔ What happens to the documents issued to me by institutions under the old regulations?

The documents relating to social security coordination (that is, E-forms, European Health Insurance Cards and Provisional Replacement Certificates) issued by the competent authorities under the old rules continue to be valid and will be taken into account by institutions of member states even after the date of application of the new regulations. However, they can not be used once their date of validity has expired or if they are withdrawn or replaced by the competent institution.

➔ In which state will I be insured if the rules covering my situation have changed?

If, as a result of the new rules, you are subject to the legislation of a member state other than the one determined under the old rules, the original legislation shall continue to apply while the relevant situation remains unchanged, for a maximum period of 10 years. However, you may request to be subjected to the legislation applicable under the new regulations.

- ➔ For posted workers, will the new rules 'restart' the period of posting provided for under the new regulations?

Even under the new rules, posting remains a time-limited exemption from the general rule that you should be insured in the state where you work. Therefore, the period of posting used under the old rules will be taken into account and deducted from the overall time limit for posting provided by the new regulations.

### **IMPORTANT**

There might be other questions and problems linked to the interaction between the old and new rules. Do not hesitate to contact the institution which is competent for the matter in your country, in order to learn more about what changes the new rules might bring in your situation. The modernised coordination places emphasis on providing information to citizens: you have a right to be informed of your rights and obligations under the new coordination provisions.

### 3. Do these provisions apply to you?

The EU provisions on social security do not yet apply to all persons moving or staying within the European Union and the European Economic Area. It is therefore important for you to know whether you are covered: only if this is the case can you have recourse to them before national courts and institutions.

All nationals of a member state of the European Union or Norway, Iceland, Liechtenstein (on the basis of the Agreement on the European Economic Area) or Switzerland (the EU–Switzerland Agreement), who are or have been insured under the legislation of one of these countries, are protected by the coordination provisions.

In certain cases these provisions also apply to non-EU nationals (see Section 6.7).



## 4. In which countries can you rely on these provisions?

You can rely on the EU provisions on social security in all of the countries belonging to the European Union (EU), the European Economic Area (EEA) and Switzerland.



New Regulations (EC) Nos 883/2004 and 987/2009 will apply to EEA countries and Switzerland only once the Agreements with EEA and Switzerland are amended. Until then, Regulations (EEC) Nos 1408/71 and 574/72 continue to apply with regard to those countries.

### REMARK

Wherever the term 'member state' is used in this guide, it refers to all the above-mentioned states.

## 5. Which matters are covered by the EU provisions on social security coordination?

The EU provisions on social security coordination apply to national legislation <sup>(1)</sup> on:

- ➔ sickness benefits
- ➔ maternity and equivalent paternity benefits
- ➔ accidents at work
- ➔ occupational diseases
- ➔ invalidity benefits
- ➔ old-age pensions
- ➔ survivors' benefits
- ➔ death grants
- ➔ unemployment benefits
- ➔ family benefits
- ➔ pre-retirement benefits.

This means that you can always have recourse to the coordination provisions when they are necessary for your entitlement to one of these benefits.

These provisions do not apply, however, to the following areas:

- ➔ social and medical assistance: these are benefits which are normally means-tested and not linked to any of the categories mentioned above;
- ➔ benefits granted to victims of war and military actions or their consequences, to victims of crime, assassination or terrorist acts, to victims of damages occasioned by agents of the state in the course of their duties, or to victims who have suffered a disadvantage for political or religious reasons or for reasons of descent.

<sup>(1)</sup> Regulation (EC) No 883/2004 Article 1(l) specifies that “legislation” means, in respect of each member state, laws, regulations and other statutory provisions and all other implementing measures’ related to the social security branches listed in this Section 5.

In some cases, it may be difficult to determine whether or not a particular benefit is covered by the coordination provisions. Do not hesitate to contact the appropriate institution to find out.

#### **IMPORTANT**

The coordination provisions apply to social security matters but not to taxation, which could be governed by bilateral agreements. Please ask the tax authorities in your own state for information on your particular case.

## **5.1. In which state are you covered?**

First of all, coordination provisions set rules to determine which member state's social security legislation applies to you when you are in a situation involving more than one member state. This is important both for the payment of social security contributions and for your entitlement to benefits and the acquisition of future pension rights.

The basic principles are explained below.

### ***A. You are subject to the legislation of only one member state at a time***

This principle applies to all persons who are or have been subject to the legislation of one member state or more, regardless of the number of states concerned. Even persons who are employed in four or five member states are subject to the legislation of one single member state at a time.

### ***B. If you work in one member state, you are subject to the legislation of this member state***

This applies to employed and self-employed persons alike, even if they reside in the territory of another state or their companies or employers are located in another member state.

In other words, if you stop working in one member state to carry work in another one, you will become subject to the legislation of the 'new' state of employment. This means that you will stop building up rights in the 'old' state and start acquiring them in the 'new' one. It does not matter whether or not you take up residence there: even as a frontier worker who remains a resident of the 'old' state of employment, you are insured under the legislation of the state where you work.

### EXCEPTIONS

There are a limited number of exceptions to this general principle.

**In the case of posting:** Your employer may temporarily send you to work in another state. This situation, which occurs under specific conditions, is known as 'posting'. If these conditions are fulfilled (and you are not sent to replace another person), you can work up to 24 months while remaining under the legislation of the 'sending' state. This solution aims at avoiding frequent changes of applicable legislation in case of short periods abroad, which is why it is limited in time.

Before going to the state to which you are posted, you should make sure you get an 'A1' document (see list in Section 7) which certifies that you are covered by the legislation of the state from which you are posted. You or your employer may obtain this document from the institution of the member state in which you are insured (the 'sending' member state).

The same provisions apply to self-employed persons who perform a similar activity temporarily in another member state.

**For mariners:** If you are a mariner and you work on board a sea vessel flying the flag of a member state, you will be covered by the legislation of that state, even if you reside in another one.

However, if the registered place of business of your employer is in a different member state than the one flying the flag and this is also your place of residence, you will be covered by your state of residence.

**In the interest of the persons concerned:** It is possible to derogate from these common EU rules under the condition that it is in the interest of the persons concerned. Two or more member states may then provide for national derogations by common agreement.

### *C. If you work in more than one member state*

Under these circumstances, the principle is to determine the state with which you have the strongest links.

- ➔ When working in more than one member state and residing in the state where you pursue a substantial part of your activity, as an employed or as a self-employed person, you are subject to the legislation of your state of residence.
- ➔ When working in more than one member state and being employed by various undertakings or employers in different member states you are also subject to the legislation of your state of residence.
- ➔ If your state of residence does not correspond to the state in which you pursue a substantial part of your activity (in the case of an employed person) or to the centre of interest (in the case of a self-employed person), the following rules apply.

**Employed persons:** You are subject to the legislation of the member state in which the registered office or place of business of your employer is situated.

**Self-employed persons:** You are subject to the legislation of the member state in which the centre of interest of your activities is situated.

- ➔ If you pursue both an employed and a self-employed activity in different member states, the legislation of the state of your employed activity prevails.
- ➔ Finally, civil servants remain under the legislation of their administration even if they carry out employed and/or self-employed activities.

### *D. If you do not work, you are subject to the legislation of your state of residence*

This may apply in some cases of unemployment (see Section 5.8) and in other situations not covered by the previous paragraphs (i.e. so-called 'non-active persons', see Section 6.6).

## Applicable legislation under modernised coordination

REFERENCE TO REGULATION (EC) NO 883/2004	WHICH LEGISLATION APPLIES TO WHO?
<b>General principles</b> Article 11	Workers are subject to the legislation of the place where they work according to the principle of <i>lex loci laboris</i> .
<b>Derogations</b> Articles 12 and 16	'Posted' workers remain subject to the legislation of the state they are posted from.  Two or more states may agree to provide exceptions to the general rules in the interest of certain persons or categories of persons.
<b>Conflicting rules</b> Article 13	For persons who pursue activities in two or more states, the legislation applicable will depend on where the substantial part of their activity takes place.
<b>Special categories</b> Article 11 (2), (3)(e) and (4)	Special rules apply to 'non-active' persons.  Special rules apply to mariners.

## 5.2. What are your rights and obligations?

As a rule, when you are subject to the social security legislation of a member state you are entitled to the same rights and obligations as nationals of that state. This means, in particular, that your claim for benefit may not be rejected for the sole reason that you are not a national of that state.

The principle of equal treatment applies not only to forms of clear 'direct' discrimination but also to all forms of hidden ('indirect') discrimination where, in theory, a provision of national legislation applies equally to nationals and foreigners, but, in practice, is found to be disadvantageous for foreigners.

The principles of non-discrimination and equal treatment are central components of the coordination rules as they prevent people from being put at disadvantage when moving within the Union. So under the new coordination rules a general provision formulates

these principles in concrete terms: it deals with equalisation or assimilation of benefits, income, facts or events. This means, for example, that where a member state makes eligibility for a benefit dependent on a certain event (such as the completion of military service or an accident at work), it must also take into account events occurring in other member states as if they had occurred on its own territory when assessing a person's right to social security benefits.

According to the coordination provisions, you have the same entitlement as the nationals of the state in which you are covered to elect the members of the bodies of social security institutions or to participate in their nomination. Whether you are also eligible to be a member of these bodies depends, however, on the national legislation.

Finally, you should not forget your obligations towards the state in which you are covered. This applies in the first place to the obligation to pay social insurance contributions, but also to all other obligations to which the nationals of that state are subject (for example to register with and to notify certain facts to national authorities).

## 5.3. What you should know in the event of sickness or maternity

The coordination provisions contain a detailed chapter on sickness, maternity and equivalent paternity benefits for insured persons, pensioners and members of their families residing or staying abroad. They offer extensive and adequate protection not only to migrant workers and the members of their families but to all persons to whom these provisions apply, in particular to the millions of tourists spending their holidays abroad. The following paragraphs give you an overview of your rights.

### A. General rules

**Aggregation:** whenever certain conditions have to be fulfilled before you become entitled to benefits, the competent institution must take account of periods of insurance, residence or employment completed under the legislation of other states. This is a guarantee that you will not lose your sickness insurance coverage when changing employment and moving to another state.

### **EXAMPLE**

In some states, you become entitled to sickness benefits only after six months of insurance. The coordination provisions ensure that if you had to interrupt your previous insurance when moving to that state, you will be entitled to sickness benefits from the beginning of your insurance period there.

Sickness and maternity benefits are different in each of the member states. However, in all of them there are two major categories of benefits: benefits in cash and benefits in kind.

### ***B. Sickness benefits in cash***

These benefits are normally intended to replace an income (wages, salaries) which is suspended due to sickness. Benefits provided in a specific situation (e.g. dependence) may also be regarded as sickness benefits in cash.

As a general rule, they are always paid according to the legislation of the state where you are insured, regardless of which state you are residing or staying in.

This applies to all categories of insured persons and all situations. The amount and duration of the benefits depend entirely on the legislation of the state in which you are insured. All benefits in cash will therefore normally be paid directly to you by the competent institution of this state.

### ***C. Sickness benefits in kind***

These benefits include healthcare, medical treatment, medicines and hospitalisation, certain benefits for persons reliant on care, as well as the direct payments intended to reimburse their costs.

As a general rule, they are provided according to the legislation of the state in which you reside or stay as if you were insured in that state. This may or may not be to your advantage in comparison to the legislation of the state where you are actually insured.

However, the mere fact that benefits in kind are provided according to the legislation of the state of residence or stay does not mean that you can expect to receive these



benefits in all the states concerned without any restrictions or limitations. It is therefore important to know the concrete conditions applying to the entitlement to sickness benefits in kind in each member state.

#### *D. Residence in the state in which you are insured*

If you reside in the state in which you are insured, it goes without saying that you are entitled to all benefits in kind provided under the legislation of that state. These benefits are provided by the sickness insurance institution of your place of residence under the same conditions as for all other persons insured in that state.

#### *E. Residence outside the state where you are insured*

If you reside in a different state from the one in which you are insured, you are entitled to all benefits in kind provided under the legislation of the state where you reside. The benefits are provided by the sickness insurance institution of your place of residence as if you were insured with it. If you are a cross-border worker or a member of his/her family, you also have rights in the state in which you work (there are some restrictions for members of the family of a frontier worker (see Section 6.1) and for pensioners (see Section 6.3)).

Please note that you should register with the sickness insurance institution of your place of residence. For that purpose, you should request an 'S1' document (see list in Section 7) certifying your healthcare coverage from the institution with which you are insured. The institution of your place of residence may also liaise with the institution with which you are insured in order to exchange the necessary information on your entitlements.

Normally, the sickness insurance institution of the place of residence is reimbursed by the sickness insurance institution with which you are insured.

#### *F. Temporary stay outside the state where you are insured*

If you are staying temporarily in a different state from the one in which you are insured, you will be entitled to all benefits in kind which become medically necessary during your stay in the territory of another member state, taking into account the nature of the benefits and the expected length of the stay.

In other words, you will always get the treatment you really need, even very expensive hospital treatment (e.g. intensive care after a heart attack). The treatment should be given to you under the same conditions as if you were insured in the state of stay. But be careful: if you go abroad specifically to seek treatment, an authorisation is required (see Section 5.3.G below).

### **THE EUROPEAN HEALTH INSURANCE CARD**

The European Health Insurance Card (EHIC) is issued to European citizens who are travelling within the European Economic Area (i.e. the European Union, Norway, Iceland and Liechtenstein) and Switzerland, for private or professional reasons or for reasons of study. This card simplifies the procedure when receiving medical assistance during a temporary stay in one of these states.

Each member state is responsible for producing and distributing the EHIC within its territory. However, the card is identical and has the same technical characteristics in each member state, which ensures its immediate recognition by healthcare providers all over Europe.

If you are not in possession of a EHIC, you can obtain a card free of charge by contacting your local health insurance institution.

In order to learn more about your rights to healthcare abroad please visit our website (<http://ehic.europa.eu>).

### ***G. Travelling to another state for treatment***

If you go to another state in order to obtain healthcare treatment, in accordance with the coordination rules, the costs will only be covered by your sickness insurance institution if you have received permission from it beforehand. Normally, it is up to your health insurance institution to decide whether or not it will give its approval.

However, in cases where the treatment required is provided for by the legislation of your state, but not available within the necessary time with regard to your current state of health, the permission may not be refused. The competent institution must then issue an 'S2' document (see list in Section 7) certifying your entitlement to receive the treatment abroad. Accordingly, you are entitled to the benefits provided

by the host state on behalf of your sickness insurance institution. In some cases you can also apply for an additional reimbursement in your state of residence.

Additionally, the Court of Justice of the European Union has ruled that persons covered by health insurance who do not have the authorisation of their national competent institution may nevertheless ask their social security fund to reimburse the cost of non-hospital medical treatment in another member state, on the basis of the scale applied in the state of insurance.

In this same case-law, the Court concluded that social security institutions may refuse an authorisation for hospital treatment in another member state. Nevertheless, the administrative authorisation procedures leading to this decision must be based on objective, non-discriminatory criteria which are known in advance.

These criteria must ensure that the national authorities' discretion is not used arbitrarily: the procedures must be easily accessible, make sure that requests for authorisation are dealt with objectively and within a reasonable delay and allow for refusals to be challenged in judicial or quasi-judicial proceedings. In addition, national authorities must take account of all the circumstances of each individual case, i.e. not only the patient's state of health, but also his or her medical history.

## 5.4. Accidents at work and occupational diseases

The coordination provisions on benefits in respect of accidents at work or occupational diseases are very similar to the provisions on sickness benefits. However, you will have to fulfil some specific procedures to inform or notify the authorities with whom you are insured when an accident at work occurs or when a professional disease is diagnosed for the first time. It is important to make sure such formalities are fulfilled: a failure to do so can negatively affect the process for granting benefits in cash.

### ***A. Benefits in kind***

If you suffer an accident at work or from an occupational disease, you are entitled to benefits in kind according to the legislation of the state in which you reside.

If you reside in a different member state from the one in which you are insured, the institution in the state of residence will provide you with benefits in kind according to its legislation. The state of residence will be reimbursed by the competent institution of the state in which you are insured. Your entitlement to healthcare cover abroad under insurance against accidents at work and occupational disease can be certified by a 'DA1' document (see list in Section 7) issued by the institution with which you are insured.

### ***B. Benefits in cash***

These benefits are always paid according to the legislation of the state in which you were insured when the accident at work or the occupational disease occurred, regardless of where you reside or stay.

They are normally paid out directly by the institution of your state of insurance who can, however, agree with the institutions of your state of residence or stay that the cash benefit will be paid out by them (in no way will this change the amount of the benefit).

If the amount of the cash benefit depends on the number of members of your family, family members residing in another member state will also be taken into account.

### ***C. Accidents while travelling***

If you suffer an accident at work while travelling outside the territory of the state in which you are insured, you are still covered against this risk and entitled to the specific benefits. You can prove your rights to healthcare by presenting a 'DA1' document (see list in Section 7).

## 5.5. Invalidity

The invalidity schemes of the member states vary considerably. Nevertheless, two major types can be distinguished.

- ➔ In many states, invalidity pensions are calculated in a similar way to old-age pensions, i.e. the amount of your invalidity pension depends on the length of your insurance periods: the longer you were insured before you became an invalid, the higher your pension will be.

Under these schemes, you are normally not required to actually be insured at the time the invalidity occurs. In other words, even if you had stopped working several years before becoming an invalid, you will nevertheless be entitled to an invalidity pension based on your previous periods of insurance.

- ➔ In other states, the amount of your invalidity pension is independent of the length of your insurance periods. This means that you will be entitled to the same amount of pension regardless of whether you were insured for 5, 10 or 20 years before you became an invalid.

Under these schemes, however, entitlement to a pension depends on actual insurance at the moment when the invalidity occurs. If you stopped working even shortly before, you will not be entitled to an invalidity pension.

The following explanations cover the most frequent problems which you may be confronted with on becoming an invalid.

### A. General rules

**Aggregation:** The institution of the state where you claim an invalidity pension will take account of periods of insurance or residence which you have completed under the legislation of any other member state, if this is necessary for your entitlement to the benefit.

**Residence or stay abroad:** When you are entitled to an invalidity pension, it will be paid to you regardless of where you reside or stay in an EU member state, Iceland, Liechtenstein, Norway or Switzerland.

**Medical examinations:** When you are entitled to an invalidity pension from one state and you reside or stay in another state, necessary administrative checks and medical examinations will normally be carried out by the institution of your place of residence or stay. You may, however, be required to return for such an examination to the state paying your pension, if your state of health allows you to do so.

### *B. Persons who have been insured in one single state*

If you have been insured in one single member state, the amount of your invalidity pension will be calculated in accordance with the legislation of that state. You are entitled to the same treatment as nationals of that country.

### *C. Persons who have been insured in more than one member state*

If you have been insured in several member states before becoming an invalid, there are different possibilities concerning your entitlement to a pension.

- ➔ **You have only been insured in member states where the amount of the pension depends on the length of insurance periods:** In this case you will get separate pensions from each of these states. The amount of each pension will correspond to the periods of insurance completed in the respective state.
- ➔ **You have only been insured in member states where the amount of the pension is independent of the length of insurance periods:** You will get a pension from the state where you were insured at the moment when you became an invalid. You will always be entitled to the full amount of this pension, even if you were only insured in this state for a short period (one year, for example). On the other hand, you will not be entitled to pensions from the other states where you were previously insured.

In practice, this means that the amount you will receive will correspond to the amount paid by the member state where you are insured at the moment the invalidity occurred even if this amount is lower than the amount which would have been paid under the legislation of a member state where you were previously insured.

This reflects the principle of so-called risk-based schemes where the amount of a pension does not depend on the length of insurance periods and where you need to actually be insured at the time you become an invalid.

- ➔ **You were first insured in a member state where the amount of the invalidity pension depends on the length of insurance periods and then in a state where the pension does not depend on the length of periods:** You will receive two pensions, one from the first state corresponding to the insurance periods completed under its legislation, one from the state where you were insured when you became an invalid.

The latter state would normally be obliged to pay you a full pension. In many cases, however, you will only get a part of it because the state takes into account the pension you get from the first state. You might consider that this means you are losing pension rights you have worked and paid for: this impression is incorrect because if you had always been insured in one of the two states (it does not matter in which), you could never have received a higher pension than the one you are now entitled to. You are neither worse nor better off than a person who has worked his or her entire career in one single member state.

- ➔ **You were first insured in a state where the amount of the pension is independent of the length of insurance periods and then in a state where the pension does depend on the length of insurance periods:** You will get two separate pensions, each corresponding to the length of your insurance periods in the respective states.

#### *D. Decisions on the degree of invalidity*

The determination of the degree of invalidity can be a problem if you have been insured in more than one member state as there are wide discrepancies between national criteria. As a matter of fact, in most cases, the amount of the pension will depend on the degree of invalidity recognised. This decision will be made by the national institutions of the state where you were insured, according to its own national legislation. Only in a few special cases is the decision of one institution binding for the institutions of all the other states involved.

### EXAMPLE

You were insured for 20 years in state A, then for five years in state B and finally for two years in state C. In all three of these states, the amount of the invalidity pension depends on the length of the insurance periods covered.

You stop working in state C where your degree of invalidity was assessed at 100 %. This entitles you to an invalidity pension from state C based on the two years of insurance in that state. You will also get an invalidity pension from state B where you were insured for five years. However, in that member state your degree of invalidity was assessed at only 70 %. In state A, where you were insured over most of your professional career (20 years), you will get an invalidity pension based on an invalidity of only 30 %.

In this case, you would be in the best position if the amount of invalidity pension in state C was independent of the length of insurance periods. You would then get a full pension from state C, so it would not matter to which degree you are considered as being an invalid under the legislation of other states.

This depends on the fact that the national social security systems are not harmonised, but only coordinated by the EU provisions on social security and therefore it is up to each state to determine its rules on invalidity pensions.

## 5.6. Who pays my old-age pension?

Old-age pensions are among the most important social security benefits. So when you take up an occupational activity abroad, you want to know what the consequences for your future pension rights may be.

The EU provisions on old-age pensions guarantee the following rights.

- ➔ In every member state where you have been insured, your insurance record is preserved until you reach the pensionable age. In other words, contributions which have been paid are neither transferred to another member state nor paid out to you if you are no longer insured in that member state.



- ➔ Every member state where you have been insured will have to pay an old-age pension when you reach the pensionable age. For example, if you have worked in three member states, you will get three separate old-age pensions once you reach the pensionable age.
- ➔ This pension will be calculated according to your insurance record in each member state. The amount you will receive from each one of the member states will depend on the length of your coverage in each state.

These principles ensure that nobody will be disadvantaged by having worked in several member states: no contributions will be lost, acquired rights will be protected, and every member state will pay a pension corresponding to the insurance periods completed there. Every state pays neither more nor less than the pension which has been 'earned', in particular through the contributions of the worker. The following paragraphs explain how old-age pensions are calculated and paid under coordination rules.

## A. General rules

**Aggregation:** If the period during which you have been insured in a member state is not long enough to qualify for a pension there, any periods of insurance which you completed in other member states will be taken into account.

### EXAMPLE

If you have been covered for less than a year in a member state a special rule may apply, as some member states do not provide a pension for short periods. What happens to your contributions paid in that member state?

You were insured in state A for 10 months and in state B for 35 years. Do not worry. Your months of insurance in state A, where you worked less than one year, will not be lost. State B will take over the 10 months paid in state A.

**Residence or stay abroad:** Your old-age pension will be paid regardless of where you stay or reside within the EU, Iceland, Liechtenstein, Norway or Switzerland without any reduction, modification or suspension.

## *B. You have been insured in one single member state*

In this case, the amount of your pension will be calculated in accordance with the legislation of that member state in exactly the same way as it is for its own nationals. It does not matter whether or not you reside in that state when you reach the pensionable age.

## *C. You have been insured in more than one member state*

You will get a pension from every member state in which you were insured. These pensions will correspond to the insurance periods completed in each of the states concerned.

### **EXAMPLE**

You have been insured:

- ➔ for 10 years in member state A,
- ➔ for 20 years in member state B,
- ➔ for 5 years in member state C.

This means that you were insured for 35 years in total before you reached the pensionable age.

Member state A will calculate the amount of pension you would be entitled to after 35 years of insurance in that state. It will then pay you the amount corresponding to your actual periods of insurance, i.e. 10/35 of this amount.

Similarly, member state B will pay you 20/35 of the amount you would be entitled to in that state after 35 years of insurance.

Finally, member state C will pay you 5/35 of the amount you would have been entitled to in that state after 35 years of insurance.

## *D. Applying for your pension*

When you have worked in more than one member state, you should apply for your pension in your state of residence, unless in fact you never worked there. In the latter case, you should apply to the country where you last worked.

## *E. Pensionable age*

As mentioned above, member states' social security systems are not harmonised and therefore pensionable age varies from one state to another. For a person who is entitled to a pension in more than one member state, this means that you could be entitled to your old-age pension in one country at 65, yet have to wait until 67 in another. In such circumstances, it is important that you obtain information in advance, from the states that will pay your pensions, on the consequences of delaying the payment of your pension. There might be, in some cases, an effect on the amounts that you will be paid if you take one pension earlier than the other. The institutions that will pay the pensions are obliged to give you this advice on your request.

## *F. The summary note*

A 'contact institution' (normally in the state where you reside) will take charge of the management of your pension claim. The contact institution facilitates the exchange of information on your insurance records between the countries involved in your pension claim.

Once the contact institution has been notified of all the decisions from the different countries, it will send you a summary note of these decisions. The summary note is a portable document 'P1' (see list in Section 7) which will give you an overview of the decisions made by each member state. It will inform you on the way the institutions have dealt with the different periods of insurance and allow you to see, for instance, whether there are gaps, or overlapping of certain insurance periods.

The new coordination rules give you the right to ask for a review of a national decision on your pension entitlement, where it appears that your rights may have been adversely affected by the interaction of the decisions taken by two or more institutions. The time limit for asking for such a review runs from the date you receive the summary note and is the limit applicable in national law.

## ***G. Transaction costs***

Payments of pensions are made directly from the national institutions to you or your bank. As a matter of principle, no transaction costs or administrative costs should be charged for a payment between member states belonging to the euro area. However, for cross-border payments to countries that are not part of the euro area, it is possible you may incur some exchange transaction costs. Such costs should be objectively justified and proportionate to the service rendered.

## **5.7. Survivors' pensions and death grants**

### ***A. Survivors' pensions***

In general, the rules which apply to pensions for surviving spouses or orphans are the same as the ones applying to invalidity and old-age pensions (see Section 5.6). Namely, survivors' pensions have to be paid without any reduction, modification or suspension regardless of where the surviving spouse resides in the EU, Iceland, Liechtenstein, Norway or Switzerland.

### ***B. Death grants***

As for all other categories of benefits, the national institution of a member state has to take account of periods of insurance or residence completed under the legislation of any other member state, when this is necessary for entitlement to death grants.

The death grants will be paid by the institution of the state in which the deceased person was insured, regardless of the member state in which the entitled persons reside. Special rules apply in the event of death of a pensioner or his/her family members.

## **5.8. What to do in the event of unemployment?**

In a context of high unemployment rates, the coordination provisions on unemployment benefits are particularly important.

## A. General rules

**Aggregation:** If you become unemployed, the institution of the state in which you claim unemployment benefits is obliged to take account of periods of insurance or employment completed under the legislation of any other member state, if this is necessary for entitlement to the benefits. Under the new coordination rules, periods completed by self-employed persons are also taken into account. You can ask for a 'U1' document (see list in Section 7) certifying your insurance or employment periods from the institution of the state in which you worked.

### IMPORTANT

In contrast to other benefits, in the unemployment sector the principle of aggregation is only applied if you have completed your most recent period of insurance in the member state where you claim the benefits. In other words, you should claim unemployment benefits in the state where you were last employed (except for the case of cross-border workers, to whom special rules apply, see the following section (5.8.B)).

**Legislation applicable:** Normally, the member state in which you are employed is the one responsible for granting unemployment benefits, according to the principle that you are subject to the legislation of the state in which you work. You are entitled to unemployment benefits under the same conditions as the nationals of the state which pays your benefits.

Special provisions apply to frontier workers and other cross-border workers who have maintained their residence in a member state other than the one in which they work.

**Calculation of benefits:** If the amount of unemployment benefit depends on your previous salary or professional income, only salaries or professional income which you received in the state where you were most recently employed are taken into account.

If members of your family reside in another member state, and the amount of your unemployment benefit increases according to the number of members of your family, they will be taken into account as if they were residing in the state which pays your benefits.

## *B. Wholly unemployed cross-border workers*

If your member state of residence is not the one in which you work, special provisions apply to you.

**Frontier workers:** as a wholly unemployed frontier worker <sup>(2)</sup>, you have to claim unemployment benefits in your member state of residence. Although you have not paid any contributions to the institution of your state of residence, you will receive your benefits as if you had been insured there during your last period of employment. If the amount of unemployment benefit depends on your previous salary or professional income, the institution granting the benefit has to base its calculation on the salary or professional income you actually received in the member state in which you worked.

If you wish to look for a job in the state of your last employment as well as in your state of residence, you can — as a supplementary step — also register with the employment services there. You will then have to comply with the control procedures and obligations of both member states. However, as the benefits are always paid by your member state of residence, obligations and job-seeking activities there have priority.

### **EXAMPLE**

If you worked as a frontier worker in state B and resided in state A, after becoming unemployed, you have to claim for benefits in state A. If you wish, you may also register with the employment services of state B and look for a job in that state as well. However, the benefits continue to be paid by state A and your obligations towards employment services in state A have priority.

**Other cross-border workers:** If you are a wholly unemployed other cross-border worker <sup>(3)</sup>, you have two options, you can either register with employment services and claim unemployment benefits in the state of your last employment or you can return to your state of residence to look for a job and receive unemployment benefits there.

<sup>(2)</sup> Frontier workers are persons employed or self-employed in one member state, residing in another member state to which they return, as a rule, daily or at least once a week.

<sup>(3)</sup> Other cross-border workers are persons employed in one member state and residing in another member state to which they return less often than a frontier worker (i.e. less frequently than once a week). However, they are still considered to have their place of residence (i.e. the centre of their personal interests, family, etc.) in a member state other than the state of employment.

### EXAMPLE

If you worked as an 'other cross-border worker' in state B and resided in state A, after becoming unemployed, you can choose to register and claim benefits either in state A or in state B (depending on where your prospect of finding a new job is better).

If you decide to return to your member state of residence, the calculation of your unemployment benefits is based on the professional income you received during your last activity in the member state where you worked.

You also have the possibility to first register as a jobseeker and claim benefits in your state of last employment and then return to your state of residence by exporting your unemployment benefits (see Section 5.8.D).

### IMPORTANT

Which member state is responsible for granting sickness benefits, pensions, family benefits, etc. if I receive unemployment benefits from my state of residence?

As for your unemployment benefits, you become subject to the legislation of the state of residence also with regard to other social security matters.

## *C. Partially unemployed persons*

In the case of partial or intermittent unemployment, the member state in which you work is responsible for granting unemployment benefits, regardless of your state of residence.

## *D. Persons looking for a job in another member state*

If you want to look for a job in a different state than the one in which you receive your unemployment benefits, under certain conditions you may export these benefits for a limited period of time.

- ➔ You must have made yourself available to the employment services of the state which pays your unemployment benefits for at least four weeks after becoming unemployed. However, the employment services may allow you to leave before the

end of this period. The underlying idea is that you should first exhaust all possibilities of finding a new job there before extending your search to other states.

- ➔ The institution you are registered with as a jobseeker will supply you with a 'U2' document (see list in Section 7) allowing you to export unemployment benefits.
- ➔ Within seven days after departing, you have to register with the employment services of the state in which you are looking for a job. You have to comply with the obligations and the control procedures organised by the employment services of that state.
- ➔ You will then be entitled to receive your unemployment benefits for a period of three months from the date you ceased to be available to the employment services of the state that you left. The competent service or institution of that state may extend this period up to a maximum of six months.
- ➔ If you are not able to find a new job, you have to return before the expiry of the period. If you return later, without the explicit permission of the employment services of the state which is paying your benefits, you will lose all remaining entitlement to them.

### **IMPORTANT**

Many unemployed persons lose their entitlement to benefits because of unfamiliarity with these conditions. They leave the state where they were last employed without having registered with its employment services, they register too late with the employment services of the state where they are looking for work, or they return after the expiry of the exportation period.

You should, therefore, contact the employment institution responsible for paying your unemployment benefits before leaving in order to learn more about your rights and obligations.



## 5.9. What about family benefits?

Family benefits exist under the legislation of all member states, but their characteristics and amounts vary considerably from one state to another. It is therefore important for you to know which state is responsible for providing you with these benefits and what the conditions to entitlement are.

As in the case of other benefits, the state which is responsible for paying your family benefits must take into account periods of insurance completed under the legislation of any other member state, if this is necessary to satisfy the conditions governing entitlement to the benefit.

### *A. Your family members reside in the state where you are covered*

If the members of your family reside in the state under whose legislation you are covered as an employed or self-employed person, this state will always be competent for the payment of family benefits. You are entitled to exactly the same amount of benefits as nationals of that state.

### *B. Your family members do not reside in the state where you are covered*

If the members of your family do not reside in the state under whose legislation you are covered, the following rules apply.

- ➔ If you are entitled to family benefits under the legislation of more than one state, your family will, in principle, receive the highest amount of benefits provided for in the legislation of one of these states. In other words, your family is treated as if all persons concerned reside and are insured in the state with the most favourable legislation.
- ➔ You cannot receive family benefits twice over the same period and for the same family member. There are priority rules which provide for suspension of benefits of one state up to the amount of the benefits of the other state which is primarily competent for payment of the family benefits.

### EXAMPLE

If the amount of family benefits provided in state A is higher than that provided in state B, which is primarily responsible for paying the benefits, then state A will pay a supplement corresponding to the difference between the two benefits.

The priority rules are as follows: the state which pays benefits based on employment or self-employment takes precedence over the state which pays benefits based on a pension or based on residence.

### EXAMPLES

If the family benefit in state A is based on an activity as an employed person and the family benefit in state B is based on pension entitlement or on residence, state A is primarily responsible to pay the family benefit and state B only has to pay a supplement if the amount of the family benefit in state B is higher than in state A.

If there is entitlement based on a pension in state A and based on residence in state B, state A is primarily responsible to pay the family benefit and state B only has to pay a supplement if the amount of the family benefit in state B is higher than in state A.

What happens if family benefits in state A and in state B are both based on employment or self-employment or on pension or on residence?

- ➔ In cases where family benefits are based on employment or self-employment in both states, the state where the children reside takes precedence provided that a parent works there, otherwise the state where the highest amount is paid is responsible.
- ➔ In the case where the family benefits are based on receipt of a pension in both states, the state where the children reside prevails, provided that this state also pays the pension. Otherwise the state where the person concerned has been insured or has resided for the longest period is responsible.
- ➔ In cases where the family benefits are based on residence, the state where the children reside prevails.

In practice the application of these rules depends on the circumstances of each particular case. Do not hesitate to contact your institution for more details.

### *C. Family benefits for unemployed persons*

Unemployed persons drawing unemployment benefits under the legislation of a member state are entitled to family benefits according to the legislation of that state, and for members of their families residing in another member state.

### *D. Family benefits for pensioners*

Pensioners normally receive family benefits from the state which pays their pension. Where a pensioner receives more than one pension, special rules apply.

## **5.10. Pre-retirement benefits**

Statutory pre-retirement schemes also come within the scope of the coordination provisions. This guarantees both equal treatment when granting these benefits to migrants and the possibility of exporting pre-retirement benefits. The recipients of these benefits also have to be awarded family and healthcare benefits in accordance with the rules described above.

However, the principle of aggregation of insurance periods does not apply in cases of pre-retirement benefits. This means that the periods of insurance, employment or residence completed in other states do not need to be taken into account when these benefits are awarded.

## 5.11. Special non-contributory cash benefits

A certain number of special benefits <sup>(4)</sup> which are not based on contributions (the so-called non-contributory benefits) will only be provided by and at the expense of the institution of your place of residence. In most cases these benefits are means-tested ones, i.e. paid to persons whose pensions or income are below a certain level.

In other words, payment of these benefits will not be exported if you transfer your residence to another state. Nevertheless, if such a benefit is provided in your new state of residence, the latter may grant you this special benefit under its own national legislation, even if you have never worked there.

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<sup>(4)</sup> These special non-contributory cash benefits are listed, member state by member state, in Annex X to Regulation (EC) No 883/2004 as amended by Regulation (EC) No 987/2009.

# 6. Your rights in a nutshell

## 6.1. Frontier worker

A frontier worker is an employed or self-employed person who pursues his occupation in a different member state from the one in which he resides and to which he returns at least once a week.

As a frontier worker you are protected by the EU provisions on social security in the same way as all the other categories of persons to whom these provisions apply.

- ➔ You are insured in the state where you work.
- ➔ You are entitled to family benefits even for members of your family who reside in another state.
- ➔ You will receive a separate pension from each state where you were insured for at least one year.

There are, however, some special rules in relation to sickness benefits and unemployment benefits.

- ➔ As regards benefits in kind for sickness and accidents at work, you have a right of option: you may obtain these benefits either in the state where you reside or in the state where you work. In many cases, it will be more practical for you to receive sickness benefits in kind in the state where you work and where you spend most of your time. When you become a pensioner, you will lose the status of 'frontier worker' and your right to sickness benefits in kind in the state where you were previously employed will be restricted. However, you will be entitled to continue a treatment started when you were still a frontier worker.

### IMPORTANT

Members of the families of frontier workers enjoy the same rights as the frontier worker only in a few states <sup>(5)</sup>.

In some states, retired frontier workers retain their right to receive healthcare.

Please contact your sickness insurance institution for more information.

- ➔ As regards unemployment benefits, you are only entitled to benefits — if you are wholly unemployed — in the state where you reside. However, you may — as a supplementary step — register and also look for a job in the state of your last employment (for further details see Section 5.8.B).

## 6.2. Posted worker

A posted worker is a person who is normally employed in one state but is sent temporarily to another state to work there for his/her undertaking. The maximum period for posting is 24 months.

As a posted worker, the following conditions apply.

- ➔ You remain insured in the state where you are normally employed, which means that you continue paying contributions to the social security system of that state. This is certified by an 'A1' document (see list in Section 7) which you should obtain from the institution of the posting state (the state where you are normally employed).
- ➔ You are entitled to all healthcare benefits in kind in the state to which you have been sent, regardless of whether or not you transferred your residence there.
- ➔ You are entitled to family benefits from the state in which you remain insured, regardless of which state the members of your family reside in.

<sup>(5)</sup> The member states which impose a restriction of rights to benefits in kind for members of the family of a frontier worker are listed in Annex III to Regulation (EC) No 883/2004 as amended by Regulation (EC) No 987/2009.

- ➔ In the event of unemployment, you are entitled to unemployment benefits in the state where you are normally employed. However, if you transferred your residence to the state in which you have been posted, you could also be entitled to unemployment benefits there.

### 6.3. Pensioner

As a pensioner (i.e. receiving statutory old-age, invalidity or survivor's pension) you are offered considerable protection by the coordination provisions.

#### IMPORTANT

This applies not only to former migrant workers but to all nationals of a member state who are entitled to a pension under a statutory pension scheme. Therefore, even if you never left your state during your working life, you can rely on the coordination provisions when you are a pensioner residing or staying in another state.

In a nutshell, these are your rights.

- ➔ You are entitled to a separate pension from every member state where you were insured for at least one year, provided you satisfy the conditions laid down in national law (e.g. pensionable age, conditions imposed). If the conditions include having worked/contributed for a certain minimum period of time, work and insurance periods completed in all member states will be counted towards meeting that requirement.
- ➔ Your pension will be paid wherever you reside within the EU or the EEA without any reduction, modification or suspension. This is not the case, however, for some pension supplements or means-tested social pensions (see Section 5.11).
- ➔ You are entitled to all sickness benefits in kind in the member state where you reside, even if you were never insured in that state while working, provided that you have acquired a right to receive sickness benefits in at least one of the member states which pay you a pension. During a temporary stay in another member state, you are entitled to all the benefits in kind which become necessary during that stay.

- ➔ You are entitled to family benefits, regardless of where you or the members of your family reside within the EU or the EEA. These benefits are paid by the institution of the member state from which you draw your pension. If you are entitled to several pensions from different member states, in principle, you receive the highest amount of benefits provided under the legislation of one of these states (see Section 5.9.B).

## 6.4. Tourist

Every year, millions of tourists travel across Europe to spend their holidays abroad. In the case of sickness or accident, they need access to any necessary healthcare and sickness benefits in the state where they are staying.

Provided that you are insured under a statutory healthcare insurance scheme in your home state, the following circumstances apply.

- ➔ You are entitled to all medically necessary sickness benefits in kind in the state of stay under the same conditions as nationals of that state.
- ➔ To obtain these benefits you must produce your European Health Insurance Card (EHIC).

If you have forgotten or lost your EHIC you can ask your sickness insurance institution to fax or e-mail you a provisional replacement certificate. This is equivalent to the EHIC and will give you the same entitlement to medical treatment and reimbursement of the associated costs during a temporary stay in another member state. This approach is particularly advisable if you need to be hospitalised.

- ➔ The fact that you are unable to present your EHIC should have no bearing on your medical treatment. However, the doctor or medical establishment might ask you to pay the full cost or to pay up front a proportion of the costs which an insured person in that same member state would not be asked to pay. You may then ask for a reimbursement in the member state in which you are insured.



## 6.5. Student

An increasing number of young people choose to pursue part or all of their studies in another state. Among the problems they face (besides language problems, recognition of diplomas, accommodation, etc.), access to healthcare and sickness benefits is certainly not the least important.

As a matter of principle, as a student staying temporarily in the state where you pursue your studies, you are regarded as still residing in your home state. This means that you are entitled to all necessary sickness benefits in kind on presentation of the European Health Insurance Card issued by your home state before leaving (see Sections 5.3.F and 6.4).

## 6.6. Non-active person

If you are neither employed nor self-employed, but you are or have been insured under the legislation of a member state — you are a so-called ‘non-active person’ — you are also covered by the EU provisions on social security (see Section 5.1.D).

In addition, in some cases you can benefit from protection as a member of the family of an employed or self-employed person or of a pensioner.

## 6.7. Non-EU national

As a third-country national (i.e. a national of a country not included in the list provided in Section 4) you can benefit from the coordination provisions in situations which involve more than one member state. Your family members and survivors will also fall under these provisions. Specific provisions on family benefits apply in the cases of Austria and Germany.

However, third-country nationals are not yet covered by the provisions of the ‘modernised coordination’. They therefore remain subject to the old coordination rules (Regulations (EC) Nos 1408/71 and 574/72) even after the date of entry into force of the new ones (1 May 2010), until the European Council reaches an agreement on the extension of the new regulations to non-EU nationals.

## 7. How do the coordination provisions work in practice?

Sections 1 to 6 of this guide deal with the purpose, principles and content of the EU provisions on social security. This section provides you with some general information on how the provisions work in practice, to help you claim your rights.

### 7.1. Portable documents

When dealing with administrative cases involving cross-border elements, social security institutions often need to exchange information with institutions in other member states. Most data is exchanged directly between them. However, in certain cases the information you require may be issued in the form of a document which you can then present to the institutions of other member states. These portable documents, which currently take the form of paper forms (however, they may be issued via other media in future), allow you to prove your entitlement to a certain number of rights when moving within Europe. They are listed in the following table.

The portable documents are usually issued upon your request. However, if you forget to ask for the appropriate document before leaving, this will not prevent you from claiming benefits: the institution of the other member state will obtain the necessary data directly from the competent institution of your own state. However, this might cause some delay to the decision on your claim.

### 7.2. Dealing with several member states

When dealing with the social security systems of several member states (e.g. posted workers, frontier workers) you may find it difficult to submit a claim within the required deadline to an authority, an institution or a tribunal of a specific member state. This could lead to a partial or total loss of your entitlement to the benefit under the national laws of that state. In order to avoid such undesirable consequences, the coordination provisions ensure that your claim will be admissible if you submit it within the same deadline to a corresponding authority, institution or tribunal of another member state (where you are staying or residing, for example). Your claim will then be forwarded without delay to the competent state.

## Portable documents

SOCIAL SECURITY FIELD	DOCUMENT	NUMBER	FORMER E-FORM
<b>LEGISLATION APPLICABLE</b>	Certificate concerning the social security legislation which applies to the holder	<b>A1</b>	E101 E103
<b>SICKNESS BENEFITS</b>	Registering for healthcare cover	<b>S1</b>	E106 E109 E120 E121
	Entitlement to scheduled treatment	<b>S2</b>	E112
	Medical treatment for former cross-border worker in former country of work	<b>S3</b>	-
	Entitlement to healthcare cover under insurance against accidents at work and occupational diseases	<b>DA1</b>	E123
<b>PENSIONS</b>	Summary of pension decisions taken by institutions in the member states where the person has built up pension rights	<b>P1</b>	E205 E207 E211
<b>UNEMPLOYMENT BENEFITS</b>	Periods to be taken into account for granting unemployment benefits	<b>U1</b>	E301
	Retention of unemployment benefits entitlement	<b>U2</b>	E303
	Circumstances likely to affect the entitlement to unemployment benefits	<b>U3</b>	-

If you have been employed or self-employed in several member states, you may find it difficult to identify the state to which you should submit your applications for invalidity or old-age pensions. As a rule, you can submit them to the institution of the member state where you reside, if you have been insured there. The institution of the state of residence will forward the application to the competent institution and the date on which the application was originally submitted will be regarded as the date on which it was submitted to

the correct institution. This solution is in your interest because, usually, the easiest and most convenient way to submit a claim is to do it in your state of residence.

A claim for invalidity benefits can also be submitted in the state where the invalidity occurred, whilst a claim for an old-age pension can also be submitted to the institution of the state where you were last insured, if you were not insured in your state of residence.

#### **IMPORTANT**

The abovementioned documents and procedures are intended to facilitate cross-border dealings between social security institutions of several member states. They can help you get benefits within a reasonable time and respect deadlines for the submission of applications.

Please note, however, that the deadlines and other formalities which have to be observed when claiming benefits depend on the provisions of national law and will therefore differ from one state to another.

The competent institution can also ask you to produce the information, documents or supporting evidence necessary to establish your rights and obligations. Therefore, do not hesitate to ask the appropriate national institutions in time for detailed information on what you have to do to get your benefits.

### **7.3. Foreign countries — foreign languages: not necessarily a problem!**

Whenever you work, reside or stay in a foreign country, foreign languages may present a problem, especially where difficult terms in the field of social security are concerned. Unfamiliarity with foreign languages can easily give rise to misunderstandings and could therefore be a handicap when claiming benefits, in observing deadlines and in lodging appeals.

Claims and documents which you present to the institutions or courts of another member state may not be rejected on the grounds that they are not written in the official language of that state. In other words, you may present your claims, letters and

certificates in your mother-tongue (if it is amongst the official languages of the EU) whenever you consider it necessary or appropriate. Of course, this might delay the decision on your particular claim, but in many cases it will help you to express yourself clearly and avoid misunderstandings.

## 7.4. The social security institutions of the member states: one of your points of contact for any problems

When confronted with foreign social security laws and regulations, complex documents and unknown terms, you should not hesitate to ask the competent institution of the place where you are working, residing or staying for help and information. As a rule, these institutions are prepared and willing to provide guidance, even in difficult cases.

Sometimes, it may be appropriate to consult a special liaison body which has specific experience in dealing with cross-border social security matters.

If you have doubts as to whether any information given by a national institution is correct and in accordance with the coordination provisions, you should first contact the institution concerned so that it can recheck it. This also applies to formal decisions on the entitlement to benefits. But do not forget the deadlines for formal appeals.

### **IMPORTANT**

The addresses of the relevant institutions dealing with social security coordination in each member state can be found at <http://ec.europa.eu/social-security-directory>.

## 7.5. The EU rules have priority

The EU provisions on social security coordination are among the best recognised rules within the Union. As regulations, they have general legal force and apply directly in all member states. In other words, they are binding upon everyone and have to be observed by national authorities and administrations, social security institutions and courts.

Even in cases where provisions of national law are in conflict with EU rules, the latter have priority.

#### EXAMPLE

According to the wording of the laws of some member states, entitlement to certain benefits is still conditional upon one having the nationality of the state concerned. This condition is waived by the 'direct effect' of the EU social security provisions on all persons to whom they apply.

In spite of this, problems sometimes arise because of a restrictive interpretation given to the coordination regulations, because they are not applied correctly, or because a particular benefit is considered to be outside their scope. In such cases, do not worry. You are entitled to have direct recourse to the relevant EU provisions before all competent authorities and courts if these provisions are applicable to your case.

## 7.6. Bringing a case to court: it's your right

There can be many reasons for bringing a case to court:

- ➔ Unfamiliarity on the part of local institutions with the relevant provisions of national or EU law and the respective case-law of both national courts and the Court of Justice of the European Union. Even for experts, it is almost impossible to know all the details of these laws and to always apply them correctly.
- ➔ A too narrow or a too broad interpretation of existing provisions by the institution concerned. These provisions are not always sufficiently clear and therefore often need to be interpreted by the person charged with implementing them.
- ➔ Gaps in legal texts and unforeseen situations which require a court decision.

It is your right to rely on the methods of appeal provided by national legislation in these or similar situations whenever you think a particular decision might be wholly or partially wrong.

### IMPORTANT

If the payment of your pension or other benefits is suspended for apparently unjustified reasons, do not be content with explanations given over the telephone, even from the competent institution. Always insist on receiving a written decision in order to be able to support a potential appeal.

Court procedures differ in each member state. Normally, a precondition for bringing a case to court is that all appeals before the social security institutions have been exhausted. If this has not been done, you risk losing the right to go to court. The same applies if you wait too long after the final decision was made by the institution competent to deal with your appeal.

Because of the complexity of the matter, and as hiring a lawyer to defend your interests in a court case can prove to be very expensive, regardless of whether your appeal succeeds or fails, we recommend that you first contact a legal adviser specialising in the subject. These specialists can, among other things, tell you exactly what to do and assess your chances of success.

## 7.7. The Court of Justice of the European Union

Since the provisions on social security coordination were adopted over 50 years ago, the Court of Justice of the European Union has delivered more than 600 judgments on their interpretation. Most of them are in favour of migrant workers and the members of their families.

This figure clearly illustrates the importance of the Court for the protection of European citizens. Its role is essential when doubts arise about the scope of the EU provisions, their application to individual cases and their interpretation with regard to national law.

It is therefore no exaggeration to state that, without the case-law of the Court of Justice, the protection offered by the EU provisions on social security coordination would be less efficient, less complete and less satisfactory. The Court of Justice is the legal guardian of European citizens exercising their right of movement and stay within Europe.

Given this role, you should know what to do to get the Court involved in the decision on your case.

- ➔ The Court of Justice does not directly rule on individual cases in the field of social security. Its judgments are limited to the interpretation of the relevant EU provisions in the light of a particular case. This interpretation is binding, however, on all parties involved (national courts, social security institutions, individual persons) and therefore essential for the final decision on your case.
- ➔ It follows that there is no possibility for you to bring your case directly to the Court of Justice. You must first go through the national courts, though it is not necessary to exhaust all the legal procedures and appeals available under national law.
- ➔ In cases of doubt, the national court dealing with your case may ask the Court of Justice how a specific provision of the EU rules on social security should be interpreted if the decision in your case depends on this interpretation. This is called a 'reference for a preliminary ruling'. Every national court concerned, even at first instance, may ask for such a preliminary ruling. If no further appeal is possible against the decision of the national court, it is obliged to apply for a preliminary ruling. You can always suggest that the judge in your case should consult the Court of Justice.
- ➔ Finally, there is also a possibility that the European Commission may refer a matter to the Court of Justice when it considers that provisions of national laws and regulations are incompatible with EU rules (the so-called 'infringement procedure'). To start this procedure, neither the exhaustion of all national remedies and appeals, nor the existence of a concrete individual case are required. However, the procedure is time-consuming, and, out of more than 600 judgments of the Court, only a few are the result of an infringement procedure. More than 90 % of the judgments have been delivered following requests for preliminary rulings presented by national courts.

In most cases, it will not even be necessary to present a particular case to the Court of Justice, because existing case-law is sufficiently clear to allow a decision to be taken on your case. It is therefore important that lawyers, legal advisers and national courts have a good knowledge of this case-law.



## 8. Further questions?

The aim of this guide is to give you a general idea of how European citizens exercising their right to freedom of movement are protected by the EU provisions on social security coordination. The information provided may help you determine whether your own case is covered by these provisions and what your rights and obligations might be.

As already mentioned, it is not possible to give clear advice on particular cases. You may, therefore, still have a number of questions after reading this guide. If so, we recommend that you contact the competent institutions and bodies at the local, regional or national level: as EU law only coordinates national social security systems, the assessment of your situation will always depend on the national legal provisions which apply in your case. National authorities are therefore often in a better position to provide you with advice and information as they are familiar both with EU rules and their internal set of laws.

If you are still not satisfied with the results of your inquiries, the EU provides several information and problem-solving tools.

- ➔ The Directorate-General for Employment and Social Affairs of the European Commission edits a website dedicated to EU social security rules (<http://ec.europa.eu/social-security-coordination/>).

Apart from the information on social security rights in situations which involve more than one member state, this website includes many frequently asked questions, access to legislation texts and to a number of relative explanatory notes.

- ➔ The Citizen Signpost Service (CSS) is a free advice service open to all citizens of the EU member states, plus the EEA (Norway, Iceland and Liechtenstein), available online (<http://ec.europa.eu/citizensrights/>). The CSS enables people to exercise and benefit from their rights and opportunities in the single market by providing them with practical, tailor-made replies in response to individual enquiries about free movement and citizens' rights within the EU and the EEA.

It also gives advice on the steps citizens can take to overcome problems which they may encounter in the exercise of their rights and, finally, 'signposts' them to a body (official or independent, at EU, national or local level) which can help them further.

- ➔ Europe Direct offers information on all subjects related to the EU and also directs enquirers to other sources of information or advice at European, national, regional and local level, CSS included (<http://ec.europa.eu/europedirect/>).

- ➔ Solvit is a network created by the European Commission and the member states (plus Norway, Liechtenstein and Iceland) with the aim of solving problems between national administrations that arise for individual citizens and businesses as a result of the misapplication of internal market rules. It helps to find out-of-court (informal) solutions to complaints regarding the incorrect application of internal market laws by public authorities (<http://ec.europa.eu/solvit/>).
- ➔ In cases where you consider that the national legislation of a particular member state or that the administrative practices applied by the institutions of that state conflict with the EU provisions on social security coordination, you can write a complaint to the European Commission. Where a member state fails to comply with EU law, the Commission has powers of its own (action for non-compliance) to bring the infringement to an end and, where necessary, it may refer the case to the Court of Justice of the European Union.

# Useful Internet links

## Information on social security coordination in Europe:

<http://ec.europa.eu/social-security-coordination>

<http://ec.europa.eu/social-security-directory>

<http://ehic.europa.eu>

<http://www.tress-network.org>

## Information on the free movement of workers:

<http://ec.europa.eu/free-movement-of-workers/>

## Information on national social security systems:

<http://www.ec.europa.eu/missoc>

## Problem-solving tools:

<http://ec.europa.eu/citizensrights>

<http://ec.europa.eu/europedirect>

<http://ec.europa.eu/solvit>



European Commission

## The EU provisions on social security — Your rights when moving within the European Union

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This guide is an update of the publication *The Community provisions on social security* (KE-64-04-022-EN-C, ISBN 92-894-8490-X). It provides updated information for mobile Europeans so they know about their social security rights when moving between EU Member States. The guide details coordinated EU social security provisions and explains one's rights as a worker, a tourist, a student, an unemployed or other non-active person, a pensioner or a third-country national.

This publication is available in printed format in all EU official languages.



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