

The Community provisions on social security

*Your rights when moving within
the European Union*

Employment & social affairs

Social security and social integration

European Commission

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Why this guide?

The purpose of this guide is to provide you with easily understandable information about your rights and obligations in the field of social security whenever you have to deal with the social security systems of two or more Member States of the European Union.

This could be the case, for example, when exercising an occupational activity abroad, taking up residence elsewhere in the European Union or simply during a temporary stay in another Member State.

The national social security schemes vary considerably from one country to another, and the Community provisions on social security, although constantly evolving, are not intended to harmonise them. The purpose of these provisions is merely to prevent you from losing part or all of your social security rights when you move from one Member State to another.

Your social security situation will not always remain the same when you move to another Member State. Consequently, we strongly recommend that before moving to another country in the European Union, 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.

Please note that this guide does not contain information on the social security schemes of the Member States. A detailed summary of these schemes can be found in a guide which was published by the Office for Official Publications of the European Communities in 1997. The title of this guide is *Your social security rights when moving within the European Union — A practical guide*. It can be obtained from the address mentioned at the end of this guide.

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1. Why do we need Community provisions on social security?

Without Community provisions on social security, millions of European citizens would be without sufficient protection.

Employed and self-employed persons, civil servants, pensioners, students, tourists and other categories of persons exercising their right to move and to stay freely within the European Union, are confronted with various issues and problems concerning their social security. Examples include:

- Who pays the hospital bill in the case of an accident or sickness during a stay abroad?
- What about the pension rights of a worker who was employed for several years in another country?
- Which country has to pay unemployment benefits to frontier workers?
- Which country is obliged to pay family benefits when children reside in another Member State?
- Where should social security contributions be paid, in what language should claims for benefits be submitted and what are the deadlines to be observed?

It is not certain that national social security legislation would always be able to provide a full or partial answer to these questions; many workers would run the risk of being insured twice or not at all, or they might lose the social security benefit rights they 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.

Only if it can be guaranteed that European citizens moving within the Union do not suffer disadvantages in the field of their social security will they be unafraid to exercise their right to move to and stay in another Member State.

These provisions have existed for more than 30 years. They have been adapted, improved and extended many times. Today, they are contained in Regulations (EEC) Nos 1408/71 and 574/72, most recently amended in 1999 (!). The regulations offer practical and satisfactory

(!) For an updated version of the regulations which takes account of all amendments up to the end of 1995, see OJ L 28, 30.1.1997.

solutions to most of the cross-border problems arising in the field of social security. As you will see, there are still some problems for which solutions have yet to be found. The European Commission will therefore continue to strive for further improvement and simplification of the Community provisions, in order to make them more comprehensible and to fill the remaining gaps.

Community social security provisions, just like national social security provisions, may at first sight seem difficult, technical and complex. However do not be discouraged: the basic principles are easy to understand, even for non-specialists.

The following explanations are intended to give you a general overview. For specific cases, you should consult the competent authorities or insurance institutions or the various organisations and associations concerned with the problems of workers moving within the European Union and the European Economic Area before taking decisions on your professional or private future on the basis of this guide.

2. Do these provisions apply to you?

At present, the Community 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 personally covered and protected by these provisions. Only if this is the case can you have recourse to them before national courts and institutions.

The following persons who are nationals of a Member State of the European Union or the European Economic Area are protected by the Community provisions:

- employed and self-employed persons who are or have been insured under the legislation of one of these States;
- civil servants ⁽²⁾;
- students ⁽³⁾;
- pensioners, even if they had already become pensioners before their country joined the European Union or the European Economic Area;
- members of the families and survivors of the abovementioned persons, regardless of their nationality. As a rule, the status of family member is defined in the legislation of the State of residence.

Those not protected by the Community provisions are all persons not belonging to one of the categories mentioned above, in particular:

- persons who are not or are no longer covered by a national general social security scheme, and are not or are no longer considered as members of the family of an employed or self-employed person or of a pensioner (non-active persons);
- third-country nationals, i.e. nationals of States not belonging to the European Union or the European Economic Area (for further information, see Section 6.8 below).

⁽²⁾ Council Regulation (EC) No 1606/98 of 29 June 1998 (OJ L 209, 25.7.1998).

⁽³⁾ Council Regulation (EC) No 307/99 of 8 February 1999 (OJ L 38, 12.2.1999).

3. In which countries can you rely on these provisions?

You can rely on the Community provisions on social security in all of the countries belonging to the European Union or to the European Economic Area. These are:

Austria	Greece	Netherlands
Belgium	Iceland	Norway
Denmark	Ireland	Portugal
Finland	Italy	Spain
France	Liechtenstein	Sweden
Germany	Luxembourg	United Kingdom

Note

Wherever the terms 'country', 'State' or 'Member State' are used in this guide, they always refer to the abovementioned countries. All other States are referred to as 'third countries'.

If you can produce evidence of insurance periods completed in a Member State or third country, the Community social security provisions do not apply to you with regard to this third country. However, in many cases there are bilateral agreements between a Member State and a third country or between the European Union and a third country which offer similar protection. For more detailed information, consult the social security institutions in your own country.

4. Which matters are covered?

The Community provisions on social security apply to all national legislation on:

- sickness and maternity;
- accidents at work;
- occupational diseases;
- invalidity benefits;
- old-age pensions;
- survivors' benefits;
- death grants;
- unemployment benefits;
- family benefits.

This means that you can always have recourse to the Community provisions when they are necessary for your entitlement to benefit.

The Community 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 one of the categories mentioned above;
- benefits granted to victims of war or its consequences;
- benefits under existing early retirement schemes, to which other Community provisions may apply.

A Council directive ⁽⁴⁾ has recently safeguarded benefits under occupational pension schemes.

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

⁽⁴⁾ Council Directive 98/49/EC of 29 June 1998 (OJ L 209, 25.7.1998).

Important

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

5. What is the content of the Community provisions on social security?

The Community provisions on social security do not replace the different national social security systems by a single European system. Such harmonisation would not be possible because of the wide divergence in standards of living among the 18 States belonging to the European Union and the European Economic Area. Moreover, even those States with similar standards of living have different social security systems which are the result of long-standing traditions deeply rooted in national culture and preferences.

There is no need to replace the national systems which are widely accepted and appreciated by the populations of the various Member States with one common system, when the necessary protection can be efficiently ensured by other means.

Rather than harmonising the national social security systems, the Community provisions on social security provide for simple coordination of these systems.

In other words, every Member State is free to decide who is to be insured under its legislation, which benefits are granted and under what conditions, and how these benefits are calculated and how many contributions should be paid. The Community 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 the European Union and the European Economic Area.

In simple terms, a person who has exercised the right to move within the Union 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 particular.

- In some Member States, social security 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 twice or not at all, the Community provisions on social security determine which national legislation applies to a migrant worker in each particular case.

- Under national legislation, entitlement to benefits is often conditional upon the completion of certain periods of insurance, employment or residence (depending on the country and the type of benefit: 6 months, 1 year, 5 years, 10 years, or up to 15 years in some cases).

For example:

What would happen to a migrant worker who becomes an invalid and who was first insured 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 insured for a total of 18 years.

The Community provisions provide for 'aggregation of periods', which means that periods of insurance, employment or residence completed under the legislation of one Member State are taken into consideration, where necessary, for entitlement to benefit under the legislation of another Member State.

- According to national law, benefits are very often paid only to persons residing within the territory of the State concerned; in other cases, the amount of benefit is reduced (e.g. 70 % instead of 100 %) if a person resides abroad. This would be particularly disadvantageous for frontier workers, seasonal workers and members of the families of migrant workers still residing in the State of origin, as well as for pensioners who have been employed in several Member States or who simply decide to move to another country after reaching pensionable age. The Community provisions on social security provide appropriate solutions to this problem for every category of benefit.
- Whenever the legislation of several countries is involved, the Community provisions on social security determine which country has to pay benefits.

Such is the role of the Community provisions on social security. They neither 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.

5.1. In which country are you insured?

Before you take up employment abroad, you should know in which country you will be insured. In other words, which Member State's social security legislation will apply to you? This is most important not only for the payment of social security contributions but also for your entitlement to benefits and the acquisition of future pension rights.

The Community provisions on social security provide detailed rules which will determine in every single case which country's national legislation is applicable. The basic principles are simple, and are explained below.

A. You are subject to the legislation of only one Member State at a time

This principle applies to all employed and self-employed persons covered by the Community provisions, regardless of the number of States where an occupational activity is carried out. Even persons who are employed in four or five Member States are subject to the legislation of a single Member State at a time.

There is only one small exception to this basic principle: a person who is simultaneously employed in one Member State and self-employed in another may — in exceptional cases — be insured in both of these States.

B. You are insured in the country where you exercise your occupational activity

This applies to employed and self-employed persons alike, even if they reside in the territory of another country or their companies or employers are situated in another Member State.

In other words, if you stop working in one Member State in order to carry out an occupational activity in another Member State, you will become subject to the legislation of the 'new' country of employment. Consequently, you will stop building up rights in the 'old' country and start acquiring them in the 'new' country. It does not matter whether or not you take up residence in the 'new' country of employment. Even as a frontier worker who remains a resident of the 'old' country of employment, you will be insured under the legislation of the country where you work.

C. Temporary exception: posting abroad

It may happen that the undertaking which employs you in one country will temporarily send you to work in another country ('posting'). If the period of work abroad does not exceed 12 months (and you are not sent to replace another employee whose period of posting has ended), the applicable legislation will not change. In other words, you will remain insured under the legislation of the 'old' country even whilst posted in a 'new' country. This solution is reasonable because it would not be appropriate to change the applicable legislation for such short periods of employment abroad.

Before going to the country to which you are posted, you should get a form E 101 which certifies that you remain covered by the legislation of the previous State. You or your employer may obtain the form from the institution of the Member State whose legislation remains applicable.

If the duration of the work to be done abroad exceeds 12 months because of unforeseen circumstances, you can apply for an extension of the posting period of up to 12 more months (in this case you must obtain form E 102).

The provisions on posting apply not only to employed persons but also to self-employed persons who perform work temporarily in another country.

D. Special categories of persons

Mariners: If you are a mariner and you work on board a vessel flying the flag of a Member State, you will be insured in that State, even if you live in another country.

Workers in international transport (excluding mariners): If you are employed by an undertaking operating international transport services by rail, road, air or inland waterway, you are insured in the Member State in which this undertaking is based (exceptions apply if you are employed in a branch office or agency of that undertaking in another Member State or if you are employed primarily in the country where you live).

Civil servants: As a civil servant (or a person treated as such), you are insured in the country of the administration which employs you.

Persons called up for service in the armed forces: You will be subject to the legislation of the country in whose armed forces you are serving. The same applies to persons called up for civilian service.

Persons employed by diplomatic missions or consular posts: As a rule, you will be insured in the State of employment (i.e. the State where the diplomatic mission or consular post is situated); however, if you are a national of the accrediting or sending State, you may opt to be insured in this State instead.

E. Special cases

In some exceptional cases, the abovementioned rules will not be sufficient to determine in which country an employed or self-employed person is insured.

Persons working regularly in more than one Member State: If you are regularly employed in more than one Member State, you are insured in the country where you reside if you carry out part of your work in that country. The same applies to self-employed persons who work in several Member States. If you do not reside in one of the States where you carry out your occupational activities, you will then be insured in the Member State in which your employer resides or in which the undertaking which employs you has its registered office (if you are an employed person). If you are self-employed, you will be insured in the State in which you do most of your work as a self-employed person.

Persons who are employed in one Member State and self-employed in another: As a rule, you are insured in the country where you are working as an employed person. However, as mentioned above, in exceptional cases you may be insured in both States; you should therefore contact the social security institutions of the Member States in which you work.

5.2. What are your rights and obligations in the country in which you are insured?

As a rule, the social security legislation of the country in which you are insured entitles you to have the same rights and obligations as nationals of that country.

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.

You may always rely on the principle of equality of treatment.

As the Court of Justice of the European Communities has decided, this 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.

For example:

A Member State makes entitlement to a benefit subject to residence in that State for a certain length of time, and this condition is applied to all workers. Clearly, this puts nationals of this State in a better position than migrant workers.

In many cases, the principle of equal treatment is not sufficient to protect migrant workers if they or the members of their families reside outside the State under whose legislation they are insured, or if the worker concerned has a 'broken' insurance record completed under the legislation of two or more States. There are special provisions for cases such as these, which are dealt with in Sections 5.3 to 5.9 below.

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

Finally, you should not forget your obligations under the legislation of the State in which you are insured. 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.

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

The Community provisions on social security contain a detailed chapter on sickness and maternity benefits with special rules for workers, unemployed 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 explanations are intended to give you an overview of your rights to these benefits as well as practical tips on how to obtain them.

A. Conditions imposed — 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 countries (aggregation). This is a guarantee that you will not lose your sickness insurance coverage when changing employment and moving to another State.

For example:

In some countries, you become entitled to sickness benefits only after six months of insurance. The Community provisions ensure that a worker who had to interrupt his previous insurance when moving to that State will be entitled to sickness benefits from the beginning of his insurance.

Sickness and maternity benefits are different in each of the States to which the Community provisions on social security apply. However, there are two major categories of benefits in all countries belonging to the European Union or the European Economic Area: benefits in cash and benefits in kind.

B. Sickness benefits in cash

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

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

This applies to all categories of persons and all situations: frontier workers, seasonal workers, posted workers, pensioners or family members. The amount and duration of benefits depend entirely on the legislation of the State where you are insured, and they will normally be paid directly to you by the institution with which you are insured.

C. Sickness benefits in kind

These benefits comprise medical and dental care, medicines and hospitalisation, as well as direct payments intended to reimburse the costs of these.

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

The reason for this rule is easy to understand: the doctors and institutions concerned cannot possibly know the details of the legislation of 18 different countries; therefore, they always apply the legislation of their own country, even if the person concerned is insured in another country.

In this guide, we often use the terms 'residence' and 'stay'. Before continuing, we should explain the difference between them: the place of 'residence' is where a person normally lives; the place of 'stay' is where a person is temporarily.

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 persons covered by the Community provisions on social security can expect to receive these benefits in all the countries concerned without any restrictions or limitations. It is therefore important to know the concrete conditions applying to the different situations and categories of persons for the entitlement to sickness benefits in kind.

D. Residence in the country in which you are insured

If you reside in the country in which you are insured, it goes without saying that you are entitled to all benefits in kind provided under the legislation of that country. 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 country.

E. Residence outside the country where you are insured

If you reside in a different country from the one in which you are insured, you are entitled to all benefits in kind provided under the legislation of the country 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 frontier worker, remember that you also have rights in the country in which you work (see page 33).

This applies to all categories of persons covered by the Community provisions on social security (employed and self-employed persons, civil servants, unemployed persons, pensioners and members of the families of these persons), regardless of their country of residence. 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 country where you are insured

If you are staying temporarily in a different country from the one in which you are insured, you will be entitled to all immediately necessary benefits in kind. It does not matter if you are abroad as a tourist, or whether your journey is for work-related or private reasons.

'Immediately necessary benefits' means all urgent medical treatment which is necessary with regard to your state of health (accident, sudden illness, etc.).

All pensioners, workers posted abroad, unemployed persons and students are in a 'slightly' better position: they are entitled to all benefits in kind which become necessary during a temporary stay abroad.

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). But be careful: if you go abroad specifically to obtain treatment, special conditions apply.

G. Travelling to another country for treatment

If you go to another country in order to obtain treatment there, the costs will be covered by your sickness insurance institution only if you received permission from it beforehand. Normally, it is up to the sickness insurance institution to decide whether or not it will give approval. However, in cases where the treatment in question is among the benefits provided for by the legislation of your country but not available within the time normally necessary with regard to your current state of health, the required permission may not be refused. The competent institution must then issue you with a form E 112. In this case, you are entitled to the benefits available in the host country. In some cases you can also apply for reimbursement in your country of origin.

H. Practical tips

Residence outside the country where you are insured

If you reside in a different country from the one in which you are insured, you should register with the sickness insurance institution of your place of residence. You will need the following forms which are issued by the sickness insurance institution with which you are insured:

- form E 106 for employed or self-employed persons and the members of their families living with them in the same country;
- form E 109 for the members of the family living in a different country from the one in which the employed or self-employed person concerned lives;
- form E 121 for pensioners and the members of their family living with them in the same country;
- form E 122 for members of the family not living in the same country as the pensioner concerned ⁽⁵⁾;
- form E 127 for each pensioner and each member of his or her family.

In some cases, the form is sent directly to the sickness insurance institution of your place of residence; please contact the institution concerned for further information.

Stay outside the country where you are insured

Before you leave the country where you are insured, you should obtain the forms needed to receive immediately necessary treatment. Otherwise, you will have to pay for the treatment and will be reimbursed only after you return to the country where you are insured. You need the following forms:

- form E 111 for employed and self-employed persons (also for posted workers), pensioners and the members of their family;
- form E 110 or E 111 for persons employed in international transport and persons who usually work in more than one State;
- form E 119 for unemployed persons looking for work in another country;
- form E 128 for posted workers and self-employed persons, for members of their families and for students temporarily staying in another Member State.

Note:

The explanations given in this section also apply to maternity benefits in cash or in kind.

5.4. Accidents at work and occupational diseases

The Community provisions on benefits in respect of accidents at work or occupational diseases are relatively simple and easy to understand. In many ways, they can be compared with the relevant provisions on sickness benefits.

⁽⁵⁾ Valid only until 31.12.2001 and only in regard to relations with France.

A. Benefits in kind

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

If you reside in a different country from the one in which you are insured, the institution in the State of residence will provide you with benefits in kind according to the legislation of that country and will be reimbursed by the competent institution of the country in which you are insured for all benefits it provides to you. As in the case of sickness benefits, this solution is justified because the doctors in the country where you reside cannot possibly know the details of each of the 18 different legislations under which you could be insured.

B. Cash benefits

These benefits are always paid according to the legislation of the State in which you were insured at the moment 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 that State; it can, however, agree with the institutions of the State of residence or stay that the cash benefit will be paid out by them (this in no way changes the amount of the benefit).

If the calculation of the cash benefits is based on average earnings, only earnings which have been paid since you became insured under the legislation of the State which pays your benefit will be taken into account. The same applies if the calculation is based on standard earnings.

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

C. Accidents while travelling

If you suffer an accident while travelling outside the territory of the State in which you are insured, you are still covered against the risk of accident.

5.5. Invalidity

The invalidity schemes of the 18 countries belonging to the European Union and to the European Economic Area differ considerably. Nevertheless, two major types can be distinguished.

- In many countries, invalidity pensions are calculated in a similar way to old-age pensions, i.e. the amount of your 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 not normally required to be actually insured at the time the invalidity occurs. In other words, a person who had already stopped working several years before he or she became an invalid will nevertheless be entitled to an invalidity pension based on previous periods of insurance.

- In other countries, the amount of invalidity pension is independent of the length of 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 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.

This divergence between national invalidity insurance schemes makes European coordination in this field difficult and not always easy to understand. But as for other categories of benefits, the aim of the Community provisions is simple: on becoming an invalid, a migrant worker should not find himself in a position inferior to that of a person who has always lived and worked in one single country.

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

A. General rules

Aggregation: The institution of the State where you claim a pension takes 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 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 the European Union or in the European Economic Area.

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 situated in your place of residence or stay. You may, however, be required to return for such an examination to the State paying your pension, if this is compatible with your current state of health.

B. Persons who have been insured in one single country

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

C. Persons who have been insured in more than one country

If you have been insured in several countries before becoming an invalid, there are several different possibilities.

You were exclusively insured in countries where the amount of 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. For details of the method of calculation, see Section 5.6 below.

You were insured only in countries where the amount of 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 insured in this country for only 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:

- if you were first insured in a country where invalidity pensions are relatively 'low' and then in a country with 'high' invalidity pensions, you will get the full amount of the 'high' pension, even if you were insured 10 times longer in the first State;

- if you were first insured in a country where invalidity pensions are 'high' and then in a country with 'low' invalidity pensions, you will get only the 'low' pension from the State where you were insured when the invalidity occurred.

This truly reflects the philosophy of schemes covering risks where the amount of pension does not depend on the length of insurance periods; the important factor is the actual insurance at the time you become an invalid.

You were first insured in a country where the amount of invalidity pension depends on the length of insurance periods and then in a country where it does not

You will receive two pensions, one from the first State corresponding to the insurance periods completed under its legislation, and 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 get only a reduced pension because that 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; however, this impression is wrong. If you had always been insured in one of the two States concerned (it does not matter which), you could never have received a higher pension than that to which you are now entitled. You are neither worse off nor better off than a person who has worked his or her entire career in one single country.

You were first insured in a country where the amount of pension is independent of the length of insurance periods and then in a country where the pension does depend on these periods

You will get two separate pensions, each corresponding to the length of your insurance periods in the respective countries.

D. Decisions on the degree of invalidity: a problem area still unresolved

The determination of the degree of invalidity is a potential problem for persons who have been insured in more than one country. These decisions are made by the national institutions of each State where a person was insured, according to its own national legislation. Only in a few special cases is the decision of one institution binding on the institutions of all the other States involved.

The wide discrepancies among national criteria for determining the degree of invalidity can have potentially severe consequences, as in most cases the amount of pension depends on the degree of invalidity.

For example:

A person was insured for 20 years in State A, then five years in State B and finally two years in State C. In all three of these States, the amount of invalidity pension depends on the length of insurance periods. He stops working in State C because his degree of invalidity was assessed at 100 %. This entitles him, however, to only a small pension from State C, because he was insured there for only two years. He will also get a small pension from State B where he was insured for five years and where his degree of invalidity was assessed at 70 %. In State A, where he was insured for most of his professional career (20 years), he will get no pension, as under the legislation of this State he is not considered to be an invalid at all.

In this example, the person concerned will be in a much better position if the amount of invalidity pension in State C is independent of the length of insurance periods; he will then get a full pension from State C, so that it does not matter whether or not he is also considered an invalid under the legislation of States A and B.

The situations described above are a result of the fact that the national social security systems are not harmonised, but only coordinated by the Community provisions. Nevertheless, it would be in the interest of all migrant workers if some progress could be made in the mutual recognition of decisions on the degree of invalidity.

5.6. Who pays my old-age pension?

Old-age pensions are among the most important social security benefits. It is therefore natural that persons intending to take up occupational activities abroad want to have a clear idea about the consequences for their future pension rights before taking a final decision. In particular, they want to know:

- What will happen to the contributions paid so far?
- Which State will pay their pension?
- Will it be paid throughout Europe without reduction or suspension?

Only if they can be reassured that the Community provisions on social security provide satisfactory answers to these questions will they be ready to exercise their right to freedom of movement across Europe.

The following principles apply to a person who stops working in one country and continues his activities in another.

- In every country where a person was insured, his insurance record is preserved until he reaches pensionable age; in other words, contribu-

tions which have been paid are neither transferred to another country nor paid out to the person if he is no longer insured in that country.

- Every country where a person was insured for at least one year will have to pay an old-age pension when the person concerned reaches pensionable age; for example, if you have worked in three countries, you will get three separate old-age pensions once you reach pensionable age.
- This pension will be calculated according to your insurance record in that country. If you were insured there for a long period of time, you will get a relatively 'high' pension. If not, your pension will be relatively 'low'.

But what happens if you are insured in a country for less than a year? Will the contributions you have paid there be lost?

For example:

You were insured in Belgium for 10 months, in Germany for 9 months and in France for 15 years, then finished your working life in Italy, where you paid contributions for 7 years.

Don't worry. Your months of insurance in Belgium and Germany will not be lost. Italy, your final country of employment, will take over the 10 months from Belgium and the 9 months from Germany.

These solutions guarantee that nobody will be disadvantaged by having worked in several countries. No contributions will be lost, acquired rights are protected, and every country will pay a pension corresponding to the insurance periods completed there. The result is not just in the interest of migrant workers but also in the interest of the Member States, in that every country pays neither more nor less than the pension which has been 'earned' by the contributions of the worker. The following examples show how pensions are calculated and paid.

A. General rules

Aggregation: If the period during which you have been insured in a country is not long enough to qualify for a pension in this country, account will be taken of any periods of insurance which you completed in other countries.

Residence or stay abroad: Your old-age pension will be paid to you regardless of where you stay or reside within the European Union or the European Economic Area without any reduction, modification or suspension. This applies not only to former 'migrant workers' but to all pensioners residing in another State.

Important

This principle does not apply to certain special benefits which are not based on contributions. In most cases, they are means-tested (i.e. paid to persons whose pensions are below a certain level). These benefits are paid to you as long as you reside in the State concerned. For example, guaranteed income for the elderly in Belgium, the supplementary allowance from the National Solidarity Fund in France, and non-contributory old-age pensions in Ireland and Portugal.

In other words, payment of these benefits will be suspended if you transfer your residence to another State, which will then grant you the corresponding benefit, even if you have never worked there.

For example:

You live in Portugal, where you receive a non-contributory old-age pension. At the age of 65 you decide to move to France. What happens?

Portugal will suspend payment of your non-contributory old-age pension, but France must grant you the supplementary allowance from the National Solidarity Fund.

B. You have been insured in one single country

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

C. You have been insured in more than one country

You will get a pension from every State where you were insured for at least one year. These pensions will correspond to the insurance periods completed in each of the States concerned.

For example:

You were insured:

- for 10 years in Member State A,
- for 25 years in Member State B, and
- for 5 years in Member State C.

This means that you were insured for 40 years in total before you reached pensionable age.

Member State A will calculate the amount of pension you would be entitled to after 40 years of insurance in that State. It will then pay you the amount corresponding to your actual periods of insurance, i.e. 10/40 (or 1/4) of this amount.

Similarly, Member State B will pay you 25/40 (or 5/8) of the amount you would be entitled to in that State after 40 years of insurance.

Finally, Member State C will pay you 5/40 (or 1/8) of the amount you would have been entitled to in that State after 40 years of insurance.

D. Practical problems

Pensionable age: As has already been mentioned, the social security systems of the Member States are not harmonised. It is therefore not surprising that pensionable age varies according to the different countries. For example, in some States, you get your pension at 60, in others at 65 and in some at 67.

For example:

A person was first insured for 35 years in State A where the pensionable age is 67 and then for 10 years in State B where the pensionable age is 60. At the age of 60, this person will have to stop working in State B and will be entitled to a small pension from this State, corresponding to the length of insurance periods completed in that State (10/45). He has then to wait seven more years before he becomes entitled to the relatively high pension from State A (35/45). In some cases, the pension drawn from State B is so low that the person concerned has to rely on social assistance.

In order to avoid this undesirable situation, you should ask for information on the pensionable age in the country where you wish to continue your occupational activities before moving there.

Exchange rates: If you receive a pension from another country, it normally has to be converted into the currency of your country of residence.

In the past, conversion was done at exchange rates which often fluctuated. This could work out to your advantage, but also to your disadvantage depending on the currency concerned. With the euro, exchange rates are permanently fixed four times a year, thus doing away with this awkward situation.

However, the problem of fluctuations may still affect pensions from Denmark, Greece, Iceland, Liechtenstein, Norway, Sweden, and the United Kingdom.

Postal and bank charges: If your pension is paid to you from another country, postal and bank charges may be deducted. In exceptional cases, where the amount of your pension is very small (e.g. a pension corre-

sponding to one year of insurance abroad), the deduction of these charges may mean a considerable reduction in your pension.

5.7. Survivors' benefits and death grants

A. Pensions for widows and widowers

In general, the same rules apply to pensions for surviving spouses as to invalidity and old-age pensions (see Section 5.6 above).

- Pensions have to be paid without any reduction, modification or suspension regardless of where the surviving spouse resides in the European Union or the European Economic Area.
- If the deceased person was still an employed or self-employed person, the pension for the surviving spouse will be calculated according to the same principles as would have applied to the insured person himself.
- If the deceased person was already a pensioner, the pension for the surviving spouse will be calculated according to the national legislation concerned. If the pensioner was drawing pensions under the legislation of two or more countries, the spouse will also become entitled to widows' or widowers' pensions under each (which normally will be lower than that of the old-age pension of the deceased person).

Note that under the legislation of some Member States with residence-based pension insurance (e.g. the Netherlands), there are no survivors' pensions provided for persons who have reached pensionable age, who are presumed to have built up their own residence-based pensions during their residence in the country concerned.

B. Benefits for orphans

If you are an orphan of a person who was insured under the legislation of a single State, you will be entitled to orphan's benefits according to the legislation of that State, regardless of where you reside within the European Union or the European Economic Area.

If you are an orphan of a person who was insured under the legislation of two or more Member States, you will, as a rule, be entitled to pro-rata benefits allocated according to the legislation of these Member States.

As the procedure for determining the amount of benefit to which you are entitled is rather complicated, we strongly recommend you to con-

tact the national social security institutions for whatever information and assistance you may need.

C. Death grants

As for all other categories of benefit, the national institutions of a Member State have to take account of periods of insurance or residence completed under the legislation of any other Member State, where this is necessary for entitlement to death grants.

It goes without saying that death grants will be paid by the competent institution of the State in which the deceased person was insured, regardless of the Member State in which the entitled persons reside.

5.8. What to do in the event of unemployment?

In an era of high unemployment rates, the Community provisions on unemployment insurance become particularly important. Compared with the provisions for other categories of benefit, they are relatively restrictive and less generous. You are therefore strongly advised to read the following explanations very carefully; they could help you to avoid problems and safeguard against losing your entitlement to unemployment benefits.

A. Basic rules

Conditions imposed — Aggregation: If you become unemployed, the institution of the country in which you claim unemployment benefit 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 unemployment benefit in the State where you submit your claim.

Important

In contrast to other benefits, this applies only if you completed such periods under the legislation of the country in which the benefits are claimed immediately before becoming unemployed. In other words, it is not possible to claim unemployment benefit in a country where you were not insured immediately before you became unemployed, except in the case of frontier workers, to whom special rules apply.

If you are insured in the country where you reside (because you work there), you are entitled to unemployment benefits according to its legislation under the same conditions as the nationals of this State.

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 country which pays your benefit.

If the calculation of your unemployment benefit is based on the amount of your previous wage or salary, only wages or salaries which you received in the State where you were most recently employed are taken into account (provided you were employed there for at least four weeks; otherwise, the calculation will be based on the normal wage or salary corresponding to the particular job in question).

B. Special rules for frontier workers

If you are a frontier worker (see Section 6.1 below) and partially unemployed or working short-term, you will receive the benefits which are provided under the legislation of the State in which you are insured as if you resided there.

If, however, you are wholly unemployed, you will receive benefits only under the legislation of the country where you reside as though you had been insured in this country during your last employment. In other words, although you have not paid any contribution to the institution of the country of residence, you have to register with the employment services of this country and will receive your benefit there.

This rule was drawn up because it was assumed that frontier workers would maintain particularly close ties with their country of residence and would be most likely to find a new job there. Therefore, if you can prove that you have in fact closer ties with the country where you were last employed (e.g. if you transferred your residence into another Member State but remained working in your State of origin), you can also apply for unemployment benefits in the country of your last employment.

If, according to the legislation of the country where you reside, the calculation of the amount of your unemployment benefit is based on previous wages or salaries, the wage or salary you received in the country where you were employed as a frontier worker will be taken into account.

C. Persons looking for work in another country

It might happen that you want to look for work in a different country from the one in which you were last employed. The question then is:

- whether,
- under which conditions, and
- for how long

you will retain the right to unemployment benefits.

Unlike other benefits (old-age, invalidity, survivors' pensions, for example), unemployment benefits are not paid regardless of the country in which you reside or stay. They are paid only whilst you are looking for work in another State and under restrictive conditions and for a limited period of time.

- You must have remained available to the unemployment services of the State which pays your unemployment benefit for at least four weeks after becoming unemployed. This period can be shortened, however, by the unemployment service concerned.

The underlying idea is that you should first exhaust all possibilities of finding a new job there before extending your search for employment to other countries.

- Within seven days after departing, you have to register with the unemployment services of the country in which you are looking for work.
- You have to comply with the control procedures organised by the unemployment services of that country.
- You will then retain your unemployment benefit for a maximum period of three months.
- If you are not able to find a new job within this period, you will continue to receive unemployment benefits in the country where you were last employed only if you return before the end of the three-month period. If you return later than this, without the explicit permission of the employment services of that country, you will lose all entitlement to benefits.

- You are entitled to the three-month payment only once between two periods of employment.

Important

Many unemployed persons lose their entitlement to benefits because of unfamiliarity with the conditions set out above. They leave the country 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 three-month period.

You should, therefore, contact the employment services of the State which pays your unemployment benefit before leaving the country. This institution will provide you with form E 303 which you must present to the services of the country where you are looking for work in order to get your benefit paid within a reasonable time.

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 country to another. It is therefore important for you to know from which country you can get these benefits and what the conditions to entitlement are.

Just as in the case of entitlement to other benefits, the State which has to pay your family benefits is obliged to take into account periods of insurance or employment completed under the legislation of any other Member State, if this is necessary to satisfy conditions governing waiting periods for entitlement to the benefit concerned.

If the members of your family reside in the same country under whose legislation you are insured as an employed or self-employed person, this country 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.

If the members of your family do not reside in the country under whose legislation you are insured, the following applies:

If, in such a case, entitlement to family benefits exists under the legislation of several countries, your family will get, as a rule, the highest amount of benefit which is provided under 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 country with the most favourable legislation.

If the basic principle is clear, its application in practice depends on the circumstances of each particular case. Do not hesitate to contact your institution for more details.

Unemployed persons drawing unemployment benefit 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.

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

6. In a nutshell — your rights as a:

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 European provisions on social security in the same way as all the other categories of persons to whom these provisions apply. For example:

- you are insured in the country where you work;
- you are entitled to family benefits even for members of your family who reside in another country;
- you will receive a separate pension from each country 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 if you are a frontier worker; you may obtain these benefits either in the country where you reside or in the country where you work. In many cases, it will be more practical for you to receive sickness benefits in kind in the country where you work and where you spend most of your time. When you become a pensioner, you will, however, lose the status of 'frontier worker' and, as a result, no longer be entitled to sickness benefits in kind in the country where you were previously employed.

Important

Members of the families of frontier workers enjoy the same right of option in a few countries only. Please contact your sickness insurance institution for more information.

- As regards unemployment benefits, you are entitled to benefits — if you are wholly unemployed — only in the country where you reside, unless you can prove that you have closer ties with the country where you were last employed (calculation of the amount of benefit is dealt with in Section 5.8 above).

6.2. Seasonal worker

A seasonal worker is a person who, for a period which may on no account exceed eight months, does work of a seasonal nature in a country other than the one in which he resides.

As a seasonal worker, you derive the same rights and obligations from the Community provisions on social security as do all the other categories of workers. In particular, you are insured in the country where you are employed during the season concerned. There are special rules only with regard to unemployment benefits.

- As a seasonal worker who is wholly unemployed, you have a right of option: you can get unemployment benefits either in the country where you were a seasonal worker or in the country where you reside.
- As a seasonal worker who is wholly unemployed and who receives unemployment benefits in the country where you were a seasonal worker, you can — under the same conditions as other unemployed persons (see Section 5.8 above) — go to another country in order to seek employment. In such cases, the three-month period for the retention of the right to benefit is limited, however, to the period remaining until the end of the season for which you were engaged.

6.3. Posted worker

A posted worker is a person who is normally employed in one country but is sent temporarily to another country to work there for his undertaking. The maximum period for posting is 12 months; in exceptional cases it can be extended up to 24 months.

As a posted worker, you remain insured in the country where you are normally employed, which means that you continue paying contributions to the social security system of that country.

You are entitled to all health-care benefits in kind in the country to which you have been sent, regardless of whether or not you transferred your residence to that country.

You are entitled to family benefits from the country in which you remain insured, regardless of the country in which the members of your family reside.

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

Before leaving the country where you are normally employed, you should apply for forms E 101 and E 106, which prove that you have been posted and are entitled to sickness benefits in kind.

6.4. Pensioner

As a pensioner (i.e. receiving old-age, invalidity or survivors' pension), you are offered considerable protection by the Community provisions on social security.

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 country during your working life, you can rely on the Community provisions when you are a pensioner residing or staying in another country.

In a nutshell, these are your rights.

A. Pensions

You are entitled to a separate pension from every country 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 necessary, insurance periods completed in different countries will be aggregated.

Your pension will be paid wherever you reside within the European Union or the European Economic Area without any reduction, modification or suspension. This is not the case, however, for some pension supplements or means-tested social pensions (see Section 5.6 above).

B. Sickness benefits

You are entitled to all sickness benefits in kind in the country where you reside, even if you were never insured in that country. However, if you resided in one of the countries from which you draw a pension, you must be entitled to sickness benefits under the legislation of that country and according to the conditions applicable there.

During a **temporary stay** in another country, you are entitled to all the benefits in kind which become necessary during that stay.

C. Family benefits

You are entitled to family benefits for the members of your family, regardless of where you or the members of your family reside within the European Union or the European Economic Area. These benefits are paid by the institution of the country from which you draw your pension. If you are entitled to several pensions from different countries, it may be the case that you receive the highest amount of benefit provided under the legislation of one of these States (see also Section 5.9 above).

6.5. Student

An increasing number of young people choose to pursue part or all of their studies in another country. Among the problems they often face (besides language problems, recognition of diplomas, accommodation, etc.), access to health-care and sickness benefits is certainly not the least important. The Community provisions on social security offer practical solutions, especially since they have now been extended — albeit partially — to cover this category of persons.

- Students who reside in the country of study, are insured in their country of origin, and are pursuing their studies are entitled to all sickness benefits in kind provided under the legislation of the country of study. For this purpose, they need form E 109, which will be issued at their request by the institution with which they or their parents are insured.
- Students staying temporarily in the State where they pursue their studies are entitled to all health-care benefits in kind. A new form has been introduced for them, form E 128, which gives students more extensive health-care cover than that provided by form E 111.

6.6. Tourist

Every year, millions of tourists travel across Europe to spend their holidays abroad. In the case of sudden sickness or accident, they need access to health-care and sickness benefits in the country where they are staying.

If you are covered by the Community provisions on social security (see Chapter 2 above), you are entitled to all the immediately necessary health-care benefits in the country of stay under the same conditions as nationals of that country.

Please ask for form E 111 before going on holiday. In the event of accident or sickness, you should then present the form to the institution of the place of stay.

If you forget to take form E 111 with you, you will normally have to pay for health-care benefits in the country of stay. However, you are entitled to present the bill afterwards to your sickness insurance institution and you will be reimbursed in accordance with the refund rates of the country where you were treated.

6.7. Non-active person

As pointed out in Chapter 2 above, persons who are neither employed nor self-employed, are not drawing pensions as former workers, and are not covered by a general insurance scheme for workers — so-called ‘non-active persons’ — are as such not yet covered by the Community provisions on social security.

In some cases, they enjoy protection as members of the family of an employed or self-employed person or of a pensioner. In all other cases, they cannot rely on the Community provisions when staying or residing abroad.

However, this does not necessarily mean that they are without any protection at all. In some cases, their own private insurance may offer some protection even in foreign countries. Do not hesitate to contact your insurance institution for more information.

6.8. Third-country national

As has already been mentioned, the protection offered by the Community provisions on social security is restricted to nationals of the Member States (see Chapter 2 above).

So-called 'third-country nationals' (i.e. nationals of countries not belonging to the European Union or the European Economic Area) are, as a rule, not covered by these provisions.

Important exception

Members of the family of a person to whom the Community provisions apply are always covered, regardless of their nationality. Refugees and Stateless persons are also covered.

In many cases, there are bilateral social security agreements between Member States and third countries. There are also a number of social security provisions in some of the agreements concluded between the Community and third countries (e.g. Algeria, Hungary, Morocco, Poland, Romania, Tunisia and Turkey).

If you are a third-country national (and you are not covered by the Community provisions as a member of the family of a person to whom the Community provisions apply), you should, therefore, in any case contact the institutions of your place of residence or stay to get more information on your particular case.

7. How do the Community provisions work in practice?

Chapters 1 to 6 deal with the purpose, principles and content of the Community provisions on social security. This chapter provides you with some general information on how the provisions work in practice to help you claim your rights under these provisions.

7.1. Community rules have priority: do not worry about conflicting national laws and regulations

The Community provisions on social security are among the best recognised rules within the European 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 Community rules, the latter have priority.

For example:

According to the wording of the laws of some Member States, entitlement to certain benefits is still conditional upon your having the nationality of the State concerned; this condition is waived by the 'direct effect' of the Community 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 Community 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 Community provisions before all competent authorities and courts if these provisions are applicable to your case.

7.2. Forms and formalities

Forms and official procedures are often felt to be cumbersome and annoying. However, they are indispensable when dealing with foreign social security institutions, and can help you to obtain your rights within a reasonable space of time.

At national level, in your own country, you would also have to fill in forms and observe certain procedures when claiming social security benefits. When foreign institutions are involved, such formalities are particularly important. The foreign institution has to know, for example, in which country you are insured, whether or not you satisfy the conditions for entitlement to benefits under the legislation of that country, and which institution will reimburse it when it provides benefits to you or to the members of your family.

It would be extremely time-consuming and complicated if in every particular case the foreign institution concerned had to:

- find out the name and address of the competent institution in another country;
- draft a request for information;
- send it to the competent institution; and then
- wait for the answer before being able to take any decision on the case.

Such lengthy and cumbersome procedures can be avoided by using special forms destined to ensure rapid and efficient cross-border communication between the social security institutions to which the Community provisions apply. These forms contain all the information which is necessary to determine your benefits and to prove your entitlement. Before leaving your country, you should therefore always ask the competent institutions to provide you with the appropriate forms (e.g. as a tourist, you should have a form E 111 which entitles you to health-care benefits in the event of accident or sudden illness). When arriving in another country, the institutions of the place of residence or stay, to which you present the forms, will then be able to deal with your case without delay.

These are the most important forms:

- series E 100 for posted workers and entitlement to sickness and maternity benefits;
- series E 200 for the calculation and payment of pensions;
- series E 300 for entitlement to unemployment benefits;
- series E 400 for entitlement to family benefits.

The different forms are not only indispensable to cooperation between the social insurance institutions involved; in addition, there is often useful information on the back (e.g. names and addresses of institutions in another Member State). Of course, if you forget to ask for the appropriate forms before leaving your country, this will not prevent you from

claiming benefits; the institution of the other Member State will then obtain the necessary forms directly from the competent institution of your own country. Please note, however, that this might cause a considerably delay in the decision on your claim.

Sometimes, persons who are dealing with the social security systems of several Member States (e.g. posted workers, frontier workers, seasonal workers) will not be able to submit a claim within a specified period to an authority, institution or tribunal of a certain Member State. This could lead to partial or total loss of entitlement to benefit under the national laws of that State. In order to avoid such undesirable consequences, the Community provisions on social security ensure that your claim will nevertheless be admissible if you submit it within the same period 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.

Persons who were employed or self-employed in several Member States are confronted with the problem of identifying the country to whose institution they should submit their applications for invalidity or old-age pensions. As a rule, they can always submit it to the institution of the Member State where they reside, even if they were never insured in this State. 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 the interest of the person concerned because normally it is the easiest and most convenient way to submit a claim in the 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 the person concerned was last insured, if he or she was not insured in the State of residence.

The abovementioned forms and procedures are intended to facilitate cross-border dealings between social security institutions of several Member States. They can help you to get benefits within a reasonable time and can help you to respect deadlines for the submission of applications. Please note, however, that such deadlines and other formalities which have to be observed when claiming benefits depend on the provisions of national law and will therefore differ according to the country concerned. Do not hesitate, therefore, to ask the appropriate 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.

For this reason, the Community rules on social security contain explicit provisions which can help you avoid and overcome language problems in your dealings with foreign institutions.

The different forms you will get when moving to another State (see Section 7.2 above) should be available in all official languages of the European Union and the European Economic Area:

Danish	German	Norwegian
Dutch	Greek	Portuguese
English	Icelandic	Spanish
Finnish	Italian	Swedish
French		

Whenever you present a form to a foreign institution, it can compare it with a model in its own language so that there are no language problems in understanding the contents of the form. Therefore, do not worry about presenting your forms to foreign institutions; they will know what to do with them.

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 13 official languages mentioned above) 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.

With regard to the particularly important decisions on claims for pensions, you are entitled to a summarised statement in your own language on all decisions made by foreign institutions. The full decision will be appended to this statement.

Language problems as such are in no way an insurmountable obstacle when claiming your social security rights while moving within the European Union or the European Economic Area. Nevertheless, being able to speak a foreign language will always be an advantage and a personal enrichment.

7.4. The social security institutions of the Member States: one of your points of contact for any problems

When confronted by foreign social security laws and regulations, difficult forms 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.

The addresses of the relevant institutions can be found on the back of the appropriate forms described in Section 7.2 above.

If you have doubts as to whether any information given by a national institution is correct and in accordance with the Community provisions on social security, 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.

7.5. 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 Community law and the respective case-law of both national courts and the Court of Justice of the European Communities. Even for experts, it is almost impossible to know all the details of these laws and always to apply them correctly;
- a too narrow or a too extensive 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.

Caution

When you receive a decision, a request for additional information or any correspondence from a social security institution in any Member State concerning an application you have submitted, always keep the envelope it came in. Why?

For example:

You have applied for a pension. The competent institution rejects your application, and the date on the decision is, for example, 1 February. But for unknown reasons you receive it on 1 September. You wish to appeal against the decision, but should have done so within three months. If you have thrown away the envelope, the date applicable remains 1 February. But if you keep it, you will have until 30 November to appeal.

It may happen that, for apparently unjustified reasons, payment of your pension is suspended. Do not be content with explanations offered by telephone, even from the competent institution. Always insist on a decision in writing. Otherwise you would not be able to take the matter to court.

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 taken 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 very expensive, regardless of whether your appeal succeeds or fails, we recommend that you first contact — if possible — legal advisers specialising in the subject often employed by trade unions or migrant workers' organisations. These specialists can, among other things, tell you exactly what to do and assess your chances of success.

7.6. Court of Justice of the European Communities: legal guardian of European citizens

Since the Community provisions on social security were adopted, the Court of Justice has delivered more than 400 judgments on their interpretation, most of them in favour of migrant workers and the members of their families. This figure clearly demonstrates the importance of the Court for the protection of European citizens. Its role is essential when doubts arise about the scope of the Community 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 Community provisions on social security 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 in Europe.

Given this important role of the Court, 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 Community 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 Community rules on social security should be interpreted if the decision in your case depends on the 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 must then apply for a preliminary ruling. You can therefore 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 European 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 is required. However, the procedure is time-consuming, and out of more than 400 judgments of the Court, there are only a few resulting from infringement procedures, while more than 90 % 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 permit 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 the different chapters 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 Community provisions on social security. The information provided may help you determine whether your own case is covered by the Community provisions and what your rights and obligations under these provisions might be.

As already mentioned at the beginning of this guide, it is not possible, however, to explain the Community provisions in detail or to give clear advice on particular cases. You may, therefore, have a number of doubts and questions after reading this guide. If so, we strongly recommend you to contact the institutions and bodies at local, regional or national level in order to obtain more information.

If, however, you are still not satisfied with the results of your inquiries, feel free to contact the European Commission about your case. Whenever possible, we will answer your questions, contact the competent institutions and try to help you to claim your rights. Given the enormous number of individual cases presented every year, you will understand, however, that it may take some time before we are in a position to reply to your letter.

Our address is:

European Commission
Directorate-General for Employment and Social Affairs
Social security and social integration
Coordination of social security systems
Rue de la Loi 200
B-1049 Brussels

European Commission

The Community provisions on social security

Your rights when moving within the European Union

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