

**REGULATION (EC) No 883/2004 OF THE EUROPEAN PARLIAMENT AND  
OF THE COUNCIL**

of 29 April 2004

on the coordination of social security systems

(Text with relevance for the EEA and for Switzerland)

Amended by:

Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009

Commission Regulation (EU) No 1244/2010 of 9 December 2010

Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012

Commission Regulation (EU) No 1224/2012 of 18 December 2012

Council Regulation (EU) No 517/2013 of 13 May 2013

Commission Regulation (EU) No 1372/2013 of 19 December 2013

Corrected by:

Corrigendum, OJ L 200, 7.6.2004, p. 1 (883/2004)

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(Text with relevance for the EEA and for Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission presented after consultation with the social partners and the Administrative Commission on Social Security for Migrant Workers<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

- (1) The rules for coordination of national social security systems fall within the framework of free movement of persons and should contribute towards improving their standard of living and conditions of employment.
- (2) The Treaty does not provide powers other than those of Article 308 to take appropriate measures within the field of social security for persons other than employed persons.
- (3) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community<sup>4</sup> has been amended and updated on numerous occasions in order to take into account not only developments at Community level, including judgments of the Court of Justice, but also changes in legislation at national level. Such factors have played their

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<sup>1</sup> OJ C 38, 12.2.1999, p. 10.

<sup>2</sup> OJ C 75, 15.3.2000, p. 29.

<sup>3</sup> Opinion of the European Parliament of 3 September 2003 (not yet published in the Official Journal). Council Common Position of 26 January 2004 (OJ C 79 E, 30.3.2004, p. 15) and Position of the European Parliament of 20 April 2004 (not yet published in the Official Journal). Decision of the Council of 26 April 2004.

<sup>4</sup> OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council (OJ L 187, 10.7.2001, p. 1).

part in making the Community coordination rules complex and lengthy. Replacing, while modernising and simplifying, these rules is therefore essential to achieve the aim of the free movement of persons.

- (4) It is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination
- (5) It is necessary, within the framework of such coordination, to guarantee within the Community equality of treatment under the different national legislation for the persons concerned.
- (6) The close link between social security legislation and those contractual provisions which complement or replace such legislation and which have been the subject of a decision by the public authorities rendering them compulsory or extending their scope may call for similar protection with regard to the application of those provisions to that afforded by this Regulation. As a first step, the experience of Member States who have notified such schemes might be evaluated.
- (7) Due to the major differences existing between national legislation in terms of the persons covered, it is preferable to lay down the principle that this Regulation is to apply to nationals of a Member State, stateless persons and refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, as well as to the members of their families and to their survivors.
- (8) The general principle of equal treatment is of particular importance for workers who do not reside in the Member State of their employment, including frontier workers.
- (9) The Court of Justice has on several occasions given an opinion on the possibility of equal treatment of benefits, income and facts; this principle should be adopted explicitly and developed, while observing the substance and spirit of legal rulings.
- (10) However, the principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent Member State. Periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods.
- (11) The assimilation of facts or events occurring in a Member State can in no way render another Member State competent or its legislation applicable.
- (12) In the light of proportionality, care should be taken to ensure that the principle of assimilation of facts or events does not lead to objectively unjustified results or to the overlapping of benefits of the same kind for the same period.
- (13) The coordination rules must guarantee that persons moving within the Community and their dependants and survivors retain the rights and the advantages acquired and in the course of being acquired.
- (14) These objectives must be attained in particular by aggregating all the periods taken into account under the various national legislation for the purpose of

acquiring and retaining the right to benefits and of calculating the amount of benefits, and by providing benefits for the various categories of persons covered by this Regulation.

- (15) It is necessary to subject persons moving within the Community to the social security scheme of only one single Member State in order to avoid overlapping of the applicable provisions of national legislation and the complications which could result therefrom.
- (16) Within the Community there is in principle no justification for making social security rights dependent on the place of residence of the person concerned; nevertheless, in specific cases, in particular as regards special benefits linked to the economic and social context of the person involved, the place of residence could be taken into account.
- (17) With a view to guaranteeing the equality of treatment of all persons occupied in the territory of a Member State as effectively as possible, it is appropriate to determine as the legislation applicable, as a general rule, that of the Member State in which the person concerned pursues his/her activity as an employed or self-employed person.
- (17a) Once the legislation of a Member State becomes applicable to a person under Title II of this Regulation, the conditions for affiliation and entitlement to benefits should be defined by the legislation of the competent Member State while respecting Community law.
- (18) In specific situations which justify other criteria of applicability, it is necessary to derogate from that general rule.
- (18a) The principle of single applicable legislation is of great importance and should be enhanced. This should not mean, however, that the grant of a benefit alone, in accordance with this Regulation and comprising the payment of insurance contributions or insurance coverage for the beneficiary, renders the legislation of the Member State, whose institution has granted that benefit, the applicable legislation for that person.
- (18b) In Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation<sup>5</sup>, the concept of 'home base' for flight crew and cabin crew members is defined as the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period, or a series of duty periods, and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned. In order to facilitate the application of Title II of this Regulation for flight crew and cabin crew members, it is justified to use the concept of 'home base' as the criterion for determining the applicable legislation for flight crew and cabin crew members. However, the applicable legislation for flight crew and cabin crew members should remain stable and the home base principle should not result in frequent changes of applicable legislation due to the industry's work patterns or seasonal demands.
- (19) In some cases, maternity and equivalent paternity benefits may be enjoyed by the mother or the father and since, for the latter, these benefits are different from

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<sup>5</sup> OJ L 373, 31.12.1991, p. 4.

- parental benefits and can be assimilated to maternity benefits strictu sensu in that they are provided during the first months of a new-born child's life, it is appropriate that maternity and equivalent paternity benefits be regulated jointly.
- (20) In the field of sickness, maternity and equivalent paternity benefits, insured persons, as well as the members of their families, living or staying in a Member State other than the competent Member State, should be afforded protection.
  - (21) Provisions on sickness, maternity and equivalent paternity benefits were drawn up in the light of Court of Justice case-law. Provisions on prior authorisation have been improved, taking into account the relevant decisions of the Court of Justice.
  - (22) The specific position of pension claimants and pensioners and the members of their families makes it necessary to have provisions governing sickness insurance adapted to this situation.
  - (23) In view of the differences between the various national systems, it is appropriate that Member States make provision, where possible, for medical treatment for family members of frontier workers in the Member State where the latter pursue their activity.
  - (24) It is necessary to establish specific provisions regulating the non-overlapping of sickness benefits in kind and sickness benefits in cash which are of the same nature as those which were the subject of the judgments of the Court of Justice in Case C-215/99 Jauch and C-160/96 Molenaar, provided that those benefits cover the same risk.
  - (25) In respect of benefits for accidents at work and occupational diseases, rules should be laid down, for the purpose of affording protection, covering the situation of persons residing or staying in a Member State other than the competent Member State
  - (26) For invalidity benefits, a system of coordination should be drawn up which respects the specific characteristics of national legislation, in particular as regards recognition of invalidity and aggravation thereof.
  - (27) It is necessary to devise a system for the award of old-age benefits and survivors' benefits where the person concerned has been subject to the legislation of one or more Member States.
  - (28) There is a need to determine the amount of a pension calculated in accordance with the method used for aggregation and pro rata calculation and guaranteed by Community law where the application of national legislation, including rules concerning reduction, suspension or withdrawal, is less favourable than the aforementioned method.
  - (29) To protect migrant workers and their survivors against excessively stringent application of the national rules concerning reduction, suspension or withdrawal, it is necessary to include provisions strictly governing the application of such rules.
  - (30) As has constantly been reaffirmed by the Court of Justice, the Council is not deemed competent to enact rules imposing a restriction on the overlapping of two or more pensions acquired in different Member States by a reduction of the amount of a pension acquired solely under national legislation.

- (31) According to the Court of Justice, it is for the national legislature to enact such rules, bearing in mind that it is for the Community legislature to fix the limits within which the national provisions concerning reduction, suspension or withdrawal are to be applied.
- (32) In order to foster mobility of workers, it is particularly appropriate to facilitate the search for employment in the various Member States; it is therefore necessary to ensure closer and more effective coordination between the unemployment insurance schemes and the employment services of all the Member States.
- (33) It is necessary to include statutory pre-retirement schemes within the scope of this Regulation, thus guaranteeing both equal treatment and the possibility of exporting pre-retirement benefits as well as the award of family and health-care benefits to the person concerned, in accordance with the provisions of this Regulation; however, the rule on the aggregation of periods should not be included, as only a very limited number of Member States have statutory pre-retirement schemes.
- (34) Since family benefits have a very broad scope, affording protection in situations which could be described as classic as well as in others which are specific in nature, with the latter type of benefit having been the subject of the judgments of the Court of Justice in Joined Cases C-245/94 and C-312/94 Hoever and Zachow and in Case C-275/96 Kuusijärvi, it is necessary to regulate all such benefits.
- (35) In order to avoid unwarranted overlapping of benefits, there is a need to lay down rules of priority in the case of overlapping of rights to family benefits under the legislation of the competent Member State and under the legislation of the Member State of residence of the members of the family.
- (36) Advances of maintenance allowances are recoverable advances intended to compensate for a parent's failure to fulfil his/her legal obligation of maintenance to his/her own child, which is an obligation derived from family law. Therefore, these advances should not be considered as a direct benefit from collective support in favour of families. Given these particularities, the coordinating rules should not be applied to such maintenance allowances.
- (37) As the Court of Justice has repeatedly stated, provisions which derogate from the principle of the exportability of social security benefits must be interpreted strictly. This means that they can apply only to benefits which satisfy the specified conditions. It follows that Chapter 9 of Title III of this Regulation can apply only to benefits which are both special and non-contributory and listed in Annex X to this Regulation.
- (38) It is necessary to establish an Administrative Commission consisting of a government representative from each Member State, charged in particular with dealing with all administrative questions or questions of interpretation arising from the provisions of this Regulation, and with promoting further cooperation between the Member States.
- (39) The development and use of data-processing services for the exchange of information has been found to require the creation of a Technical Commission, under the aegis of the Administrative Commission, with specific responsibilities in the field of data-processing.

- (40) The use of data-processing services for exchanging data between institutions requires provisions guaranteeing that the documents exchanged or issued by electronic means are accepted as equivalent to paper documents. Such exchanges are to be carried out in accordance with the Community provisions on the protection of natural persons with regard to the processing and free movement of personal data.
- (41) It is necessary to lay down special provisions which correspond to the special characteristics of national legislation in order to facilitate the application of the rules of coordination.
- (42) In line with the principle of proportionality, in accordance with the premise for the extension of this Regulation to all European Union citizens and in order to find a solution that takes account of any constraints which may be connected with the special characteristics of systems based on residence, a special derogation by means of an Annex XI — ‘DENMARK’ entry, limited to social pension entitlement exclusively in respect of the new category of non-active persons, to whom this Regulation has been extended, was deemed appropriate due to the specific features of the Danish system and in the light of the fact that those pensions are exportable after a 10-year period of residence under the Danish legislation in force (Pension Act).
- (43) In line with the principle of equality of treatment, a special derogation by means of an Annex XI — ‘FINLAND’ entry, limited to residence-based national pensions, is deemed appropriate due to the specific characteristics of Finnish social security legislation, the objective of which is to ensure that the amount of the national pension cannot be less than the amount of the national pension calculated as if all insurance periods completed in any Member State were completed in Finland.
- (44) It is necessary to introduce a new Regulation to repeal Regulation (EEC) No 1408/71. However, it is necessary that Regulation (EEC) No 1408/71 remain in force and continue to have legal effect for the purposes of certain Community acts and agreements to which the Community is a party, in order to secure legal certainty.
- (45) Since the objective of the proposed action, namely the coordination measures to guarantee that the right to free movement of persons can be exercised effectively, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of that action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that article, this Regulation does not go beyond what is necessary, in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

## **TITLE I - GENERAL PROVISIONS**

### **Article 1 - Definitions**

For the purposes of this Regulation:

- (a) ‘activity as an employed person’ means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists;
- (b) ‘activity as a self-employed person’ means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists;
- (c) ‘insured person’, in relation to the social security branches covered by Title III, Chapters 1 and 3, means any person satisfying the conditions required under the legislation of the Member State competent under Title II to have the right to benefits, taking into account the provisions of this Regulation;
- (d) ‘civil servant’ means a person considered to be such or treated as such by the Member State to which the administration employing him/her is subject;
- (e) ‘special scheme for civil servants’ means any social security scheme which is different from the general social security scheme applicable to employed persons in the Member State concerned and to which all, or certain categories of, civil servants are directly subject;
- (f) ‘frontier worker’ means any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he/she returns as a rule daily or at least once a week;
- (g) ‘refugee’ shall have the meaning assigned to it in Article 1 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951;
- (h) ‘stateless person’ shall have the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954;
- (i) ‘member of the family’ means:
  - 1.
    - (i) any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided;
    - (ii) with regard to benefits in kind pursuant to Title III, Chapter 1 on sickness, maternity and equivalent paternity benefits, any person defined or recognised as a member of the family or designated as a member of the household by the legislation of the Member State in which he/she resides;
  - 2. if the legislation of a Member State which is applicable under subparagraph 1 does not make a distinction between the members of the family and other

persons to whom it is applicable, the spouse, minor children, and dependent children who have reached the age of majority shall be considered members of the family;

3. if, under the legislation which is applicable under subparagraphs 1 and 2, a person is considered a member of the family or member of the household only if he/she lives in the same household as the insured person or pensioner, this condition shall be considered satisfied if the person in question is mainly dependent on the insured person or pensioner;

(j) 'residence' means the place where a person habitually resides;

(k) 'stay' means temporary residence;

(l) 'legislation' means, in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1);

This term excludes contractual provisions other than those which serve to implement an insurance obligation arising from the laws and regulations referred to in the preceding subparagraph or which have been the subject of a decision by the public authorities which makes them obligatory or extends their scope, provided that the Member State concerned makes a declaration to that effect, notified to the President of the European Parliament and the President of the Council of the European Union. Such declaration shall be published in the *Official Journal of the European Union*;

(m) 'competent authority' means, in respect of each Member State, the Minister, Ministers or other equivalent authority responsible for social security schemes throughout or in any part of the Member State in question;

(n) 'Administrative Commission' means the commission referred to in Article 71;

(o) 'Implementing Regulation' means the Regulation referred to in Article 89;

(p) 'institution' means, in respect of each Member State, the body or authority responsible for applying all or part of the legislation;

(q) 'competent institution' means:

(i) the institution with which the person concerned is insured at the time of the application for benefit;

or

(ii) the institution from which the person concerned is or would be entitled to benefits if he/she or a member or members of his/her family resided in the Member State in which the institution is situated;

or

(iii) the institution designated by the competent authority of the Member State concerned;

or

(iv) in the case of a scheme relating to an employer's obligations in respect of the benefits set out in Article 3(1), either the employer or the insurer involved or, in default thereof, the body or authority designated by the competent authority of the Member State concerned;

- (r) 'institution of the place of residence' and 'institution of the place of stay' mean respectively the institution which is competent to provide benefits in the place where the person concerned resides and the institution which is competent to provide benefits in the place where the person concerned is staying, in accordance with the legislation administered by that institution or, where no such institution exists, the institution designated by the competent authority of the Member State concerned;
- (s) 'competent Member State' means the Member State in which the competent institution is situated;
- (t) 'period of insurance' means periods of contribution, employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance;
- (u) 'period of employment' or 'period of self-employment' mean periods so defined or recognised by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or to periods of self-employment;
- (v) 'period of residence' means periods so defined or recognised by the legislation under which they were completed or considered as completed;
- (va) 'Benefits in kind' means:
- (i) for the purposes of Title III, Chapter 1 (sickness, maternity and equivalent paternity benefits), benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care. This includes long-term care benefits in kind;
  - (ii) for the purposes of Title III, Chapter 2 (accidents at work and occupational diseases), all benefits in kind relating to accidents at work and occupational diseases as defined in point (i) above and provided for under the Member States' accidents at work and occupational diseases schemes;
- (w) 'pension' covers not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement of contributions

and, subject to the provisions of Title III, revaluation increases or supplementary allowances;

- (x) 'pre-retirement benefit' means: all cash benefits, other than an unemployment benefit or an early old-age benefit, provided from a specified age to workers who have reduced, ceased or suspended their remunerative activities until the age at which they qualify for an old-age pension or an early retirement pension, the receipt of which is not conditional upon the person concerned being available to the employment services of the competent State; 'early old-age benefit' means a benefit provided before the normal pension entitlement age is reached and which either continues to be provided once the said age is reached or is replaced by another old-age benefit;
- (y) 'death grant' means any one-off payment in the event of death excluding the lump-sum benefits referred to in subparagraph w;
- (z) 'family benefit' means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I.

### **Article 2 - Persons covered**

1. This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.
2. It shall also apply to the survivors of persons who have been subject to the legislation of one or more Member States, irrespective of the nationality of such persons, where their survivors are nationals of a Member State or stateless persons or refugees residing in one of the Member States.

### **Article 3 - Matters covered**

1. This Regulation shall apply to all legislation concerning the following branches of social security:
  - (a) sickness benefits;
  - (b) maternity and equivalent paternity benefits;
  - (c) invalidity benefits;
  - (d) old-age benefits;
  - (e) survivors' benefits;
  - (f) benefits in respect of accidents at work and occupational diseases;
  - (g) death grants;
  - (h) unemployment benefits;
  - (i) pre-retirement benefits;

- (j) family benefits.
- 2. Unless otherwise provided for in Annex XI, this Regulation shall apply to general and special social security schemes, whether contributory or non-contributory, and to schemes relating to the obligations of an employer or shipowner.
- 3. This Regulation shall also apply to the special non-contributory cash benefits covered by Article 70.
- 4. The provisions of Title III of this Regulation shall not, however, affect the legislative provisions of any Member State concerning a shipowner's obligations.
- 5. This Regulation shall not apply to:
  - (a) social and medical assistance or
  - (b) benefits in relation to which a Member State assumes the liability for damages to persons and provides for compensation, such as those for victims of war and military action or their consequences; victims of crime, assassination or terrorist acts; victims of damage occasioned by agents of the Member State in the course of their duties; or victims who have suffered a disadvantage for political or religious reasons or for reasons of descent.

#### **Article 4 - Equality of treatment**

Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.

#### **Article 5 - Equal treatment of benefits, income, facts or events**

Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

- (a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;
- (b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.

#### **Article 6 - Aggregation of periods**

Unless otherwise provided for by this Regulation, the competent institution of a Member State whose legislation makes:

- the acquisition, retention, duration or recovery of the right to benefits,

— the coverage by legislation,

or

— the access to or the exemption from compulsory, optional continued or voluntary insurance,

conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were periods completed under the legislation which it applies.

### **Article 7 - Waiving of residence rules**

Unless otherwise provided for by this Regulation, cash benefits payable under the legislation of one or more Member States or under this Regulation shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his/her family reside in a Member State other than that in which the institution responsible for providing benefits is situated.

### **Article 8 - Relations between this Regulation and other coordination instruments**

1. This Regulation shall replace any social security convention applicable between Member States falling under its scope. Certain provisions of social security conventions entered into by the Member States before the date of application of this Regulation shall, however, continue to apply provided that they are more favourable to the beneficiaries or if they arise from specific historical circumstances and their effect is limited in time. For these provisions to remain applicable, they shall be included in Annex II. If, on objective grounds, it is not possible to extend some of these provisions to all persons to whom the Regulation applies this shall be specified.
2. Two or more Member States may, as the need arises, conclude conventions with each other based on the principles of this Regulation and in keeping with the spirit thereof.

### **Article 9 - Declarations by the Member States on the scope of this Regulation**

1. The Member States shall notify the European Commission in writing of the declarations made in accordance with point (1) of Article 1, the legislation and schemes referred to in Article 3, the conventions entered into as referred to in Article 8(2), the minimum benefits referred to in Article 58, and the lack of an insurance system as referred to in Article 65a(1), as well as substantive amendments. Such notifications shall indicate the date from which this Regulation will apply to the schemes specified by the Member States therein.
2. These notifications shall be submitted to the European Commission every year and shall be given the necessary publicity.

## **Article 10 - Prevention of overlapping of benefits**

Unless otherwise specified, this Regulation shall neither confer nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance.

## **TITLE II - DETERMINATION OF THE LEGISLATION APPLICABLE**

### **Article 11 - General rules**

1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.
2. For the purposes of this Title, persons receiving cash benefits because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing the said activity. This shall not apply to invalidity, old-age or survivors' pensions or to pensions in respect of accidents at work or occupational diseases or to sickness benefits in cash covering treatment for an unlimited period.
3. Subject to Articles 12 to 16:
  - (a) a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State;
  - (b) a civil servant shall be subject to the legislation of the Member State to which the administration employing him/her is subject;
  - (c) a person receiving unemployment benefits in accordance with Article 65 under the legislation of the Member State of residence shall be subject to the legislation of that Member State;
  - (d) a person called up or recalled for service in the armed forces or for civilian service in a Member State shall be subject to the legislation of that Member State;
  - (e) any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other Member States.
4. For the purposes of this Title, an activity as an employed or self-employed person normally pursued on board a vessel at sea flying the flag of a Member State shall be deemed to be an activity pursued in the said Member State. However, a person employed on board a vessel flying the flag of a Member State and remunerated for such activity by an undertaking or a person whose registered office or place of business is in another Member State shall be subject to the legislation of the latter Member State if he/she resides in that State. The undertaking or person

paying the remuneration shall be considered as the employer for the purposes of the said legislation.

5. An activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued in the Member State where the home base, as defined in Annex III to Regulation (EEC) No 3922/91, is located.

### **Article 12 - Special rules**

1. A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another posted person.
2. A person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such activity does not exceed 24 months.

### **Article 13 - Pursuit of activities in two or more Member States**

1. A person who normally pursues an activity as an employed person in two or more Member States shall be subject:
  - (a) to the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State; or
  - (b) if he/she does not pursue a substantial part of his/her activity in the Member State of residence:
    - (i) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or employer; or
    - (ii) to the legislation of the Member State in which the registered office or place of business of the undertakings or employers is situated if he/she is employed by two or more undertakings or employers which have their registered office or place of business in only one Member State; or
    - (iii) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated other than the Member State of residence if he/she is employed by two or more undertakings or employers, which have their registered office or place of business in two Member States, one of which is the Member State of residence; or
    - (iv) to the legislation of the Member State of residence if he/she is employed by two or more undertakings or employers, at least two of

which have their registered office or place of business in different Member States other than the Member State of residence.

2. A person who normally pursues an activity as a self-employed person in two or more Member States shall be subject to:
  - (a) the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State;
  - or
  - (b) the legislation of the Member State in which the centre of interest of his/her activities is situated, if he/she does not reside in one of the Member States in which he/she pursues a substantial part of his/her activity.
3. A person who normally pursues an activity as an employed person and an activity as a self-employed person in different Member States shall be subject to the legislation of the Member State in which he/she pursues an activity as an employed person or, if he/she pursues such an activity in two or more Member States, to the legislation determined in accordance with paragraph 1.
4. A person who is employed as a civil servant by one Member State and who pursues an activity as an employed person and/or as a self-employed person in one or more other Member States shall be subject to the legislation of the Member State to which the administration employing him/her is subject.
5. Persons referred to in paragraphs 1 to 4 shall be treated, for the purposes of the legislation determined in accordance with these provisions, as though they were pursuing all their activities as employed or self-employed persons and were receiving all their income in the Member State concerned.

#### **Article 14 - Voluntary insurance or optional continued insurance**

1. Articles 11 to 13 shall not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches referred to in Article 3(1), only a voluntary scheme of insurance exists in a Member State.
2. Where, by virtue of the legislation of a Member State, the person concerned is subject to compulsory insurance in that Member State, he/she may not be subject to a voluntary insurance scheme or an optional continued insurance scheme in another Member State. In all other cases in which, for a given branch, there is a choice between several voluntary insurance schemes or optional continued insurance schemes, the person concerned shall join only the scheme of his/her choice.
3. However, in respect of invalidity, old age and survivors' benefits, the person concerned may join the voluntary or optional continued insurance scheme of a Member State, even if he/she is compulsorily subject to the legislation of another Member State, provided that he/she has been subject, at some stage in his/her career, to the legislation of the first Member State because or as a consequence of

an activity as an employed or self-employed person and if such overlapping is explicitly or implicitly allowed under the legislation of the first Member State.

4. Where the legislation of a Member State makes admission to voluntary insurance or optional continued insurance conditional upon residence in that Member State or upon previous activity as an employed or self-employed person, Article 5(b) shall apply only to persons who have been subject, at some earlier stage, to the legislation of that Member State on the basis of an activity as an employed or self-employed person.

### **Article 15 - Contract staff of the European Communities**

Contract staff of the European Communities may opt to be subject to the legislation of the Member State in which they are employed, to the legislation of the Member State to which they were last subject or to the legislation of the Member State whose nationals they are, in respect of provisions other than those relating to family allowances, provided under the scheme applicable to such staff. This right of option, which may be exercised once only, shall take effect from the date of entry into employment.

### **Article 16 - Exceptions to Articles 11 to 15**

1. Two or more Member States, the competent authorities of these Member States or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 11 to 15 in the interest of certain persons or categories of persons.
2. A person who receives a pension or pensions under the legislation of one or more Member States and who resides in another Member State may at his/her request be exempted from application of the legislation of the latter State provided that he/she is not subject to that legislation on account of pursuing an activity as an employed or self-employed person.

## **TITLE III - SPECIAL PROVISIONS CONCERNING THE VARIOUS CATEGORIES OF BENEFITS**

### **CHAPTER 1 - Sickness, maternity and equivalent paternity benefits**

#### **Section 1 - Insured persons and members of their families, except pensioners and members of their families**

#### **Article 17 - Residence in a Member State other than the competent Member State**

An insured person or members of his/her family who reside in a Member State other than the competent Member State shall receive in the Member State of residence benefits in kind provided, on behalf of the competent institution, by the institution of

the place of residence, in accordance with the provisions of the legislation it applies, as though they were insured under the said legislation.

**Article 18 - Stay in the competent Member State when residence is in another Member State – Special rules for the members of the families of frontier workers**

1. Unless otherwise provided for by paragraph 2, the insured person and the members of his/her family referred to in Article 17 shall also be entitled to benefits in kind while staying in the competent Member State. The benefits in kind shall be provided by the competent institution and at its own expense, in accordance with the provisions of the legislation it applies, as though the persons concerned resided in that Member State.
2. The members of the family of a frontier worker shall be entitled to benefits in kind during their stay in the competent Member State.
2. Where the competent Member State is listed in Annex III however, the members of the family of a frontier worker who reside in the same Member State as the frontier worker shall be entitled to benefits in kind in the competent Member State only under the conditions laid down in Article 19(1).

**Article 19 - Stay outside the competent Member State**

1. Unless otherwise provided for by paragraph 2, an insured person and the members of his/her family staying in a Member State other than the competent Member State shall be entitled to the benefits in kind which become necessary on medical grounds during their stay, taking into account the nature of the benefits and the expected length of the stay. These benefits shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though the persons concerned were insured under the said legislation.
2. The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require for practical reasons a prior agreement between the person concerned and the institution providing the care.

**Article 20 - Travel with the purpose of receiving benefits in kind — authorisation to receive appropriate treatment outside the Member State of residence**

1. Unless otherwise provided for by this Regulation, an insured person travelling to another Member State with the purpose of receiving benefits in kind during the stay shall seek authorisation from the competent institution.
2. An insured person who is authorised by the competent institution to go to another Member State with the purpose of receiving the treatment appropriate to his/her condition shall receive the benefits in kind provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though he/she were insured under the said legislation. The authorisation shall be accorded where the treatment in

question is among the benefits provided for by the legislation in the Member State where the person concerned resides and where he/she cannot be given such treatment within a time limit which is medically justifiable, taking into account his/her current state of health and the probable course of his/her illness.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to the members of the family of an insured person.
4. If the members of the family of an insured person reside in a Member State other than the Member State in which the insured person resides, and this Member State has opted for reimbursement on the basis of fixed amounts, the cost of the benefits in kind referred to in paragraph 2 shall be borne by the institution of the place of residence of the members of the family. In this case, for the purposes of paragraph 1, the institution of the place of residence of the members of the family shall be considered to be the competent institution.

### **Article 21 - Cash benefits**

1. An insured person and members of his/her family residing or staying in a Member State other than the competent Member State shall be entitled to cash benefits provided by the competent institution in accordance with the legislation it applies. By agreement between the competent institution and the institution of the place of residence or stay, such benefits may, however, be provided by the institution of the place of residence or stay at the expense of the competent institution in accordance with the legislation of the competent Member State.
2. The competent institution of a Member State whose legislation stipulates that the calculation of cash benefits shall be based on average income or on an average contribution basis shall determine such average income or average contribution basis exclusively by reference to the incomes confirmed as having been paid, or contribution bases applied, during the periods completed under the said legislation.
3. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on standard income shall take into account exclusively the standard income or, where appropriate, the average of standard incomes for the periods completed under the said legislation.
4. Paragraphs 2 and 3 shall apply *mutatis mutandis* to cases where the legislation applied by the competent institution lays down a specific reference period which corresponds in the case in question either wholly or partly to the periods which the person concerned has completed under the legislation of one or more other Member States.

### **Article 22 - Pension claimants**

1. An insured person who, on making a claim for a pension, or during the investigation thereof, ceases to be entitled to benefits in kind under the legislation of the Member State last competent, shall remain entitled to benefits in kind under the legislation of the Member State in which he/she resides, provided that

the pension claimant satisfies the insurance conditions of the legislation of the Member State referred to in paragraph 2. The right to benefits in kind in the Member State of residence shall also apply to the members of the family of the pension claimant.

2. The benefits in kind shall be chargeable to the institution of the Member State which, in the event of a pension being awarded, would become competent under Articles 23 to 25.

## **Section 2 - Pensioners and members of their families**

### **Article 23 - Right to benefits in kind under the legislation of the Member State of residence**

A person who receives a pension or pensions under the legislation of two or more Member States, of which one is the Member State of residence, and who is entitled to benefits in kind under the legislation of that Member State, shall, with the members of his/her family, receive such benefits in kind from and at the expense of the institution of the place of residence, as though he/she were a pensioner whose pension was payable solely under the legislation of that Member State.

### **Article 24 - No right to benefits in kind under the legislation of the Member State of residence**

1. A person who receives a pension or pensions under the legislation of one or more Member States and who is not entitled to benefits in kind under the legislation of the Member State of residence shall nevertheless receive such benefits for himself/herself and the members of his/her family, in so far as he/she would be entitled thereto under the legislation of the Member State or of at least one of the Member States competent in respect of his/her pensions, if he/she resided in that Member State. The benefits in kind shall be provided at the expense of the institution referred to in paragraph 2 by the institution of the place of residence, as though the person concerned were entitled to a pension and benefits in kind under the legislation of that Member State.
2. In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution as determined in accordance with the following rules:
  - (a) where the pensioner is entitled to benefits in kind under the legislation of a single Member State, the cost shall be borne by the competent institution of that Member State;
  - (b) where the pensioner is entitled to benefits in kind under the legislation of two or more Member States, the cost thereof shall be borne by the competent institution of the Member State to whose legislation the person has been subject for the longest period of time; should the application of this rule result in several institutions being responsible for the cost of benefits,

the cost shall be borne by the institution applying the legislation to which the pensioner was last subject.

**Article 25 - Pensions under the legislation of one or more Member States other than the Member State of residence, where there is a right to benefits in kind in the latter Member State**

Where the person receiving a pension or pensions under the legislation of one or more Member States resides in a Member State under whose legislation the right to receive benefits in kind is not subject to conditions of insurance, or of activity as an employed or self-employed person, and no pension is received from that Member State, the cost of benefits in kind provided to him/her and to members of his/her family shall be borne by the institution of one of the Member States competent in respect of his/her pensions determined in accordance with Article 24(2), to the extent that the pensioner and the members of his/her family would be entitled to such benefits if they resided in that Member State.

**Article 26 - Residence of members of the family in a Member State other than the one in which the pensioner resides**

Members of the family of a person receiving a pension or pensions under the legislation of one or more Member States who reside in a Member State other than the one in which the pensioner resides shall be entitled to receive benefits in kind from the institution of the place of their residence in accordance with the provisions of the legislation it applies, in so far as the pensioner is entitled to benefits in kind under the legislation of a Member State. The costs shall be borne by the competent institution responsible for the costs of the benefits in kind provided to the pensioner in his/her Member State of residence.

**Article 27 - Stay of the pensioner or the members of his/her family in a Member State other than the Member State in which they reside — stay in the competent Member State — authorisation for appropriate treatment outside the Member State of residence**

1. Article 19 shall apply *mutatis mutandis* to a person receiving a pension or pensions under the legislation of one or more Member States and entitled to benefits in kind under the legislation of one of the Member States which provide his/her pension(s) or to the members of his/her family who are staying in a Member State other than the one in which they reside.
2. Article 18(1) shall apply *mutatis mutandis* to the persons described in paragraph 1 when they stay in the Member State in which is situated the competent institution responsible for the cost of the benefits in kind provided to the pensioner in his/her Member State of residence and the said Member State has opted for this and is listed in Annex IV.
3. Article 20 shall apply *mutatis mutandis* to a pensioner and/or the members of his/her family who are staying in a Member State other than the one in which

they reside with the purpose of receiving there the treatment appropriate to their condition.

4. Unless otherwise provided for by paragraph 5, the cost of the benefits in kind referred to in paragraphs 1 to 3 shall be borne by the competent institution responsible for the cost of benefits in kind provided to the pensioner in his/her Member State of residence.
5. The cost of the benefits in kind referred to in paragraph 3 shall be borne by the institution of the place of residence of the pensioner or of the members of his/her family, if these persons reside in a Member State which has opted for reimbursement on the basis of fixed amounts. In these cases, for the purposes of paragraph 3, the institution of the place of residence of the pensioner or of the members of his/her family shall be considered to be the competent institution.

### **Article 28 - Special rules for retired frontier workers**

1. A frontier worker who has retired because of old-age or invalidity is entitled in the event of sickness to continue to receive benefits in kind in the Member State where he/she last pursued his/her activity as an employed or self-employed person, in so far as this is a continuation of treatment which began in that Member State. 'Continuation of treatment' means the continued investigation, diagnosis and treatment of an illness for its entire duration.
1. The first subparagraph shall apply *mutatis mutandis* to the members of the family of the former frontier worker unless the Member State where the frontier worker last pursued his/her activity is listed in Annex III.
2. A pensioner who, in the five years preceding the effective date of an old-age or invalidity pension has been pursuing an activity as an employed or self-employed person for at least two years as a frontier worker shall be entitled to benefits in kind in the Member State in which he/she pursued such an activity as a frontier worker, if this Member State and the Member State in which the competent institution responsible for the costs of the benefits in kind provided to the pensioner in his/her Member State of residence is situated have opted for this and are both listed in Annex V.
3. Paragraph 2 shall apply *mutatis mutandis* to the members of the family of a former frontier worker or his/her survivors if, during the periods referred to in paragraph 2, they were entitled to benefits in kind under Article 18(2), even if the frontier worker died before his/her pension commenced, provided he/she had been pursuing an activity as an employed or self-employed person as a frontier worker for at least two years in the five years preceding his/her death.
4. Paragraphs 2 and 3 shall be applicable until the person concerned becomes subject to the legislation of a Member State on the basis of an activity as an employed or self-employed person.
5. The cost of the benefits in kind referred to in paragraphs 1 to 3 shall be borne by the competent institution responsible for the cost of benefits in kind provided to

the pensioner or to his/her survivors in their respective Member States of residence.

### **Article 29 - Cash benefits for pensioners**

1. Cash benefits shall be paid to a person receiving a pension or pensions under the legislation of one or more Member States by the competent institution of the Member State in which is situated the competent institution responsible for the cost of benefits in kind provided to the pensioner in his/her Member State of residence. Article 21 shall apply *mutatis mutandis*.
2. Paragraph 1 shall also apply to the members of a pensioner's family.

### **Article 30 - Contributions by pensioners**

1. The institution of a Member State which is responsible under the legislation it applies for making deductions in respect of contributions for sickness, maternity and equivalent paternity benefits, may request and recover such deductions, calculated in accordance with the legislation it applies, only to the extent that the cost of the benefits pursuant to Articles 23 to 26 is to be borne by an institution of the said Member State.
2. Where, in the cases referred to in Article 25, the acquisition of sickness, maternity and equivalent paternity benefits is subject to the payment of contributions or similar payments under the legislation of a Member State in which the pensioner concerned resides, these contributions shall not be payable by virtue of such residence.

## **Section 3 - Common provisions**

### **Article 31 - General provision**

Articles 23 to 30 shall not apply to a pensioner or the members of his/her family who are entitled to benefits under the legislation of a Member State on the basis of an activity as an employed or self-employed person. In such a case, the person concerned shall be subject, for the purposes of this Chapter, to Articles 17 to 21.

### **Article 32 - Prioritising of the right to benefits in kind — special rule for the right of members of the family to benefits in the Member State of residence**

1. An independent right to benefits in kind based on the legislation of a Member State or on this Chapter shall take priority over a derivative right to benefits for members of a family. A derivative right to benefits in kind shall, however, take priority over independent rights, where the independent right in the Member State of residence exists directly and solely on the basis of the residence of the person concerned in that Member State.

2. Where the members of the family of an insured person reside in a Member State under whose legislation the right to benefits in kind is not subject to conditions of insurance or activity as an employed or self-employed person, benefits in kind shall be provided at the expense of the competent institution in the Member State in which they reside, if the spouse or the person caring for the children of the insured person pursues an activity as an employed or self-employed person in the said Member State or receives a pension from that Member State on the basis of an activity as an employed or self-employed person.

### **Article 33 - Substantial benefits in kind**

1. An insured person or a member of his/her family who has had a right to a prosthesis, a major appliance or other substantial benefits in kind recognised by the institution of a Member State, before he/she became insured under the legislation applied by the institution of another Member State, shall receive such benefits at the expense of the first institution, even if they are awarded after the said person has already become insured under the legislation applied by the second institution.
2. The Administrative Commission shall draw up the list of benefits covered by paragraph 1.

### **Article 34 - Overlapping of long-term care benefits**

1. If a recipient of long-term care benefits in cash, which have to be treated as sickness benefits and are therefore provided by the Member State competent for cash benefits under Articles 21 or 29, is, at the same time and under this Chapter, entitled to claim benefits in kind intended for the same purpose from the institution of the place of residence or stay in another Member State, and an institution in the first Member State is also required to reimburse the cost of these benefits in kind under Article 35, the general provision on prevention of overlapping of benefits laid down in Article 10 shall be applicable, with the following restriction only: if the person concerned claims and receives the benefit in kind, the amount of the benefit in cash shall be reduced by the amount of the benefit in kind which is or could be claimed from the institution of the first Member State required to reimburse the cost.
2. The Administrative Commission shall draw up the list of the cash benefits and benefits in kind covered by paragraph 1.
3. Two or more Member States, or their competent authorities, may agree on other or supplementary measures which shall not be less advantageous for the persons concerned than the principles laid down in paragraph 1.

### **Article 35 - Reimbursements between institutions**

1. The benefits in kind provided by the institution of a Member State on behalf of the institution of another Member State under this Chapter shall give rise to full reimbursement.
2. The reimbursements referred to in paragraph 1 shall be determined and effected in accordance with the arrangements set out in the Implementing Regulation, either on production of proof of actual expenditure, or on the basis of fixed amounts for Member States the legal or administrative structures of which are such that the use of reimbursement on the basis of actual expenditure is not appropriate.
3. Two or more Member States, and their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions coming under their jurisdiction.

## **CHAPTER 2 - Benefits in respect of accidents at work and occupational diseases**

### **Article 36 - Right to benefits in kind and in cash**

1. Without prejudice to any more favourable provisions in paragraphs 2 and 2a of this Article, Articles 17, 18(1), 19(1) and 20(1) shall also apply to benefits relating to accidents at work or occupational diseases.
2. A person who has sustained an accident at work or has contracted an occupational disease and who resides or stays in a Member State other than the competent Member State shall be entitled to the special benefits in kind of the scheme covering accidents at work and occupational diseases provided, on behalf of the competent institution, by the institution of the place of residence or stay in accordance with the legislation which it applies, as though he/she were insured under the said legislation.
- 2a. The competent institution may not refuse to grant the authorisation provided for in Article 20(1) to a person who has sustained an accident at work or who has contracted an occupational disease and who is entitled to benefits chargeable to that institution, where the treatment appropriate to his/her condition cannot be given in the Member State in which he/she resides within a time-limit which is medically justifiable, taking into account his/her current state of health and the probable course of the illness.
3. Article 21 shall also apply to benefits falling within this Chapter.

### **Article 37 - Costs of transport**

1. The competent institution of a Member State whose legislation provides for meeting the costs of transporting a person who has sustained an accident at work or is suffering from an occupational disease, either to his/her place of residence or to a hospital, shall meet such costs to the corresponding place in another Member State where the person resides, provided that that institution gives prior authorisation for such transport, duly taking into account the reasons justifying it. Such authorisation shall not be required in the case of a frontier worker.
2. The competent institution of a Member State whose legislation provides for meeting the costs of transporting the body of a person killed in an accident at work to the place of burial shall, in accordance with the legislation it applies, meet such costs to the corresponding place in another Member State where the person was residing at the time of the accident.

### **Article 38 - Benefits for an occupational disease where the person suffering from such a disease has been exposed to the same risk in several Member States**

When a person who has contracted an occupational disease has, under the legislation of two or more Member States, pursued an activity which by its nature is likely to cause the said disease, the benefits that he/she or his/her survivors may claim shall be provided exclusively under the legislation of the last of those States whose conditions are satisfied.

### **Article 39 - Aggravation of an occupational disease**

In the event of aggravation of an occupational disease for which a person suffering from such a disease has received or is receiving benefits under the legislation of a Member State, the following rules shall apply:

- (a) if the person concerned, while in receipt of benefits, has not pursued, under the legislation of another Member State, an activity as an employed or self-employed person likely to cause or aggravate the disease in question, the competent institution of the first Member State shall bear the cost of the benefits under the provisions of the legislation which it applies, taking into account the aggravation;
- (b) if the person concerned, while in receipt of benefits, has pursued such an activity under the legislation of another Member State, the competent institution of the first Member State shall bear the cost of the benefits under the legislation it applies without taking the aggravation into account. The competent institution of the second Member State shall grant a supplement to the person concerned, the amount of which shall be equal to the difference between the amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the legislation it applies, if the disease in question had occurred under the legislation of that Member State;
- (c) the rules concerning reduction, suspension or withdrawal laid down by the legislation of a Member State shall not be invoked against persons receiving

benefits provided by institutions of two Member States in accordance with subparagraph (b).

#### **Article 40 - Rules for taking into account the special features of certain legislation**

1. If there is no insurance against accidents at work or occupational diseases in the Member State in which the person concerned resides or stays, or if such insurance exists but there is no institution responsible for providing benefits in kind, those benefits shall be provided by the institution of the place of residence or stay responsible for providing benefits in kind in the event of sickness.
2. If there is no insurance against accidents at work or occupational diseases in the competent Member State, the provisions of this Chapter concerning benefits in kind shall nevertheless be applied to a person who is entitled to those benefits in the event of sickness, maternity or equivalent paternity under the legislation of that Member State if that person sustains an accident at work or suffers from an occupational disease during a residence or stay in another Member State. Costs shall be borne by the institution which is competent for the benefits in kind under the legislation of the competent Member State.
3. Article 5 shall apply to the competent institution in a Member State as regards the equivalence of accidents at work and occupational diseases which either have occurred or have been confirmed subsequently under the legislation of another Member State when assessing the degree of incapacity, the right to benefits or the amount thereof, on condition that:
  - (a) no compensation is due in respect of an accident at work or an occupational disease which had occurred or had been confirmed previously under the legislation it applies;

and

- (b) no compensation is due in respect of an accident at work or an occupational disease which had occurred or had been confirmed subsequently, under the legislation of the other Member State under which the accident at work or the occupational disease had occurred or been confirmed.

#### **Article 41 - Reimbursements between institutions**

1. Article 35 shall also apply to benefits falling within this Chapter, and reimbursement shall be made on the basis of actual costs.
2. Two or more Member States, or their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions under their jurisdiction.

## **CHAPTER 3 - Death grants**

### **Article 42 - Right to grants where death occurs in, or where the person entitled resides in, a Member State other than the competent Member State**

1. When an insured person or a member of his/her family dies in a Member State other than the competent Member State, the death shall be deemed to have occurred in the competent Member State.
2. The competent institution shall be obliged to provide death grants payable under the legislation it applies, even if the person entitled resides in a Member State other than the competent Member State.
3. Paragraphs 1 and 2 shall also apply when the death is the result of an accident at work or an occupational disease.

### **Article 43 - Provision of benefits in the event of the death of a pensioner**

1. In the event of the death of a pensioner who was entitled to a pension under the legislation of one Member State, or to pensions under the legislations of two or more Member States, when that pensioner was residing in a Member State other than that of the institution responsible for the cost of benefits in kind provided under Articles 24 and 25, the death grants payable under the legislation administered by that institution shall be provided at its own expense as though the pensioner had been residing at the time of his/her death in the Member State in which that institution is situated.
2. Paragraph 1 shall apply *mutatis mutandis* to the members of the family of a pensioner.

## **CHAPTER 4 - Invalidity benefits**

### **Article 44 - Persons subject only to type A legislation**

1. For the purposes of this Chapter, 'type A legislation' means any legislation under which the amount of invalidity benefits is independent of the duration of the periods of insurance or residence and which is expressly included by the competent Member State in Annex VI, and 'type B legislation' means any other legislation.
2. A person who has been successively or alternately subject to the legislation of two or more Member States and who has completed periods of insurance or residence exclusively under type A legislations shall be entitled to benefits only from the institution of the Member State whose legislation was applicable at the time when the incapacity for work followed by invalidity occurred, taking into account, where appropriate, Article 45, and shall receive such benefits in accordance with that legislation.

3. A person who is not entitled to benefits under paragraph 2 shall receive the benefits to which he/she is still entitled under the legislation of another Member State, taking into account, where appropriate, Article 45.
4. If the legislation referred to in paragraph 2 or 3 contains rules for the reduction, suspension or withdrawal of invalidity benefits in the case of overlapping with other income or with benefits of a different kind within the meaning of Article 53(2), Articles 53(3) and 55(3) shall apply *mutatis mutandis*.

#### **Article 45 - Special provisions on aggregation of periods**

The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of periods of insurance or residence shall, where necessary, apply Article 51(1) *mutatis mutandis*.

#### **Article 46 - Persons subject either only to type B legislation or to type A and B legislation**

1. A person who has been successively or alternately subject to the legislation of two or more Member States, of which at least one is not a type A legislation, shall be entitled to benefits under Chapter 5, which shall apply *mutatis mutandis* taking into account paragraph 3.
2. However, if the person concerned has been previously subject to a type B legislation and suffers incapacity for work leading to invalidity while subject to a type A legislation, he/she shall receive benefits in accordance with Article 44, provided that:
  - he satisfies the conditions of that legislation exclusively or of others of the same type, taking into account, where appropriate, Article 45, but without having recourse to periods of insurance or residence completed under a type B legislation,
  - and
  - he does not assert any claims to old-age benefits, taking into account Article 50(1).
3. A decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State concerned, provided that the concordance between the legislation of these Member States on conditions relating to the degree of invalidity is acknowledged in Annex VII.

### **Article 47 - Aggravation of invalidity**

1. In the case of aggravation of an invalidity for which a person is receiving benefits under the legislation of one or more Member States, the following provisions shall apply, taking the aggravation into account:
  - (a) the benefits shall be provided in accordance with Chapter 5, applied *mutatis mutandis*;
  - (b) however, where the person concerned has been subject to two or more type A legislations and since receiving benefit has not been subject to the legislation of another Member State, the benefit shall be provided in accordance with Article 44(2).
2. If the total amount of the benefit or benefits payable under paragraph 1 is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously competent for payment, that institution shall pay him/her a supplement equal to the difference between the two amounts.
3. If the person concerned is not entitled to benefits at the expense of an institution of another Member State, the competent institution of the Member State previously competent shall provide the benefits in accordance with the legislation it applies, taking into account the aggravation and, where appropriate, Article 45.

### **Article 48 - Conversion of invalidity benefits into old-age benefits**

1. Invalidity benefits shall be converted into old-age benefits, where appropriate, under the conditions laid down by the legislation or legislations under which they are provided and in accordance with Chapter 5.
2. Where a person receiving invalidity benefits can establish a claim to old-age benefits under the legislation of one or more other Member States, in accordance with Article 50, any institution which is responsible for providing invalidity benefits under the legislation of a Member State shall continue to provide such a person with the invalidity benefits to which he/she is entitled under the legislation it applies until paragraph 1 becomes applicable in respect of that institution, or otherwise for as long as the person concerned satisfies the conditions for such benefits.
3. Where invalidity benefits provided under the legislation of a Member State, in accordance with Article 44, are converted into old-age benefits and where the person concerned does not yet satisfy the conditions laid down by the legislation of one or more of the other Member States for receiving those benefits, the person concerned shall receive, from that or those Member States, invalidity benefits from the date of the conversion.

Those invalidity benefits shall be provided in accordance with Chapter 5 as if that Chapter had been applicable at the time when the incapacity for work leading to invalidity occurred, until the person concerned satisfies the qualifying conditions for old-age benefit laid down by the national legislations concerned

or, where such conversion is not provided for, for as long as he/she is entitled to invalidity benefits under the latter legislation or legislations.

4. The invalidity benefits provided under Article 44 shall be recalculated in accordance with Chapter 5 as soon as the beneficiary satisfies the qualifying conditions for invalidity benefits laid down by a type B legislation, or as soon as he/she receives old-age benefits under the legislation of another Member State.

#### **Article 49 - Special provisions for civil servants**

Articles 6, 44, 46, 47 and 48 and Article 60(2) and (3) shall apply *mutatis mutandis* to persons covered by a special scheme for civil servants.

### **CHAPTER 5 - Old-age and survivors' pensions**

#### **Article 50 - General provisions**

1. All the competent institutions shall determine entitlement to benefit, under all the legislations of the Member States to which the person concerned has been subject, when a request for award has been submitted, unless the person concerned expressly requests deferment of the award of old-age benefits under the legislation of one or more Member States.
2. If at a given moment the person concerned does not satisfy, or no longer satisfies, the conditions laid down by all the legislations of the Member States to which he/she has been subject, the institutions applying legislation the conditions of which have been satisfied shall not take into account, when performing the calculation in accordance with Article 52(1) (a) or (b), the periods completed under the legislations the conditions of which have not been satisfied, or are no longer satisfied, where this gives rise to a lower amount of benefit.
3. Paragraph 2 shall apply *mutatis mutandis* when the person concerned has expressly requested deferment of the award of old-age benefits.
4. A new calculation shall be performed automatically as and when the conditions to be fulfilled under the other legislations are satisfied or when a person requests the award of an old-age benefit deferred in accordance with paragraph 1, unless the periods completed under the other legislations have already been taken into account by virtue of paragraph 2 or 3.

#### **Article 51 - Special provisions on aggregation of periods**

1. Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in a specific activity as an employed or self-employed person or in an occupation which is subject to a special scheme for employed or self-employed persons, the competent institution of that Member State shall take into account periods completed under the legislation of other Member States only if completed under

a corresponding scheme or, failing that, in the same occupation, or where appropriate, in the same activity as an employed or self-employed person.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of the benefits of a special scheme, these periods shall be taken into account for the purposes of providing the benefits of the general scheme or, failing that, of the scheme applicable to manual or clerical workers, as the case may be, provided that the person concerned had been affiliated to one or other of those schemes.

2. The periods of insurance completed under a special scheme of a Member State shall be taken into account for the purposes of providing the benefits of the general scheme or, failing that, of the scheme applicable to manual or clerical workers, as the case may be, of another Member State, provided that the person concerned had been affiliated to one or other of those schemes, even if those periods have already been taken into account in the latter Member State under a special scheme.
3. Where the legislation or specific scheme of a Member State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied if that person has been previously insured under the legislation or specific scheme of that Member State and is, at the time of the materialisation of the risk, insured under the legislation of another Member State for the same risk or, failing that, if a benefit is due under the legislation of another Member State for the same risk. The latter condition shall, however, be deemed to be fulfilled in the cases referred to in Article 57.

### **Article 52 - Award of benefits**

1. The competent institution shall calculate the amount of the benefit that would be due:
  - (a) under the legislation it applies, only where the conditions for entitlement to benefits have been satisfied exclusively under national law (independent benefit);
  - (b) by calculating a theoretical amount and subsequently an actual amount (pro rata benefit), as follows:
    - (i) the theoretical amount of the benefit is equal to the benefit which the person concerned could claim if all the periods of insurance and/or of residence which have been completed under the legislations of the other Member States had been completed under the legislation it applies on the date of the award of the benefit. If, under this legislation, the amount does not depend on the duration of the periods completed, that amount shall be regarded as being the theoretical amount;

- (ii) the competent institution shall then establish the actual amount of the pro rata benefit by applying to the theoretical amount the ratio between the duration of the periods completed before materialisation of the risk under the legislation it applies and the total duration of the periods completed before materialisation of the risk under the legislations of all the Member States concerned.
2. Where appropriate, the competent institution shall apply, to the amount calculated in accordance with subparagraphs 1(a) and (b), all the rules relating to reduction, suspension or withdrawal, under the legislation it applies, within the limits provided for by Articles 53 to 55.
3. The person concerned shall be entitled to receive from the competent institution of each Member State the higher of the amounts calculated in accordance with subparagraphs 1(a) and (b).
4. Where the calculation pursuant to paragraph 1(a) in one Member State invariably results in the independent benefit being equal to or higher than the pro rata benefit, calculated in accordance with paragraph 1(b), the competent institution shall waive the pro rata calculation, provided that:
  - (i) such a situation is set out in Part 1 of Annex VIII;
  - (ii) no legislation containing rules against overlapping, as referred to in Articles 54 and 55, is applicable unless the conditions laid down in Article 55(2) are fulfilled; and
  - (iii) Article 57 is not applicable in relation to periods completed under the legislation of another Member State in the specific circumstances of the case.
5. Notwithstanding the provisions of paragraphs 1, 2 and 3, the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in part 2 of Annex VIII. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Member State concerned.

### **Article 53 - Rules to prevent overlapping**

1. Any overlapping of invalidity, old age and survivors' benefits calculated or provided on the basis of periods of insurance and/or residence completed by the same person shall be considered to be overlapping of benefits of the same kind.
2. Overlapping of benefits which cannot be considered to be of the same kind within the meaning of paragraph 1 shall be considered to be overlapping of benefits of a different kind.
3. The following provisions shall be applicable for the purposes of rules to prevent overlapping laid down by the legislation of a Member State in the case of overlapping of a benefit in respect of invalidity, old age or survivors with a benefit of the same kind or a benefit of a different kind or with other income:

- (a) the competent institution shall take into account the benefits or incomes acquired in another Member State only where the legislation it applies provides for benefits or income acquired abroad to be taken into account;
- (b) the competent institution shall take into account the amount of benefits to be paid by another Member State before deduction of tax, social security contributions and other individual levies or deductions, unless the legislation it applies provides for the application of rules to prevent overlapping after such deductions, under the conditions and the procedures laid down in the Implementing Regulation;
- (c) the competent institution shall not take into account the amount of benefits acquired under the legislation of another Member State on the basis of voluntary insurance or continued optional insurance;
- (d) if a single Member State applies rules to prevent overlapping because the person concerned receives benefits of the same or of a different kind under the legislation of other Member States or income acquired in other Member States, the benefit due may be reduced solely by the amount of such benefits or such income.

#### **Article 54 - Overlapping of benefits of the same kind**

1. Where benefits of the same kind due under the legislation of two or more Member States overlap, the rules to prevent overlapping laid down by the legislation of a Member State shall not be applicable to a pro rata benefit.
2. The rules to prevent overlapping shall apply to an independent benefit only if the benefit concerned is:
  - (a) a benefit the amount of which does not depend on the duration of periods of insurance or residence,or
  - (b) a benefit the amount of which is determined on the basis of a credited period deemed to have been completed between the date on which the risk materialised and a later date, overlapping with:
    - (i) a benefit of the same type, except where an agreement has been concluded between two or more Member States to avoid the same credited period being taken into account more than once,or
    - (ii) a benefit referred to in subparagraph (a).
2. The benefits and agreements referred to in subparagraphs (a) and (b) are listed in Annex IX.

## **Article 55 - Overlapping of benefits of a different kind**

1. If the receipt of benefits of a different kind or other income requires the application of the rules to prevent overlapping provided for by the legislation of the Member States concerned regarding:
  - (a) two or more independent benefits, the competent institutions shall divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules;  
  
however, the application of this subparagraph cannot deprive the person concerned of his/her status as a pensioner for the purposes of the other chapters of this Title under the conditions and the procedures laid down in the Implementing Regulation;
  - (b) one or more pro rata benefits, the competent institutions shall take into account the benefit or benefits or other income and all the elements stipulated for applying the rules to prevent overlapping as a function of the ratio between the periods of insurance and/or residence established for the calculation referred to in Article 52(1)(b)(ii);
  - (c) one or more independent benefits and one or more pro-rata benefits, the competent institutions shall apply *mutatis mutandis* subparagraph (a) as regards independent benefits and subparagraph (b) as regards pro rata benefits.
2. The competent institution shall not apply the division stipulated in respect of independent benefits, if the legislation it applies provides for account to be taken of benefits of a different kind and/or other income and all other elements for calculating part of their amount determined as a function of the ratio between periods of insurance and/or residence referred to in Article 52(1)(b)(ii).
3. Paragraphs 1 and 2 shall apply *mutatis mutandis* where the legislation of one or more Member States provides that a right to a benefit cannot be acquired in the case where the person concerned is in receipt of a benefit of a different kind, payable under the legislation of another Member State, or of other income.

## **Article 56 - Additional provisions for the calculation of benefits**

1. For the calculation of the theoretical and pro rata amounts referred to in Article 52(1)(b), the following rules shall apply:
  - (a) where the total length of the periods of insurance and/or residence completed before the risk materialised under the legislations of all the Member States concerned is longer than the maximum period required by the legislation of one of these Member States for receipt of full benefit, the competent institution of that Member State shall take into account this maximum period instead of the total length of the periods completed; this method of calculation shall not result in the imposition on that institution of

the cost of a benefit greater than the full benefit provided for by the legislation it applies. This provision shall not apply to benefits the amount of which does not depend on the length of insurance;

- (b) the procedure for taking into account overlapping periods is laid down in the Implementing Regulation;
- (c) if the legislation of a Member State provides that the benefits are to be calculated on the basis of incomes, contributions, bases of contributions, increases, earnings, other amounts or a combination of more than one of them (average, proportional, fixed or credited), the competent institution shall:
  - (i) determine the basis for calculation of the benefits in accordance only with periods of insurance completed under the legislation it applies;
  - (ii) use, in order to determine the amount to be calculated in accordance with the periods of insurance and/or residence completed under the legislation of the other Member States, the same elements determined or recorded for the periods of insurance completed under the legislation it applies;

where necessary in accordance with the procedures laid down in Annex XI for the Member State concerned;

- (d) In the event that point(c) is not applicable because the legislation of a Member State provides for the benefit to be calculated on the basis of elements other than periods of insurance or residence which are not linked to time, the competent institution shall take into account, in respect of each period of insurance or residence completed under the legislation of any other Member State, the amount of the capital accrued, the capital which is considered as having been accrued or any other element for the calculation under the legislation it administers divided by the corresponding units of periods in the pension scheme concerned.
2. The provisions of the legislation of a Member State concerning the revalorisation of the elements taken into account for the calculation of benefits shall apply, as appropriate, to the elements to be taken into account by the competent institution of that Member State, in accordance with paragraph 1, in respect of the periods of insurance or residence completed under the legislation of other Member States.

#### **Article 57 - Periods of insurance or residence of less than one year**

1. Notwithstanding Article 52(1)(b), the institution of a Member State shall not be required to provide benefits in respect of periods completed under the legislation it applies which are taken into account when the risk materialises, if:
- the duration of the said periods is less than one year,
- and

— taking only these periods into account no right to benefit is acquired under that legislation.

For the purposes of this Article, ‘periods’ shall mean all periods of insurance, employment, self-employment or residence which either qualify for, or directly increase, the benefit concerned.

2. The competent institution of each of the Member States concerned shall take into account the periods referred to in paragraph 1, for the purposes of Article 52(1)(b)(i).
3. If the effect of applying paragraph 1 would be to relieve all the institutions of the Member States concerned of their obligations, benefits shall be provided exclusively under the legislation of the last of those Member States whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with Articles 6 and 51(1) and (2) had been completed under the legislation of that Member State.
4. This Article shall not apply to schemes listed in Part 2 of Annex VIII.

#### **Article 58 - Award of a supplement**

1. A recipient of benefits to whom this chapter applies may not, in the Member State of residence and under whose legislation a benefit is payable to him/her, be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with this chapter.
2. The competent institution of that Member State shall pay him/her throughout the period of his/her residence in its territory a supplement equal to the difference between the total of the benefits due under this chapter and the amount of the minimum benefit.

#### **Article 59 - Recalculation and revaluation of benefits**

1. If the method for determining benefits or the rules for calculating benefits are altered under the legislation of a Member State, or if the personal situation of the person concerned undergoes a relevant change which, under that legislation, would lead to an adjustment of the amount of the benefit, a recalculation shall be carried out in accordance with Article 52.
2. On the other hand, if, by reason of an increase in the cost of living or changes in the level of income or other grounds for adjustment, the benefits of the Member State concerned are altered by a percentage or fixed amount, such percentage or fixed amount shall be applied directly to the benefits determined in accordance with Article 52, without the need for a recalculation.

## **Article 60 - Special provisions for civil servants**

1. Articles 6, 50, 51(3) and 52 to 59 shall apply *mutatis mutandis* to persons covered by a special scheme for civil servants.
2. However, if the legislation of a competent Member State makes the acquisition, liquidation, retention or recovery of the right to benefits under a special scheme for civil servants subject to the condition that all periods of insurance be completed under one or more special schemes for civil servants in that Member State, or be regarded by the legislation of that Member State as equivalent to such periods, the competent institution of that State shall take into account only the periods which can be recognised under the legislation it applies.  
  
If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for the receipt of these benefits, these periods shall be taken into account for the award of benefits under the general scheme or, failing that, the scheme applicable to manual or clerical workers, as the case may be.
3. Where, under the legislation of a Member State, benefits under a special scheme for civil servants are calculated on the basis of the last salary or salaries received during a reference period, the competent institution of that State shall take into account, for the purposes of the calculation, only those salaries, duly revalued, which were received during the period or periods for which the person concerned was subject to that legislation.

## **CHAPTER 6 - Unemployment benefits**

### **Article 61 - Special rules on aggregation of periods of insurance, employment or self-employment**

1. The competent institution of a Member State whose legislation makes the acquisition, retention, recovery or duration of the right to benefits conditional upon the completion of either periods of insurance, employment or self-employment shall, to the extent necessary, take into account periods of insurance, employment or self-employment completed under the legislation of any other Member State as though they were completed under the legislation it applies.  
  
However, when the applicable legislation makes the right to benefits conditional on the completion of periods of insurance, the periods of employment or self-employment completed under the legislation of another Member State shall not be taken into account unless such periods would have been considered to be periods of insurance had they been completed in accordance with the applicable legislation.
2. Except in the cases referred to in Article 65(5)(a), the application of paragraph 1 of this Article shall be conditional on the person concerned having the most

recently completed, in accordance with the legislation under which the benefits are claimed:

- periods of insurance, if that legislation requires periods of insurance,
- periods of employment, if that legislation requires periods of employment,
- or
- periods of self-employment, if that legislation requires periods of self-employment.

### **Article 62 - Calculation of benefits**

1. The competent institution of a Member State whose legislation provides for the calculation of benefits on the basis of the amount of the previous salary or professional income shall take into account exclusively the salary or professional income received by the person concerned in respect of his/her last activity as an employed or self-employed person under the said legislation.
2. Paragraph 1 shall also apply where the legislation administered by the competent institution provides for a specific reference period for the determination of the salary which serves as a basis for the calculation of benefits and where, for all or part of that period, the person concerned was subject to the legislation of another Member State.
3. By way of derogation from paragraphs 1 and 2, as far as the unemployed persons covered by Article 65(5)(a) are concerned, the institution of the place of residence shall take into account the salary or professional income received by the person concerned in the Member State to whose legislation he/she was subject during his/her last activity as an employed or self-employed person, in accordance with the Implementing Regulation.

### **Article 63 - Special provisions for the waiving of residence rules**

For the purpose of this Chapter, Article 7 shall apply only in the cases provided for by Articles 64, 65 and 65a and within the limits prescribed therein.

### **Article 64 - Unemployed persons going to another Member State**

1. A wholly unemployed person who satisfies the conditions of the legislation of the competent Member State for entitlement to benefits, and who goes to another Member State in order to seek work there, shall retain his/her entitlement to unemployment benefits in cash under the following conditions and within the following limits:
  - (a) before his/her departure, the unemployed person must have been registered as a person seeking work and have remained available to the employment services of the competent Member State for at least four weeks after becoming unemployed. However, the competent services or institutions may authorise his/her departure before such time has expired;

- (b) the unemployed person must register as a person seeking work with the employment services of the Member State to which he/she has gone, be subject to the control procedure organised there and adhere to the conditions laid down under the legislation of that Member State. This condition shall be considered satisfied for the period before registration if the person concerned registers within seven days of the date on which he/she ceased to be available to the employment services of the Member State which he/she left. In exceptional cases, the competent services or institutions may extend this period;
  - (c) entitlement to benefits shall be retained for a period of three months from the date when the unemployed person ceased to be available to the employment services of the Member State which he/she left, provided that the total duration for which the benefits are provided does not exceed the total duration of the period of his/her entitlement to benefits under the legislation of that Member State; the competent services or institutions may extend the period of three months up to a maximum of six months;
  - (d) the benefits shall be provided by the competent institution in accordance with the legislation it applies and at its own expense.
2. If the person concerned returns to the competent Member State on or before the expiry of the period during which he/she is entitled to benefits under paragraph 1(c), he/she shall continue to be entitled to benefits under the legislation of that Member State. He/she shall lose all entitlement to benefits under the legislation of the competent Member State if he/she does not return there on or before the expiry of the said period, unless the provisions of that legislation are more favourable. In exceptional cases the competent services or institutions may allow the person concerned to return at a later date without loss of his/her entitlement.
  3. Unless the legislation of the competent Member State is more favourable, between two periods of employment the maximum total period for which entitlement to benefits shall be retained under paragraph 1 shall be three months; the competent services or institutions may extend that period up to a maximum of six months.
  4. The arrangements for exchanges of information, cooperation and mutual assistance between the institutions and services of the competent Member State and the Member State to which the person goes in order to seek work shall be laid down in the Implementing Regulation.

#### **Article 65 - Unemployed persons who resided in a Member State other than the competent State**

1. A person who is partially or intermittently unemployed and who, during his/her last activity as an employed or self-employed person, resided in a Member State other than the competent Member State shall make himself/herself available to his/her employer or to the employment services in the competent Member State. He/she shall receive benefits in accordance with the legislation of the competent

Member State as if he/she were residing in that Member State. These benefits shall be provided by the institution of the competent Member State.

2. A wholly unemployed person who, during his/her last activity as an employed or self-employed person, resided in a Member State other than the competent Member State and who continues to reside in that Member State or returns to that Member State shall make himself/herself available to the employment services in the Member State of residence. Without prejudice to Article 64, a wholly unemployed person may, as a supplementary step, make himself/herself available to the employment services of the Member State in which he/she pursued his/her last activity as an employed or self-employed person.

An unemployed person, other than a frontier worker, who does not return to his/her Member State of residence, shall make himself/herself available to the employment services in the Member State to whose legislation he/she was last subject.

3. The unemployed person referred to in the first sentence of paragraph 2 shall register as a person seeking work with the competent employment services of the Member State in which he/she resides, shall be subject to the control procedure organised there and shall adhere to the conditions laid down under the legislation of that Member State. If he/she chooses also to register as a person seeking work in the Member State in which he/she pursued his/her last activity as an employed or self-employed person, he/she shall comply with the obligations applicable in that State.
4. The implementation of the second sentence of paragraph 2 and of the second sentence of paragraph 3, as well as the arrangements for exchanges of information, cooperation and mutual assistance between the institutions and services of the Member State of residence and the Member State in which he/she pursued his/her last occupation, shall be laid down in the Implementing Regulation.
5.
  - (a) The unemployed person referred to in the first and second sentences of paragraph 2 shall receive benefits in accordance with the legislation of the Member State of residence as if he/she had been subject to that legislation during his/her last activity as an employed or self-employed person. Those benefits shall be provided by the institution of the place of residence.
  - (b) However, a worker other than a frontier worker who has been provided benefits at the expense of the competent institution of the Member State to whose legislation he/she was last subject shall firstly receive, on his/her return to the Member State of residence, benefits in accordance with Article 64, receipt of the benefits in accordance with (a) being suspended for the period during which he/she receives benefits under the legislation to which he/she was last subject.
6. The benefits provided by the institution of the place of residence under paragraph 5 shall continue to be at its own expense. However, subject to paragraph 7, the

competent institution of the Member State to whose legislation he/she was last subject shall reimburse to the institution of the place of residence the full amount of the benefits provided by the latter institution during the first three months. The amount of the reimbursement during this period may not be higher than the amount payable, in the case of unemployment, under the legislation of the competent Member State. In the case referred to in paragraph 5(b), the period during which benefits are provided under Article 64 shall be deducted from the period referred to in the second sentence of this paragraph. The arrangements for reimbursement shall be laid down in the Implementing Regulation.

7. However, the period of reimbursement referred to in paragraph 6 shall be extended to five months when the person concerned has, during the preceding 24 months, completed periods of employment or self-employment of at least 12 months in the Member State to whose legislation he/she was last subject, where such periods would qualify for the purposes of establishing entitlement to unemployment benefits.
8. For the purposes of paragraphs 6 and 7, two or more Member States, or their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions falling under their jurisdiction.

**Article 65a - Special provisions for wholly unemployed self-employed frontier workers where no unemployment benefits system covering self-employed persons exists in the Member State of residence**

1. By way of derogation from Article 65, a wholly unemployed person who, as a frontier worker, has most recently completed periods of insurance as a self-employed person or periods of self-employment recognised for the purposes of granting unemployment benefits in a Member State other than his/her Member State of residence and whose Member State of residence has submitted notification that there is no possibility for any category of self-employed persons to be covered by an unemployment benefits system of that Member State, shall register with and make himself/herself available to the employment services in the Member State in which he/she pursued his/her last activity as a self-employed person and, when he/she applies for benefits, shall continuously adhere to the conditions laid down under the legislation of the latter Member State. The wholly unemployed person may, as a supplementary step, make himself/herself available to the employment services of the Member State of residence.
2. Benefits shall be provided to the wholly unemployed person referred to in paragraph 1 by the Member State to whose legislation he/she was last subject in accordance with the legislation which that Member State applies.
3. If the wholly unemployed person referred to in paragraph 1 does not wish to become or remain available to the employment services of the Member State of last activity after having been registered there, and wishes to seek work in the Member State of residence, Article 64 shall apply *mutatis mutandis*, except Article 64(1)(a). The competent institution may extend the period referred to in

the first sentence of Article 64(1)(c) up to the end of the period of entitlement to benefits.

## **CHAPTER 7 - Pre-retirement benefits**

### **Article 66 - Benefits**

When the applicable legislation makes the right to pre-retirement benefits conditional on the completion of periods of insurance, of employment or of self-employment, Article 6 shall not apply.

## **CHAPTER 8 - Family benefits**

### **Article 67 - Members of the family residing in another Member State**

A person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they were residing in the former Member State. However, a pensioner shall be entitled to family benefits in accordance with the legislation of the Member State competent for his/her pension.

### **Article 68 - Priority rules in the event of overlapping**

1. Where, during the same period and for the same family members, benefits are provided for under the legislation of more than one Member State the following priority rules shall apply:
  - (a) in the case of benefits payable by more than one Member State on different bases, the order of priority shall be as follows: firstly, rights available on the basis of an activity as an employed or self-employed person, secondly, rights available on the basis of receipt of a pension and finally, rights obtained on the basis of residence;
  - (b) in the case of benefits payable by more than one Member State on the same basis, the order of priority shall be established by referring to the following subsidiary criteria:
    - (i) in the case of rights available on the basis of an activity as an employed or self-employed person: the place of residence of the children, provided that there is such activity, and additionally, where appropriate, the highest amount of the benefits provided for by the conflicting legislations. In the latter case, the cost of benefits shall be shared in accordance with criteria laid down in the Implementing Regulation;
    - (ii) in the case of rights available on the basis of receipt of pensions: the place of residence of the children, provided that a pension is payable

under its legislation, and additionally, where appropriate, the longest period of insurance or residence under the conflicting legislations;

(iii) in the case of rights available on the basis of residence: the place of residence of the children.

2. In the case of overlapping entitlements, family benefits shall be provided in accordance with the legislation designated as having priority in accordance with paragraph 1. Entitlements to family benefits by virtue of other conflicting legislation or legislations shall be suspended up to the amount provided for by the first legislation and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount. However, such a differential supplement does not need to be provided for children residing in another Member State when entitlement to the benefit in question is based on residence only.
3. If, under Article 67, an application for family benefits is submitted to the competent institution of a Member State whose legislation is applicable, but not by priority right in accordance with paragraphs 1 and 2 of this Article:
  - (a) that institution shall forward the application without delay to the competent institution of the Member State whose legislation is applicable by priority, inform the person concerned and, without prejudice to the provisions of the Implementing Regulation concerning the provisional award of benefits, provide, if necessary, the differential supplement mentioned in paragraph 2;
  - (b) the competent institution of the Member State whose legislation is applicable by priority shall deal with this application as though it were submitted directly to itself, and the date on which such an application was submitted to the first institution shall be considered as the date of its claim to the institution with priority.

### **Article 68a - Provision of benefits**

In the event that family benefits are not used by the person to whom they should be provided for the maintenance of the members of the family, the competent institution shall discharge its legal obligations by providing those benefits to the natural or legal person in fact maintaining the members of the family, at the request and through the agency of the institution in their Member State of residence or of the designated institution or body appointed for that purpose by the competent authority of their Member State of residence.

### **Article 69 - Additional provisions**

1. If, under the legislation designated by virtue of Articles 67 and 68, no right is acquired to the payment of additional or special family benefits for orphans, such benefits shall be paid by default, and in addition to the other family benefits acquired in accordance with the abovementioned legislation, under the legislation of the Member State to which the deceased worker was subject for the longest period of time, in so far as the right was acquired under that legislation. If no right was acquired under that legislation, the conditions for the acquisition of

such right under the legislations of the other Member States shall be examined and benefits provided in decreasing order of the length of periods of insurance or residence completed under the legislation of those Member States.

2. Benefits paid in the form of pensions or supplements to pensions shall be provided and calculated in accordance with Chapter 5.

## **CHAPTER 9 - Special non-contributory cash benefits**

### **Article 70 - General provision**

1. This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance.
  2. For the purposes of this Chapter, 'special non-contributory cash benefits' means those which:
    - (a) are intended to provide either:
      - (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;

or

    - (ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned,

and

  - (b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone,

and

  - (c) are listed in Annex X.
3. Article 7 and the other chapters of this Title shall not apply to the benefits referred to in paragraph 2 of this Article.
4. The benefits referred to in paragraph 2 shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its

legislation. Such benefits shall be provided by and at the expense of the institution of the place of residence.

#### **TITLE IV - ADMINISTRATIVE COMMISSION AND ADVISORY COMMITTEE**

##### **Article 71 - Composition and working methods of the Administrative Commission**

1. The Administrative Commission for the Coordination of Social Security Systems (hereinafter called the Administrative Commission) attached to the European Commission shall be made up of a government representative from each of the Member States, assisted, where necessary, by expert advisers. A representative of the European Commission shall attend the meetings of the Administrative Commission in an advisory capacity.
2. The Administrative Commission shall act by a qualified majority as defined by the Treaties, except when adopting its rules which shall be drawn up by mutual agreement among its members.

Decisions on questions of interpretation referred to in Article 72(a) shall be given the necessary publicity.

3. Secretarial services for the Administrative Commission shall be provided by the European Commission.

##### **Article 72 - Tasks of the Administrative Commission**

The Administrative Commission shall:

- (a) deal with all administrative questions and questions of interpretation arising from the provisions of this Regulation or those of the Implementing Regulation, or from any agreement concluded or arrangement made thereunder, without prejudice to the right of the authorities, institutions and persons concerned to have recourse to the procedures and tribunals provided for by the legislation of the Member States, by this Regulation or by the Treaty;
- (b) facilitate the uniform application of Community law, especially by promoting exchange of experience and best administrative practices;
- (c) foster and develop cooperation between Member States and their institutions in social security matters in order, *inter alia*, to take into account particular questions regarding certain categories of persons; facilitate realisation of actions of crossborder cooperation activities in the area of the coordination of social security systems;
- (d) encourage as far as possible the use of new technologies in order to facilitate the free movement of persons, in particular by modernising procedures for exchanging information and adapting the information flow between institutions for the purposes of exchange by electronic means, taking account of the

development of data processing in each Member State; the Administrative Commission shall adopt the common structural rules for data processing services, in particular on security and the use of standards, and shall lay down provisions for the operation of the common part of those services;

- (e) undertake any other function falling within its competence under this Regulation and the Implementing Regulation or any agreement or arrangement concluded thereunder;
- (f) make any relevant proposals to the European Commission concerning the coordination of social security schemes, with a view to improving and modernising the Community *acquis* by drafting subsequent Regulations or by means of other instruments provided for by the Treaty;
- (g) establish the factors to be taken into account for drawing up accounts relating to the costs to be borne by the institutions of the Member States under this Regulation and to adopt the annual accounts between those institutions, based on the report of the Audit Board referred to in Article 74.

### **Article 73 - Technical Commission for Data Processing**

1. A Technical Commission for Data Processing (hereinafter called the Technical Commission) shall be attached to the Administrative Commission. The Technical Commission shall propose to the Administrative Commission common architecture rules for the operation of data-processing services, in particular on security and the use of standards; it shall deliver reports and a reasoned opinion before decisions are taken by the Administrative Commission pursuant to Article 72(d). The composition and working methods of the Technical Commission shall be determined by the Administrative Commission.
2. To this end, the Technical Commission shall:
  - (a) gather together the relevant technical documents and undertake the studies and other work required to accomplish its tasks;
  - (b) submit to the Administrative Commission the reports and reasoned opinions referred to in paragraph 1;
  - (c) carry out all other tasks and studies on matters referred to it by the Administrative Commission;
  - (d) ensure the management of Community pilot projects using data-processing services and, for the Community part, operational systems using data-processing services.

### **Article 74 - Audit Board**

1. An Audit Board shall be attached to the Administrative Commission. The composition and working methods of the Audit Board shall be determined by the Administrative Commission.

The Audit Board shall:

- (a) verify the method of determining and calculating the annual average costs presented by Member States;
- (b) collect the necessary data and carry out the calculations required for establishing the annual statement of claims of each Member State;
- (c) give the Administrative Commission periodic accounts of the results of the implementation of this Regulation and of the Implementing Regulation, in particular as regards the financial aspect;
- (d) provide the data and reports necessary for decisions to be taken by the Administrative Commission pursuant to Article 72(g);
- (e) make any relevant suggestions it may have to the Administrative Commission, including those concerning this Regulation, in connection with subparagraphs (a), (b) and (c);
- (f) carry out all work, studies or assignments on matters referred to it by the Administrative Commission.

#### **Article 75 - Advisory Committee for the Coordination of Social Security Systems**

1. An Advisory Committee for the Coordination of Social Security Systems (hereinafter referred to as Advisory Committee) is hereby established, comprising, from each Member State:
  - (a) one government representative;
  - (b) one representative from the trade unions;
  - (c) one representative from the employers' organisations.

For each of the categories referred to above, an alternate member shall be appointed for each Member State.

The members and alternate members of the Advisory Committee shall be appointed by the Council. The Advisory Committee shall be chaired by a representative of the European Commission. The Advisory Committee shall draw up its Rules of Procedure.
2. The Advisory Committee shall be empowered, at the request of the European Commission, the Administrative Commission or on its own initiative:
  - (a) to examine general questions or questions of principle and problems arising from the implementation of the Community provisions on the coordination of social security systems, especially regarding certain categories of persons;
  - (b) to formulate opinions on such matters for the Administrative Commission and proposals for any revisions of the said provisions.

## **TITLE V - MISCELLANEOUS PROVISIONS**

### **Article 76 - Cooperation**

1. The competent authorities of the Member States shall communicate to each other all information regarding:
  - (a) measures taken to implement this Regulation;
  - (b) changes in their legislation which may affect the implementation of this Regulation.
2. For the purposes of this Regulation, the authorities and institutions of the Member States shall lend one another their good offices and act as though implementing their own legislation. The administrative assistance given by the said authorities and institutions shall, as a rule, be free of charge. However, the Administrative Commission shall establish the nature of reimbursable expenses and the limits above which their reimbursement is due.
3. The authorities and institutions of the Member States may, for the purposes of this Regulation, communicate directly with one another and with the persons involved or their representatives.
4. The institutions and persons covered by this Regulation shall have a duty of mutual information and cooperation to ensure the correct implementation of this Regulation.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall in this connection provide the persons concerned with any information required for exercising the rights conferred on them by this Regulation.

The persons concerned must inform the institutions of the competent Member State and of the Member State of residence as soon as possible of any change in their personal or family situation which affects their right to benefits under this Regulation.

5. Failure to respect the obligation of information referred to in the third subparagraph of paragraph 4 may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Regulation.
6. In the event of difficulties in the interpretation or application of this Regulation which could jeopardise the rights of a person covered by it, the institution of the competent Member State or of the Member State of residence of the person concerned shall contact the institution(s) of the Member State(s) concerned. If a solution cannot be found within a reasonable period, the authorities concerned may call on the Administrative Commission to intervene.
7. The authorities, institutions and tribunals of one Member State may not reject applications or other documents submitted to them on the grounds that they are

written in an official language of another Member State, recognised as an official language of the Community institutions in accordance with Article 290 of the Treaty.

### **Article 77 - Protection of personal data**

1. Where, according to this Regulation or to the Implementing Regulation, the authorities or institutions of a Member State communicate personal data to the authorities or institutions of another Member State, such communication shall be subject to the data protection legislation of the Member State transmitting them. Any communication from the authority or institution of the receiving Member State as well as the storage, alteration and destruction of the data provided by that Member State shall be subject to the data protection legislation of the receiving Member State.
2. Data required for the application of this Regulation and the Implementing Regulation shall be transmitted by one Member State to another Member State in accordance with Community provisions on the protection of natural persons with regard to the processing and free movement of personal data.

### **Article 78 - Data processing**

1. Member States shall progressively use new technologies for the exchange, access and processing of the data required to apply this Regulation and the Implementing Regulation. The European Commission shall lend its support to activities of common interest as soon as the Member States have established such data-processing services.
2. Each Member State shall be responsible for managing its own part of the data-processing services in accordance with the Community provisions on the protection of natural persons with regard to the processing and the free movement of personal data.
3. An electronic document sent or issued by an institution in conformity with this Regulation and the Implementing Regulation may not be rejected by any authority or institution of another Member State on the grounds that it was received by electronic means, once the receiving institution has declared that it can receive electronic documents. Reproduction and recording of such documents shall be presumed to be a correct and accurate reproduction of the original document or representation of the information it relates to, unless there is proof to the contrary.
4. An electronic document shall be considered valid if the computer system on which the document is recorded contains the safeguards necessary in order to prevent any alteration, disclosure or unauthorised access to the recording. It shall at any time be possible to reproduce the recorded information in an immediately readable form. When an electronic document is transferred from one social security institution to another, appropriate security measures shall be taken in

accordance with the Community provisions on the protection of natural persons with regard to the processing and the free movement of personal data.

### **Article 79 - Funding of activities in the social security field**

In connection with this Regulation and the Implementing Regulation, the European Commission may fund in full or in part:

- (a) activities aimed at improving exchanges of information between the social security authorities and institutions of the Member States, particularly the electronic exchange of data;
- (b) any other activity aimed at providing information to the persons covered by this Regulation and their representatives about the rights and obligations deriving from this Regulation, using the most appropriate means.

### **Article 80 - Exemptions**

1. Any exemption from or reduction of taxes, stamp duty, notarial or registration fees provided for under the legislation of one Member State in respect of certificates or documents required to be produced in application of the legislation of that Member State shall be extended to similar certificates or documents required to be produced in application of the legislation of another Member State or of this Regulation.
2. All statements, documents and certificates of any kind whatsoever required to be produced in application of this Regulation shall be exempt from authentication by diplomatic or consular authorities.

### **Article 81 - Claims, declarations or appeals**

Any claim, declaration or appeal which should have been submitted, in application of the legislation of one Member State, within a specified period to an authority, institution or tribunal of that Member State shall be admissible if it is submitted within the same period to a corresponding authority, institution or tribunal of another Member State. In such a case the authority, institution or tribunal receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or tribunal of the former Member State either directly or through the competent authorities of the Member States concerned. The date on which such claims, declarations or appeals were submitted to the authority, institution or tribunal of the second Member State shall be considered as the date of their submission to the competent authority, institution or tribunal.

### **Article 82 - Medical examinations**

Medical examinations provided for by the legislation of one Member State may be carried out at the request of the competent institution, in another Member State, by the institution of the place of residence or stay of the claimant or the person entitled to

benefits, under the conditions laid down in the Implementing Regulation or agreed between the competent authorities of the Member States concerned.

### **Article 83 - Implementation of legislation**

Special provisions for implementing the legislation of certain Member States are referred to in Annex XI.

### **Article 84 - Collection of contributions and recovery of benefits**

1. Collection of contributions due to an institution of one Member State and recovery of benefits provided by the institution of one Member State but not due may be effected in another Member State in accordance with the procedures and with the guarantees and privileges applicable to the collection of contributions due to the corresponding institution of the latter Member State and the recovery of benefits provided by it but not due.
2. Enforceable decisions of the judicial and administrative authorities relating to the collection of contributions, interest and any other charges or to the recovery of benefits provided but not due under the legislation of one Member State shall be recognised and enforced at the request of the competent institution in another Member State within the limits and in accordance with the procedures laid down by the legislation and any other procedures applicable to similar decisions of the latter Member State. Such decisions shall be declared enforceable in that Member State in so far as the legislation and any other procedures of that Member State so require.
3. Claims of an institution of one Member State shall in enforcement, bankruptcy or settlement proceedings in another Member State enjoy the same privileges as the legislation of the latter Member State accords to claims of the same kind.
4. The procedure for implementing this Article, including costs reimbursement, shall be governed by the Implementing Regulation or, where necessary and as a complementary measure, by means of agreements between Member States.

### **Article 85 - Rights of institutions**

1. If a person receives benefits under the legislation of one Member State in respect of an injury resulting from events occurring in another Member State, any rights of the institution responsible for providing benefits against a third party liable to provide compensation for the injury shall be governed by the following rules:
  - (a) where the institution responsible for providing benefits is, under the legislation it applies, subrogated to the rights which the beneficiary has against the third party, such subrogation shall be recognised by each Member State;
  - (b) where the institution responsible for providing benefits has a direct right against the third party, each Member State shall recognise such rights.

2. If a person receives benefits under the legislation of one Member State in respect of an injury resulting from events occurring in another Member State, the provisions of the said legislation which determine the cases in which the civil liability of employers or of their employees is to be excluded shall apply with regard to the said person or to the competent institution.

Paragraph 1 shall also apply to any rights of the institution responsible for providing benefits against employers or their employees in cases where their liability is not excluded.

3. Where, in accordance with Article 35(3) and/or Article 41(2), two or more Member States or their competent authorities have concluded an agreement to waive reimbursement between institutions under their jurisdiction, or, where reimbursement does not depend on the amount of benefits actually provided, any rights arising against a liable third party shall be governed by the following rules:
  - (a) where the institution of the Member State of residence or stay accords benefits to a person in respect of an injury sustained in its territory, that institution, in accordance with the provisions of the legislation it applies, shall exercise the right to subrogation or direct action against the third party liable to provide compensation for the injury;
  - (b) for the application of (a):
    - (i) the person receiving benefits shall be deemed to be insured with the institution of the place of residence or stay,and
    - (ii) that institution shall be deemed to be the institution responsible for providing benefits;
  - (c) paragraphs 1 and 2 shall remain applicable in respect of any benefits not covered by the waiver agreement or a reimbursement which does not depend on the amount of benefits actually provided.

### **Article 86 - Bilateral agreements**

As far as relations between, on the one hand, Luxembourg and, on the other hand, France, Germany and Belgium are concerned, the application and the duration of the period referred to in Article 65(7) shall be subject to the conclusion of bilateral agreements.

## **TITLE VI - TRANSITIONAL AND FINAL PROVISIONS**

### **Article 87 - Transitional provisions**

1. No rights shall be acquired pursuant to this Regulation for the period before its date of application.
2. Any period of insurance and, where appropriate, any period of employment, self-employment or residence completed under the legislation of a Member State prior to the date of application of this Regulation in the Member State concerned shall be taken into consideration for the determination of rights acquired under this Regulation.
3. Subject to paragraph 1, a right shall be acquired under this Regulation even if it relates to a contingency arising before its date of application in the Member State concerned.
4. Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, at the request of that person, be provided or resumed with effect from the date of application of this Regulation in the Member State concerned, provided that the rights for which benefits were previously provided have not given rise to a lump-sum payment.
5. The rights of a person to whom a pension was provided prior to the date of application of this Regulation in a Member State may, at the request of the person concerned, be reviewed, taking into account this Regulation.
6. If a request referred to in paragraph 4 or 5 is submitted within two years from the date of application of this Regulation in a Member State, the rights acquired in accordance with this Regulation shall have effect from that date, and the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.
7. If a request referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period following the date of application of this Regulation in the Member State concerned, rights not forfeited or not time-barred shall have effect from the date on which the request was submitted, subject to any more favourable provisions under the legislation of any Member State.
8. If, as a result of this Regulation, a person is subject to the legislation of a Member State other than that determined in accordance with Title II of Regulation (EEC) No 1408/71, that legislation shall continue to apply while the relevant situation remains unchanged and in any case for no longer than 10 years from the date of application of this Regulation unless the person concerned requests that he/she be subject to the legislation applicable under this Regulation. The request shall be submitted within 3 months after the date of application of this Regulation to the competent institution of the Member State whose legislation is applicable under this Regulation if the person concerned is to be subject to the legislation of that Member State as of the date of application of this

Regulation. If the request is made after the time limit indicated, the change of applicable legislation shall take place on the first day of the following month.

9. Article 55 of this Regulation shall apply only to pensions not subject to Article 46c of Regulation (EEC) No 1408/71 on the date of application of this Regulation.
10. The provisions of the second sentences of Article 65(2) and (3) shall be applicable to Luxembourg at the latest two years after the date of application of this Regulation.
- 10a. The entries in Annex III corresponding to Estonia, Spain, Italy, Lithuania, Hungary and the Netherlands shall cease to have effect 4 years after the date of application of this Regulation.
- 10b. The list contained in Annex III shall be reviewed no later than 31 October 2014 on the basis of a report by the Administrative Commission. That report shall include an impact assessment of the significance, frequency, scale and costs, both in absolute and in relative terms, of the application of the provisions of Annex III. That report shall also include the possible effects of repealing those provisions for those Member States which continue to be listed in that Annex after the date referred to in paragraph 10a. In the light of that report, the Commission shall decide whether to submit a proposal concerning a review of the list, with the aim in principle of repealing the list unless the report of the Administrative Commission provides compelling reasons not to do so.
11. Member States shall ensure that appropriate information is provided regarding the changes in rights and obligations introduced by this Regulation and the Implementing Regulation.

#### **Article 87a - Transitional provision for application of Regulation (EU) No 465/2012**

1. If as a result of the entry into force of Regulation (EU) No 465/2012, a person is subject, in accordance with Title II of this Regulation, to the legislation of a different Member State than that to which he/she was subject before that entry into force, the legislation of the Member State applicable before that date shall continue to apply to him/her for a transitional period lasting for as long as the relevant situation remains unchanged and, in any case, for no longer than 10 years from the date of entry into force of Regulation (EU) No 465/2012. Such a person may request that the transitional period no longer applies to him/her. Such request shall be submitted to the institution designated by the competent authority of the Member State of residence. Requests submitted by 29 September 2012 shall be deemed to take effect on 28 June 2012. Requests submitted after 29 September 2012 shall take effect on the first day of the month following that of their submission.
2. No later than 29 June 2014, the Administrative Commission shall evaluate the implementation of the provisions laid down in Article 65a of this Regulation and

present a report on their application. On the basis of this report, the European Commission may, as appropriate, submit proposals to amend those provisions.

### **Article 88 - Updating of the Annexes**

The Annexes of this Regulation shall be revised periodically.

### **Article 89 - Implementing Regulation**

A further Regulation shall lay down the procedure for implementing this Regulation.

### **Article 90 - Repeal**

1. Council Regulation (EEC) No 1408/71 shall be repealed from the date of application of this Regulation.

However, Regulation (EEC) No 1408/71 shall remain in force and shall continue to have legal effect for the purposes of:

- (a) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality<sup>6</sup>, for as long as that Regulation has not been repealed or modified;
  - (b) Council Regulation (EEC) No 1661/85 of 13 June 1985 laying down the technical adaptations to the Community rules on social security for migrant workers with regard to Greenland<sup>7</sup>, for as long as that Regulation has not been repealed or modified;
  - (c) the Agreement on the European Economic Area<sup>8</sup> and the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons<sup>9</sup> and other agreements which contain a reference to Regulation (EEC) No 1408/71, for as long as those agreements have not been modified in the light of this Regulation.
2. References to Regulation (EEC) No 1408/71 in Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community<sup>10</sup> are to be read as referring to this Regulation.

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<sup>6</sup> OJ L 124, 20.5.2003, p. 1.

<sup>7</sup> OJ L 160, 20.6.1985, p. 7.

<sup>8</sup> OJ L 1, 3.1.1994, p. 1.

<sup>9</sup> OJ L 114, 30.4.2002, p. 6. Agreement as last amended by Decision No 2/2003 of the EU-Swiss Committee (OJ L 187, 26.7.2003, p. 55).

<sup>10</sup> OJ L 209, 25.7.1998, p. 46.

### **Article 91 - Entry into force**

This Regulation shall enter into force on the 20th day after its publication in the *Official Journal of the European Union*.

It shall apply from the date of entry into force of the Implementing Regulation.

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

## ANNEX I

### ADVANCES OF MAINTENANCE PAYMENTS AND SPECIAL CHILDBIRTH AND ADOPTION ALLOWANCES

(Article 1(z))

#### I. Advances of maintenance payments

##### *BELGIUM*

Advances of maintenance allowances under the law of 21 February 2003 creating a maintenance payments agency within the federal public service, Finance Department

##### *BULGARIA*

Maintenance payments made by the State under Article 92 of the Family Code

##### *DENMARK*

Advance payment of child support laid down in the Act on Child Benefits

Advance payment of child support consolidated by Law No 765 of 11 September 2002

##### *GERMANY*

Advances of maintenance payments under the German law on advances of maintenance payments (Unterhaltsvorschussgesetz) of 23 July 1979

##### *ESTONIA*

Maintenance allowances under the Maintenance Allowance Act of 21 February 2007

##### *SPAIN*

Advances of maintenance payments under the Royal Decree 1618/2007 of 7 December 2007

##### *FRANCE*

Family support allowance paid to a child one of whose parents or both of whose parents are in default or are unable to meet their maintenance obligations or the payment of a maintenance allowance laid down by a court decision

##### *CROATIA*

Temporary advances paid by Centres for Social Welfare on the basis of the obligation to provide temporary maintenance pursuant to the Family Act (OG 116/03, as amended)

##### *LITHUANIA*

Payments from the Children's Maintenance Fund under the Law on the Children's Maintenance Fund.

*LUXEMBOURG*

Advances and recovery of maintenance payments within the meaning of the Act of 26 July 1980

*AUSTRIA*

Advances of maintenance payments under the Federal Law on the grant of advances of child maintenance (Unterhaltsvorschussgesetz 1985 – UVG)

*POLAND*

Benefits from the Alimony Fund under the Act of Assistance to the Persons Entitled to Alimony

*PORTUGAL*

Advances of maintenance payments (Act No 75/98, 19 November, on the guarantee of maintenance for minors)

*SLOVENIA*

Maintenance replacement in accordance with the Act of Public Guarantee and Maintenance Fund of the Republic of Slovenia of 25 July 2006

*SLOVAKIA*

Substitute alimony benefit (substitute maintenance payment) pursuant to the Act No 452/2004 Coll. on substitute alimony benefit as amended by later regulations

*FINLAND*

Maintenance allowance under the Security of Child Maintenance Act (671/1998)

*SWEDEN*

Maintenance allowance under the Maintenance Support Act (1996:1030)

**II. Special childbirth and adoption allowances**

*BELGIUM*

Childbirth allowance and adoption grant

*BULGARIA*

Maternity lump sum allowance (Law on Family Allowances for Children)

*CZECH REPUBLIC*

Childbirth allowance

*ESTONIA*

(a) Childbirth allowance

(b) Adoption allowance

*SPAIN*

Single payment birth and adoption grants

*FRANCE*

Birth or adoption grants as part of the ‘early childhood benefit’, except when they are paid to a person who remains subject to French legislation pursuant to Article 12 or Article 16

*CROATIA*

One-off cash benefit for a newborn child under the Maternity and Parental Benefits Act (OG 85/08, as amended)

One-off cash benefit for an adopted child under the Maternity and Parental Benefits Act (OG 85/08, as amended)

One-off cash benefits for a newborn child or an adopted child provided by regulations on local and regional self-government pursuant to Article 59 of the Maternity and Parental Benefits Act (OG 85/08, as amended)

*LATVIA*

(a) Childbirth grant

(b) Adoption allowance

*LITHUANIA*

Child lump sum grant

*LUXEMBOURG*

Antenatal allowances

Childbirth allowances

*HUNGARY*

Maternity grant

*POLAND*

Single payment birth grant (Act on Family Benefits)

*ROMANIA*

(a) Childbirth allowance

(b) Layette for newborn children

*SLOVENIA*

Childbirth grant

*SLOVAKIA*

(a) Childbirth allowance

(b) Supplement to childbirth allowance

*FINLAND*

Maternity package, maternity lump-sum grant and assistance in the form of a lump sum intended to offset the cost of international adoption pursuant to the Maternity Grant Act.

## ANNEX II

### **PROVISIONS OF CONVENTIONS WHICH REMAIN IN FORCE AND WHICH, WHERE APPLICABLE, ARE RESTRICTED TO THE PERSONS COVERED THEREBY**

**(Article 8(1))**

#### **General comments**

It is to be noted that the provisions of bilateral conventions which do not fall within the scope of this Regulation and which remain in force between Member States are not listed in this Annex. This includes obligations between Member States arising from conventions providing, for example, for provisions regarding aggregation of insurance periods fulfilled in a third country.

Provisions of social security conventions remaining applicable:

#### *BELGIUM-GERMANY*

Articles 3 and 4 of the Final Protocol of 7 December 1957 to the General Convention of that date, as set out in the Complementary Protocol of 10 November 1960 (reckoning of insurance periods completed in some border regions before, during and after the Second World War).

#### *BELGIUM-LUXEMBOURG*

Convention of 24 March 1994 on social security for frontier workers (relating to the complementary flat rate reimbursement).

#### *BULGARIA-GERMANY*

Article 28(1)(b) of the Convention on social security of 17 December 1997 (maintenance of conventions concluded between Bulgaria and the former German Democratic Republic for persons who already received a pension before 1996).

#### *BULGARIA-CROATIA*

Article 35(3) of the Convention on Social Security of 14 July 2003 (recognition of periods of insurance completed until 31 December 1957 at the expense of the contracting state in which the insured person resided on 31 December 1957).

#### *BULGARIA-AUSTRIA*

Article 38(3) of the Convention on social security of 14 April 2005 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by that Convention.

#### *BULGARIA-SLOVENIA*

Article 32(2) of the Convention on Social Security of 18 December 1957 (reckoning of periods of insurance completed until 31 December 1957).

#### *CZECH REPUBLIC-GERMANY*

Article 39(1)(b) and (c) of the Convention on Social Security of 27 July 2001 (maintenance of the convention concluded between the former Czechoslovak Republic and the former German Democratic Republic for persons who already received a pension before 1996; reckoning of periods of insurance completed in one of the contracting States for persons who already received a pension for these periods on 1 September 2002 from the other contracting State, while residing in its territory).

#### *CZECH REPUBLIC-CYPRUS*

Article 32(4) of the Convention on Social Security of 19 January 1999 (determining competence for the calculation of periods of employment completed under the relevant Convention of 1976); the application of that provision remains restricted to the persons covered by it.

#### *CZECH REPUBLIC-LUXEMBOURG*

Article 52(8) of the Convention on Social Security of 17 November 2000 (reckoning of pension insurance periods for political refugees).

#### *CZECH REPUBLIC-AUSTRIA*

Article 32(3) of the Convention on social security of 20 July 1999 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

#### *CZECH REPUBLIC-SLOVAKIA*

Articles 12, 20 and 33 of the Convention on Social Security of 29 October 1992 (Article 12 determines competence for a grant of survivor's benefits; Article 20 determines competence for calculation of insurance periods completed until the day of dissolution of the Czech and Slovak Federal Republic; Article 33 determines competence for payment of pensions awarded before the day of the dissolution of the Czech and Slovak Federal Republic).

#### *DENMARK-FINLAND*

Article 7 of the Nordic Convention on social security of 18 August 2003 (concerning coverage of extra travel expenses in case of sickness during stay in another Nordic country increasing the cost of return travel to the country of residence).

#### *DENMARK-SWEDEN*

Article 7 of the Nordic Convention on social security of 18 August 2003 (concerning coverage of extra travel expenses in case of sickness during stay in another Nordic country increasing the cost of return travel to the country of residence).

#### *GERMANY-SPAIN*

Article 45(2) of the Social Security Convention of 4 December 1973 (representation by diplomatic and consular authorities).

### *GERMANY-FRANCE*

- (a) Complementary Agreement No 4 of 10 July 1950 to the General Convention of the same date, as set out in Supplementary Agreement No 2 of 18 June 1955 (reckoning of periods of insurance completed between 1 July 1940 and 30 June 1950);
- (b) Title I of that Supplementary Agreement No 2 (reckoning of periods of insurance completed before 8 May 1945);
- (c) points 6, 7 and 8 of the General Protocol of 10 July 1950 to the General Convention of the same date (administrative arrangements);
- (d) Titles II, III and IV of the Agreement of 20 December 1963 (social security in the Saar).

### *GERMANY-CROATIA*

Article 41 of the Convention on Social Security of 24 November 1997 (settlement of rights acquired before 1 January 1956 under the social security scheme of the other contracting state); the application of that provision remains restricted to the persons covered by it.

### *GERMANY-LUXEMBOURG*

Articles 4, 5, 6 and 7 of the Convention of 11 July 1959 (reckoning of insurance periods completed between September 1940 and June 1946).

### *GERMANY-HUNGARY*

Article 40(1)(b) of the Convention on social security of 2 May 1998 (maintenance of the convention concluded between the former German Democratic Republic and Hungary for persons who already received a pension before 1996).

### *GERMANY-NETHERLANDS*

Articles 2 and 3 of Complementary Agreement No 4 of 21 December 1956 to the Convention of 29 March 1951 (settlement of rights acquired under the German social insurance scheme by Dutch workers between 13 May 1940 and 1 September 1945).

### *GERMANY-AUSTRIA*

- (a) Article 1(5) and Article 8 of the Convention on Unemployment Insurance of 19 July 1978 and Article 10 of the Final Protocol to this Convention (granting of unemployment allowances to frontier workers by the previous State of employment) shall continue to apply to persons who have exercised an activity as a frontier worker on or before 1 January 2005 and become unemployed before 1 January 2011;
- (b) Article 14(2)(g), (h), (i) and (j) of the Convention on social security of 4 October 1995 (determination of competencies between both countries with regard to former insurance cases and acquired insurance periods); the application of that provision remains restricted to the persons covered by it.

#### *GERMANY-POLAND*

- (a) Convention of 9 October 1975 on old-age and work injury provisions, under the conditions and the scope defined by Article 27(2) to (4) of the Convention on social security of 8 December 1990 (maintenance of legal status, on the basis of the Convention of 1975, of the persons who had established their residence in the territory of Germany or Poland before 1 January 1991 and who continue to reside there);
- (b) Articles 27(5) and 28(2) of the Convention on social security of 8 December 1990 (maintenance of entitlement to a pension paid on the basis of the Convention of 1957 concluded between the former German Democratic Republic and Poland; reckoning of periods of insurance completed by Polish employees under the Convention of 1988 concluded between the former German Democratic Republic and Poland).

#### *GERMANY-ROMANIA*

Article 28(1)(b) of the Convention on social security of 8 April 2005 (maintenance of the Convention concluded between the former German Democratic Republic and Romania for persons who already received a pension before 1996).

#### *GERMANY-SLOVENIA*

Article 42 of the Convention on social security of 24 September 1997 (settlement of rights acquired before 1 January 1956 under the social security scheme of the other contracting state); the application of that provision remains restricted to the persons covered by it.

#### *GERMANY-SLOVAKIA*

Article 29(1), second and third subparagraphs of the Agreement of 12 September 2002 (maintenance of the Convention concluded between the former Czechoslovak Republic and the former German Democratic Republic for persons who already received a pension before 1996; reckoning of periods of insurance completed in one of the contracting States for persons who already received a pension for these periods on 1 December 2003 from the other contracting State, while residing in its territory).

#### *GERMANY-UNITED KINGDOM*

- (a) Article 7(5) and (6) of the Convention on social security of 20 April 1960 (legislation applicable to civilians serving in the military forces);
- (b) Article 5(5) and (6) of the Convention on unemployment insurance of 20 April 1960 (legislation applicable to civilians serving in the military forces).

#### *IRELAND-UNITED KINGDOM*

Article 19(2) of the Agreement of 14 December, 2004 on social security (concerning the transfer and reckoning of certain disability credits).

### *SPAIN-PORTUGAL*

Article 22 of the General Convention of 11 June 1969 (export of unemployment benefits). This entry will remain valid for 2 years from the date of application of this Regulation.

### *CROATIA-ITALY*

- (a) The Agreement between Yugoslavia and Italy on Regulation of Mutual Obligations in Social Insurance with Reference to Paragraph 7 of Annex XIV to the Peace Treaty, concluded by exchange of notes on 5 February 1959 (reckoning of periods of insurance completed before 18 December 1954); the application remains restricted to the persons covered by that Agreement;
- (b) Article 44(3) of the Convention on Social Security between the Republic of Croatia and the Italian Republic of 27 June 1997, concerning ex Zone B of the Free Territory of Trieste (reckoning of periods of insurance completed before 5 October 1956); the application of that provision remains restricted to persons covered by that Convention.

### *CROATIA-HUNGARY*

Article 43(6) of the Convention on Social Security of 8 February 2005 (recognition of periods of insurance completed until 29 May 1956 at the expense of the contracting state in which the insured person resided on 29 May 1956).

### *CROATIA-AUSTRIA*

Article 35 of the Convention on Social Security of 16 January 1997 (reckoning of periods of insurance completed before 1 January 1956); the application of that provision remains restricted to the persons covered by it.

### *CROATIA-SLOVENIA*

- (a) Article 35(3) of the Agreement on Social Security of 28 April 1997 (recognition of periods with bonus under the legislation of the former common State);
- (b) Articles 36 and 37 of the Agreement on Social Security of 28 April 1997 (benefits acquired before 8 October 1991 remain the obligation of the contracting state that granted them; pensions granted between 8 October 1991 and 1 February 1998, the date of entry into force of the said Agreement, in respect of the periods of insurance completed in the other contracting state until 31 January 1998, are subject to recalculation).

### *ITALY-SLOVENIA*

- (a) Agreement on regulation of mutual obligations in social insurance with reference to paragraph 7 of Annex XIV to the Peace Treaty, concluded by exchange of notes on 5 February 1959 (reckoning of periods of insurance completed before 18 December 1954); the application of that provision remains restricted to the persons covered by that Agreement;
- (b) Article 45(3) of the Convention on social security of 7 July 1997 concerning ex-Zone B of the Free Territory of Trieste (reckoning of periods of insurance

completed before 5 October 1956); the application of that provision remains restricted to the persons covered by that Convention.

*LUXEMBOURG-PORTUGAL*

Agreement of 10 March 1997 (on the recognition of decisions by institutions in one contracting party concerning the state of invalidity of applicants for pensions from institutions in the other contracting party).

*LUXEMBOURG-SLOVAKIA*

Article 50(5) of the Convention on Social Security of 23 May 2002 (reckoning of pension insurance periods for political refugees).

*HUNGARY-AUSTRIA*

Article 36(3) of the Convention on social security of 31 March 1999 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

*HUNGARY-SLOVENIA*

Article 31 of the Convention on social security of 7 October 1957 (reckoning of periods of insurance completed before 29 May 1956); the application of that provision remains restricted to the persons covered by it.

*HUNGARY-SLOVAKIA*

Article 34(1) of the Convention on social security of 30 January 1959 (Article 34(1) of that Convention provides that the insurance periods awarded before the day of signing that Convention are the insurance periods of the contracting State on which territory the entitled person had a residence); the application of that provision remains restricted to the persons covered by it.

*AUSTRIA-POLAND*

Article 33(3) of the Convention on social security of 7 September 1998 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

*AUSTRIA-ROMANIA*

Article 37(3) of the Agreement on social security of 28 October 2005 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

*AUSTRIA-SLOVENIA*

Article 37 of the Convention on social security of 10 March 1997 (reckoning of periods of insurance completed before 1 January 1956); the application of that provision remains restricted to the persons covered by it.

*AUSTRIA-SLOVAKIA*

Article 34(3) of the Convention of 21 December 2001 on Social Security (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

*FINLAND-SWEDEN*

Article 7 of the Nordic Convention on social security of 18 August 2003 (concerning coverage of extra travel expenses in case of sickness during stay in another Nordic country increasing the cost of return travel to the country of residence).

## ANNEX III

### **RESTRICTION OF RIGHTS TO BENEFITS IN KIND FOR MEMBERS OF THE FAMILY OF A FRONTIER WORKER**

**(referred to in Article 18(2))**

*DENMARK*

*ESTONIA* (this entry will be valid during the period referred to in Article 87(10a))

*IRELAND*

*SPAIN* (this entry will be valid during the period referred to in Article 87(10a))

*CROATIA*

*ITALY* (this entry will be valid during the period referred to in Article 87(10a))

*LITHUANIA* (this entry will be valid during the period referred to in Article 87(10a))

*HUNGARY* (this entry will be valid during the period referred to in Article 87(10a))

*NETHERLANDS* (this entry will be valid during the period referred to in Article 87(10a))

*FINLAND*

*SWEDEN*

*UNITED KINGDOM*

**ANNEX IV**

**MORE RIGHTS FOR PENSIONERS RETURNING TO THE COMPETENT  
MEMBER STATE**

**(Article 27(2))**

*BELGIUM*

*BULGARIA*

*CZECH REPUBLIC*

*GERMANY*

*GREECE*

*SPAIN*

*FRANCE*

*CYPRUS*

*LUXEMBOURG*

*HUNGARY*

*THE NETHERLANDS*

*AUSTRIA*

*POLAND*

*SLOVENIA*

*SWEDEN*

## ANNEX V

**MORE RIGHTS FOR FORMER FRONTIER WORKERS WHO RETURN TO THEIR PREVIOUS MEMBER STATE OF ACTIVITY AS AN EMPLOYED OR SELF-EMPLOYED PERSON (APPLICABLE ONLY IF THE MEMBER STATE IN WHICH THE COMPETENT INSTITUTION RESPONSIBLE FOR THE COSTS OF THE BENEFITS IN KIND PROVIDED TO THE PENSIONER IN HIS/HER MEMBER STATE OF RESIDENCE IS SITUATED ALSO APPEARS ON THE LIST)**

**(Article 28(2))**

*BELGIUM*

*GERMANY*

*SPAIN*

*FRANCE*

*LUXEMBOURG*

*AUSTRIA*

*PORTUGAL*

## ANNEX VI

### IDENTIFICATION OF TYPE A LEGISLATION WHICH SHOULD BE SUBJECT TO SPECIAL COORDINATION

(Article 44(1))

#### *CZECH REPUBLIC*

Full disability pension for persons whose total disability arose before reaching 18 years of age and who were not insured for the required period (Section 42 of the Pension Insurance Act No 155/1995 Coll.)

#### *ESTONIA*

- (a) Invalidity pensions granted before 1 April 2000 under the State Allowances Act and which are retained under the State Pension Insurance Act
- (b) National pensions granted on the basis of invalidity according to the State Pension Insurance Act
- (c) Invalidity pensions granted according to the Defence Forces Service Act, Police Service Act, Prosecutor's Office Act, Status of Judges Act, Members of the Riigikogu Salaries, Pensions and Other Social Guarantees Act and President of the Republic Official Benefits Act

#### *IRELAND*

Part 2, Chapter 17 of the Social Welfare Consolidation Act 2005

#### *GREECE*

Legislation relating to the agricultural insurance scheme (OGA), under Law No 4169/1961

#### *CROATIA*

- (a) Invalidity pension due to occupational injury or disease according to Article 52(5) of the Pension Insurance Act (OG 102/98, as amended).
- (b) Physical damage allowance according to Article 56 of the Pension Insurance Act (OG 102/98, as amended).

#### *LATVIA*

Invalidity pensions (third group) under Article 16(1)(2) of the Law on State Pensions of 1 January 1996

#### *HUNGARY*

As from 1 January 2012 pursuant to the Act CXCI of 2011 on the benefits for persons with changed working capacity and amendments of certain other acts:

- (a) the rehabilitation benefit;
- (b) the invalidity benefit.

### *SLOVAKIA*

Invalidity pension for a person who became invalid as a dependent child or during full-time doctoral studies while under the age of 26 years and who is always deemed to have fulfilled the required period of insurance (Article 70(2), Article 72(3) and Article 73(3) and (4) of Act No 461/2003 on social insurance, as amended).

### *FINLAND*

National Pensions to persons who are born disabled or become disabled at an early age (the National Pension Act, 568/2007);

Invalidity pensions determined according to transitional rules and awarded prior to 1 January 1994 (Act on Enforcement of the National Pensions Act, 569/2007).

### *SWEDEN*

Income-related sickness benefit and activity compensation (Chapter 34 of the Social Insurance Code (2010:110))

### *UNITED KINGDOM*

Employment and Support Allowance

(a) Great Britain

Part 1 of the Welfare Reform Act 2007.

(b) Northern Ireland

Part 1 of the Welfare Reform Act (Northern Ireland) 2007.

## ANNEX VII

### CONCORDANCE BETWEEN THE LEGISLATIONS OF MEMBER STATES ON CONDITIONS RELATING TO THE DEGREE OF INVALIDITY

(Article 46(3) of the Regulation)

#### BELGIUM

Member State	Schemes administered by Member States which have taken a decision recognising the degree of invalidity	Schemes administered by Belgian institutions on which the decision is binding in cases of concordance			
		General scheme	Miners' scheme General invalidity	Occupational invalidity	Mariners' scheme Ossom
FRANCE	1. General scheme:				
	– Group III (constant attendance)	Concordance	Concordance	Concordance	No concordance
	– Group II	Concordance	Concordance	Concordance	No concordance
	– Group I	Concordance	Concordance	Concordance	No concordance
	2. Agricultural scheme				
	– Total, general invalidity	Concordance	Concordance	Concordance	No concordance
	– Two-thirds general invalidity	Concordance	Concordance	Concordance	No concordance
	– Constant attendance	Concordance	Concordance	Concordance	No concordance
	3. Miners' scheme:				
	– Partial, general invalidity	Concordance	Concordance	Concordance	No concordance
– Constant attendance	Concordance	Concordance	Concordance	No concordance	
– Occupational invalidity	No concordance	No concordance	Concordance	No concordance	

	4. Mariners' scheme:								
	- General invalidity	Concordance	No concordance						
	- Constant attendance	Concordance	No concordance						
	- Occupational invalidity	No concordance							
ITALY	1. General scheme:								
	- Invalidity — manual workers	No concordance	Concordance	Concordance	Concordance	Concordance	Concordance	Concordance	No concordance
	- Invalidity — clerical staff	No concordance	Concordance	Concordance	Concordance	Concordance	Concordance	Concordance	No concordance
	2. Mariners' scheme:								
	- Unfitness for seafaring	No concordance							

## FRANCE

Member State	Schemes administered by French institutions on which the decision is binding in cases of concordances											
	General scheme			Agricultural scheme			Miners' scheme			Mariners' scheme		
	Group I	Group II	Group III Constant attendance	2/3 Invalidity	Total invalidity	Constant attendance	2/3 General invalidity	Constant attendance	Occupational invalidity	2/3 General invalidity	Total occupational invalidity	Constant attendance
BELGIUM	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	2. Miners' scheme:											
	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	Concordance (2)			
	Concordance (1)	No concordance	No concordance	Concordance (1)	No concordance	No concordance	Concordance (1)	No concordance	No concordance	No concordance	No concordance	No concordance
ITALY												
	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	2. Mariners' scheme:											
	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance

(1) In so far as the invalidity recognised by the Belgian institutions is general invalidity.

(2) Only if the Belgian institution has recognised that the worker is unfit for work underground or at ground level.

## ITALY

Member State	Schemes administered by institutions of Member States which have taken a decision recognising the degree of invalidity	Schemes administered by Italian institutions on which the decision is binding in cases of concordance		
		General scheme		Mariners unfit for navigation
		Manual workers	Clerical staff	
BELGIUM	1. General scheme	No concordance	No concordance	No concordance
	2. Miners' scheme			
	– partial general invalidity	Concordance	Concordance	No concordance
	– occupational invalidity	No concordance	No concordance	No concordance
	3. Mariners' scheme	No concordance	No concordance	No concordance
FRANCE	1. General scheme			
	– Group III (constant attendance)	Concordance	Concordance	No concordance
	– Group II	Concordance	Concordance	No concordance
	– Group I	Concordance	Concordance	No concordance
	2. Agricultural scheme			
	– total general invalidity	Concordance	Concordance	No concordance
	– partial general invalidity	Concordance	Concordance	No concordance
	– constant attendance	Concordance	Concordance	No concordance
	3. Miners' scheme			
	– partial general invalidity	Concordance	Concordance	No concordance
	– constant attendance	Concordance	Concordance	No concordance
	– occupational invalidity	No concordance	No concordance	No concordance
	4. Mariners' scheme			
		– partial general invalidity	No concordance	No concordance
	– constant attendance	No concordance	No concordance	No concordance
	– occupational invalidity			

## ANNEX VIII

### CASES IN WHICH THE PRO RATA CALCULATION SHALL BE WAIVED OR SHALL NOT APPLY

(Article 52(4) and 52(5))

#### Part 1: Cases in which the pro rata calculation shall be waived pursuant to Article 52(4)

##### *DENMARK*

All applications for pensions referred to in the law on social pensions, except for pensions mentioned in Annex IX.

##### *IRELAND*

All applications for state pension (transition), state pension (contributory), widow's (contributory) pension and widower's (contributory) pension.

##### *CYPRUS*

All applications for old age, invalidity, widow's and widower's pensions.

##### *LATVIA*

- (a) All applications for invalidity pensions (Law on State Pensions of 1 January 1996);
- (b) All applications for survivor's pensions (Law on State pensions of 1 January 1996; Law on State funded pensions of 1 July 2001).

##### *LITHUANIA*

All applications for State social insurance survivor's pensions calculated on the basis of the basic amount of survivor's pension (Law on State Social Insurance Pensions).

##### *NETHERLANDS*

All applications for old-age pensions under the law on general old-age insurance (AOW).

##### *AUSTRIA*

- (a) All applications for benefits under the Federal Act of 9 September 1955 on General Social Insurance – ASVG, the Federal Act of 11 October 1978 on social insurance for self-employed persons engaged in trade and commerce – GSVG, the Federal Act of 11 October 1978 on social insurance for self-employed farmers – BSVG and the Federal Act of 30 November 1978 on social insurance for the self-employed in the liberal professions (FSVG);
- (b) All applications for invalidity pensions based on a pension account pursuant to the General Pensions Act (APG) of 18 November 2004;

- (c) All applications for survivors' pensions based on a pension account pursuant to the General Pensions Act (APG) of 18 November 2004, with the exception of cases under Part 2;
- (d) All applications for invalidity and survivors' pensions of the Austrian Provincial Chambers of Physicians (Landesärztekammer) based on basic provision (basic and any supplementary benefit, or basic pension);
- (e) All applications for permanent occupational invalidity support and survivors' support from the pension fund of the Austrian Chamber of Veterinary Surgeons;
- (f) All applications for benefits from occupational invalidity, widows and orphans pensions according to the statutes of the welfare institutions of the Austrian bar associations, Part A;
- (g) All applications for benefits under the Notary Insurance Act of 3 February 1972 – NVG 1972.

#### *POLAND*

All applications for disability pensions, old-age pensions under the defined benefits scheme and survivors' pensions.

#### *PORTUGAL*

All applications for invalidity, old-age and survivors' pension claims, except for the cases where the totalised periods of insurance completed under the legislation of more than one Member State are equal to or longer than 21 calendar years but the national periods of insurance are equal or inferior to 20 years, and the calculation is made under Articles 32 and 33 of Decree-Law No 187/2007 of 10 May 2007.

#### *SLOVAKIA*

- (a) All applications for survivors' pension (widow's pension, widower's and orphan's pension) calculated according to the legislation in force before 1 January 2004, the amount of which is derived from a pension formerly paid to the deceased;
- (b) All applications for pensions calculated pursuant to Act No 461/2003 Coll. on social security as amended.

#### *SWEDEN*

- (a) Applications for a guarantee pension in the form of an old-age pension (Chapter 66 and 67 of the Social Insurance Code (2010:110));
- (b) Applications for a guarantee pension in the form of a survivor's pension (Chapter 81 of the Social Insurance Code (2010:110)).

#### *UNITED KINGDOM*

All applications for retirement pension, widows' and bereavement benefits, with the exception of those for which during a tax year beginning on or after 6 April 1975:

- (i) the party concerned had completed periods of insurance, employment or residence under the legislation of the United Kingdom and another Member

State; and one (or more) of the tax years was not considered a qualifying year within the meaning of the legislation of the United Kingdom;

- (ii) the periods of insurance completed under the legislation in force in the United Kingdom for the periods prior to 5 July 1948 would be taken into account for the purposes of Article 52(1)(b) of the Regulation by application of the periods of insurance, employment or residence under the legislation of another Member State.

All applications for additional pension pursuant to the Social Security Contributions and Benefits Act 1992, section 44, and the Social Security Contributions and Benefits (Northern Ireland) Act 1992, section 44.

## **Part 2: Cases in which Article 52(5) applies**

### *BULGARIA*

Old age pensions from the Supplementary Compulsory Pension Insurance, under Part II, Title II, of the Social Insurance Code.

### *CZECH REPUBLIC*

Pensions paid from the Second Pillar scheme established by Act No 426/2011 Coll., on pension savings.

### *DENMARK*

- (a) Personal pensions;
- (b) Benefits in the event of death (accrued based on contributions to Arbejdsmarkedets Tillægspension related to the time before 1 January 2002);
- (c) Benefits in the event of death (accrued based on contributions to Arbejdsmarkedets Tillægspension related to the time after 1 January 2002) referred to in the Consolidated Act on Labour Market Supplementary Pension (Arbejdsmarkedets Tillægspension) 942:2009.

### *ESTONIA*

Mandatory funded old-age pension scheme.

### *FRANCE*

Basic or supplementary schemes in which old-age benefits are calculated on the basis of retirement points.

### *CROATIA*

Pensions from the compulsory insurance scheme based on the individual capitalised savings according to the Compulsory and Voluntary Pension Funds Act (OG 49/99, as amended) and the Act on Pension Insurance Companies and Payment of Pensions Based on Individual Capitalised Savings (OG 106/99, as amended), except in the cases provided by Articles 47 and 48 of the Compulsory and Voluntary Pension Funds Act (invalidity pension based on general incapacity to work and survivor's pension).

### *LATVIA*

Old-age pensions (Law on State pensions of 1 January 1996; Law on State funded pensions of 1 July 2001).

### *HUNGARY*

Pension benefits based on membership of private pension funds.

### *AUSTRIA*

- (a) Old-age pensions and survivor's pensions derived thereof based on a pension account pursuant to the General Pensions Act (APG) of 18 November 2004;
- (b) Compulsory allowances under Article 41 of the Federal Law of 28 December 2001, BGBl I Nr. 154 on the general salary fund of Austrian pharmacists (Pharmazeutische Gehaltskasse für Österreich);
- (c) Retirement and early retirement pensions of the Austrian Provincial Chambers of Physicians based on basic provision (basic and any supplementary benefit, or basic pension), and all pension benefits of the Austrian Provincial Chambers of Physicians based on additional provision (additional or individual pension);
- (d) Old-age support from the pension fund of the Austrian Chamber of Veterinary Surgeons;
- (e) Benefits according to the statutes of the welfare institutions of the Austrian bar associations, Parts A and B, with the exception of applications for benefits from disability, widows' and orphans' pensions according to the statutes of the welfare institutions of the Austrian bar associations, Part A;
- (f) Benefits by the welfare institutions of the Federal Chamber of Architects and Consulting Engineers under the Austrian Civil Engineers' Chamber Act (Ziviltechnikerkammergesetz) 1993 and the statutes of the welfare institutions, with the exception of benefits on grounds of occupational invalidity and survivors' benefits deriving from the last-named benefits;
- (g) Benefits according to the statute of the welfare institution of the Federal Chamber of Professional Accountants and Tax Advisors under the Austrian Professional Accountants and Tax Advisors' Act (Wirtschaftstreuhandberufsgesetz).

### *POLAND*

Old-age pensions under the defined contribution scheme.

### *PORTUGAL*

Supplementary pensions granted pursuant to Decree-Law No 26/2008 of 22 February 2008 (public capitalisation scheme).

### *SLOVENIA*

Pension from compulsory supplementary pension insurance.

### *SLOVAKIA*

Mandatory old-age pension saving.

*SWEDEN*

Income pensions and premium pensions (Chapters 62 and 64 of the Social Insurance Code (2010:110)).

*UNITED KINGDOM*

Graduated retirement benefits paid pursuant to the National Insurance Act 1965, sections 36 and 37, and the National Insurance Act (Northern Ireland) 1966, sections 35 and 36.

## ANNEX IX

### **BENEFITS AND AGREEMENTS WHICH ALLOW THE APPLICATION OF ARTICLE 54**

#### **I. Benefits referred to in Article 54(2)(a) of the Regulation, the amount of which is independent of the length of periods of insurance or residence completed**

##### *BELGIUM*

Benefits relating to the general invalidity scheme, the special invalidity scheme for miners and the special scheme for merchant navy mariners

Benefits on insurance for self-employed persons against incapacity to work

Benefits relating to invalidity in the overseas social insurance scheme and the invalidity scheme for former employees of the Belgian Congo and Rwanda-Urundi

##### *DENMARK*

The full Danish national old-age pension acquired after 10 years' residence by persons who will have been awarded a pension by 1 October 1989

##### *IRELAND*

Type A Invalidity pension

##### *GREECE*

Benefits under Law No 4169/1961 relating to the agricultural insurance scheme (OGA)

##### *SPAIN*

Survivors' pensions granted under the general and special schemes, with the exception of the Special Scheme for Civil Servants

##### *FRANCE*

Invalidity pension under the general social security system or under the agricultural workers scheme

Widower's or widow's invalidity pension under the general social security system or under the agricultural workers scheme where it is calculated on the basis of the deceased spouse's invalidity pension settled in accordance with Article 52(1)(a)

##### *LATVIA*

Invalidity pensions (third group) under Article 16(1)(2) of the Law on State Pensions of 1 January 1996

##### *NETHERLANDS*

Disability Insurance Act of 18 February 1966, as amended (WAO)

Self-employed Persons Disablement Benefits Act of 24 April 1997, as amended (WAZ)

General Surviving Relatives Act of 21 December 1995 (ANW)

The Work and Income according to Labour Capacity Act of 10 November 2005 (WIA)

*FINLAND*

National pensions to persons who are born disabled or become disabled at an early age (the National Pensions Act, 568/2007)

National pensions and spouse's pensions determined according to the transitional rules and awarded prior to the 1 of January 1994 (Act on Enforcement of the National Pensions Act, 569/2007)

The additional amount of child's pension when calculating independent benefit according to the National Pension Act (the National Pension Act, 568/2007)

*SWEDEN*

Swedish income-related sickness compensation and activity compensation (Chapter 34 of the Social Insurance Code (2010:110))

Swedish guarantee pension and guaranteed compensation which replaced the full Swedish state pensions provided under the legislation on the state pension which applied before 1 January 1993, and the full state pension awarded under the transitional rules of the legislation applying from that date

**II. Benefits referred to in Article 54(2)(b) of the Regulation, the amount of which is determined by reference to a credited period deemed to have been completed between the date on which the risk materialised and a later date**

*GERMANY*

Invalidity and survivors' pensions, for which account is taken of a supplementary period

Old-age pensions, for which account is taken of a supplementary period already acquired

*SPAIN*

The pensions for retirement or retirement for permanent disability (invalidity) under the Special Scheme for Civil Servants due under Title I of the consolidated text of the Law on State Pensioners if at the time of materialisation of the risk the beneficiary was an active civil servant or treated as such; death and survivors' (widows'/widowers', orphans' and parents') pensions due under Title I of the consolidated text of the Law on State Pensioners if at the time of death the civil servant was active or treated as such

*ITALY*

Italian pensions for total incapacity for work (inabilità)

*LATVIA*

Survivors' pension calculated on the basis of assumed insurance periods (Article 23(8) of the Law on State Pensions of 1 January 1996)

*LITHUANIA*

- (a) State social insurance work incapacity pensions, paid under the Law on State Social Insurance Pensions
- (b) State social insurance survivors' and orphans' pensions, calculated on the basis of the work incapacity pension of the deceased under the Law on State Social Insurance Pensions

*LUXEMBOURG*

Invalidity and survivors' pensions

*SLOVAKIA*

- (a) Slovak invalidity pension and survivors' pension derived therefrom

*FINLAND*

Employment pensions for which account is taken of future periods according to the national legislation

*SWEDEN*

Sickness compensation and activity compensation in the form of guarantee compensation (Chapter 35 of the Social Insurance Code (2010:110))

Widow's pension calculated on the basis of credited insurance periods (Chapter 84 of the Social Insurance Code (2010:110)).

**III. Agreements referred to in Article 54(2)(b)(i) of the Regulation intended to prevent the same credited period being taken into account two or more times:**

The Social Security Agreement of 28 April 1997 between the Republic of Finland and the Federal Republic of Germany

The Social Security Agreement of 10 November 2000 between the Republic of Finland and the Grand Duchy of Luxembourg

Nordic Convention on social security of 18 August 2003

## ANNEX X

### SPECIAL NON-CONTRIBUTORY CASH BENEFITS

(Article 70(2)(c))

#### *BELGIUM*

- (a) Income replacement allowance (Law of 27 February 1987);
- (b) Guaranteed income for elderly persons (Law of 22 March 2001).

#### *BULGARIA*

Social Pension for old age (Article 89 of the Social Insurance Code).

#### *CZECH REPUBLIC*

Social allowance (State Social Support Act No 117/1995 Sb.).

#### *DENMARK*

Accommodation expenses for pensioners (Law on individual accommodation assistance, consolidated by Law No 204 of 29 March 1995).

#### *GERMANY*

- (a) Basic subsistence income for the elderly and for persons with reduced earning capacity under Chapter 4 of Book XII of the Social Code;
- (b) Benefits to cover subsistence costs under the basic provision for jobseekers unless, with respect to these benefits, the eligibility requirements for a temporary supplement following receipt of unemployment benefit (Article 24(1) of Book II of the Social Code) are fulfilled.

#### *ESTONIA*

- (a) Disabled adult allowance (Social Benefits for Disabled Persons Act of 27 January 1999);
- (b) State unemployment allowance (Labour Market Services and Support Act of 29 September 2005).

#### *IRELAND*

- (a) Jobseekers' allowance (Social Welfare Consolidation Act 2005, Part 3, Chapter 2);
- (b) State pension (non-contributory) (Social Welfare Consolidation Act 2005, Part 3, Chapter 4);
- (c) Widow's (non-contributory) pension and widower's (non-contributory) pension (Social Welfare Consolidation Act 2005, Part 3, Chapter 6);
- (d) Disability allowance (Social Welfare Consolidation Act 2005, Part 3, Chapter 10);

- (e) Mobility allowance (Health Act 1970, Section 61);
- (f) Blind pension (Social Welfare Consolidation Act 2005, Part 3, Chapter 5).

*GREECE*

Special benefits for the elderly (Law 1296/82).

*SPAIN*

- (a) Minimum income guarantee (Law No 13/82 of 7 April 1982);
- (b) Cash benefits to assist the elderly and invalids unable to work (Royal Decree No 2620/81 of 24 July 1981);
- (c)
  - (i) Non-contributory invalidity and retirement pensions as provided for in Article 38(1) of the Consolidated Text of the General Law on Social Security, approved by Royal Legislative Decree No 1/1994 of 20 June 1994; and
  - (ii) the benefits which supplement the above pensions, as provided for in the legislation of the Comunidades Autónomas, where such supplements guarantee a minimum subsistence income having regard to the economic and social situation in the Comunidades Autónomas concerned;
- (d) Allowances to promote mobility and to compensate for transport costs (Law No 13/1982 of 7 April 1982).

*FRANCE*

- (a) Supplementary allowances of:
  - (i) the Special Invalidity Fund; and
  - (ii) the Old Age Solidarity Fund in respect of acquired rights(Law of 30 June 1956, codified in Book VIII of the Social Security Code);
- (b) Disabled adults' allowance (Law of 30 June 1975, codified in Book VIII of the Social Security Code);
- (c) Special allowance (Law of 10 July 1952, codified in Book VIII of the Social Security Code) in respect of acquired rights;
- (d) Old-age solidarity allowance (ordinance of 24 June 2004, codified in Book VIII of the Social Security Code) as of 1 January 2006.

*ITALY*

- (a) Social pensions for persons without means (Law No 153 of 30 April 1969);
- (b) Pensions and allowances for the civilian disabled or invalids (Laws No 118 of 30 March 1971, No 18 of 11 February 1980 and No 508 of 23 November 1988);
- (c) Pensions and allowances for the deaf and dumb (Laws No 381 of 26 May 1970 and No 508 of 23 November 1988);

- (d) Pensions and allowances for the civilian blind (Laws No 382 of 27 May 1970 and No 508 of 23 November 1988);
- (e) Benefits supplementing the minimum pensions (Laws No 218 of 4 April 1952, No 638 of 11 November 1983 and No 407 of 29 December 1990);
- (f) Benefits supplementing disability allowances (Law No 222 of 12 June 1984);
- (g) Social allowance (Law No 335 of 8 August 1995);
- (h) Social increase (Article 1(1) and (12) of Law No 544 of 29 December 1988 and successive amendments).

#### *CYPRUS*

- (a) Social Pension (Social Pension Law of 1995 (Law 25(I)/95), as amended);
- (b) Severe motor disability allowance (Council of Ministers' Decisions Nos 38210 of 16 October 1992, 41370 of 1 August 1994, 46183 of 11 June 1997 and 53675 of 16 May 2001);
- (c) Special grant to blind persons (Special Grants Law of 1996 (Law 77(I)/96), as amended).

#### *LATVIA*

- (a) State Social Security Benefit (Law on State Social Benefits of 1 January 2003);
- (b) Allowance for the compensation of transportation expenses for disabled persons with restricted mobility (Law on State Social Benefits of 1 January 2003).

#### *LITHUANIA*

- (a) Social assistance pension (Law of 2005 on State Social Assistance Benefits, Article 5);
- (b) Relief compensation (Law of 2005 on State Social Assistance Benefits, Article 15);
- (c) Transport compensation for the disabled who have mobility problems (Law of 2000 on Transport Compensation, Article 7).

#### *LUXEMBOURG*

Income for the seriously disabled (Article 1(2), Law of 12 September 2003), with the exception of persons recognised as being disabled workers and employed on the mainstream labour market or in a sheltered environment.

#### *HUNGARY*

- (a) Invalidity annuity (Decree No 83/1987 (XII 27) of the Council of Ministers on Invalidity Annuity);
- (b) Non-contributory old age allowance (Act III of 1993 on Social Administration and Social Benefits);
- (c) Transport allowance (Government Decree No 164/1995 (XII 27) on Transport Allowances for Persons with Severe Physical Handicap).

*MALTA*

- (a) Supplementary allowance (Section 73 of the Social Security Act (Cap. 318) 1987);
- (b) Age pension (Social Security Act (Cap. 318) 1987).

*NETHERLANDS*

- (a) Work and Employment Support for Disabled Young Persons Act of 24 April 1997 (Wet Wajong).
- (b) Supplementary Benefits Act of 6 November 1986 (TW).

*AUSTRIA*

Compensatory supplement (Federal Act of 9 September 1955 on General Social Insurance — ASVG, Federal Act of 11 October 1978 on Social insurance for persons engaged in trade and commerce — GSVG and Federal Act of 11 October 1978 on Social insurance for farmers — BSVG).

*POLAND*

Social pension (Act of 27 June 2003 on social pensions).

*PORTUGAL*

- (a) Non-contributory State old-age and invalidity pension (Decree-Law No 464/80 of 13 October 1980);
- (b) Non-contributory widowhood pension (Regulatory Decree No 52/81 of 11 November 1981);
- (c) Solidarity supplement for the elderly (Decree – Law No 232/2005 of 29 December 2005, amended by Decree – Law No 236/2006 of 11 December 2006).

*SLOVENIA*

- (a) State pension (Pension and Disability Insurance Act of 23 December 1999);
- (b) Income support for pensioners (Pension and Disability Insurance Act of 23 December 1999);
- (c) Maintenance allowance (Pension and Disability Insurance Act of 23 December 1999).

*SLOVAKIA*

- (a) Adjustment awarded before 1 January 2004 to pensions constituting the sole source of income;
- (b) Social pension which has been awarded before 1 January 2004.

*FINLAND*

- (a) Housing allowance for pensioners (Act concerning the Housing Allowance for pensioners, 571/2007);
- (b) Labour market support (Act on Unemployment Benefits 1290/2002);

- (c) Special assistance for immigrants (Act on Special Assistance for Immigrants, 1192/2002).

*SWEDEN*

- (a) Housing supplements for persons receiving a pension (Law 2001:761);
- (b) Financial support for the elderly (Law 2001:853).

*UNITED KINGDOM*

- (a) State Pension Credit (State Pension Credit Act 2002 and State Pension Credit Act (Northern Ireland) 2002);
- (b) Income-based allowances for jobseekers (Jobseekers Act 1995 and Jobseekers (Northern Ireland) Order 1995);
- (d) Disability Living Allowance mobility component (Social Security Contributions and Benefits Act 1992 and Social Security Contributions and Benefits (Northern Ireland) Act 1992);
- (e) Employment and Support Allowance Income-related (Welfare Reform Act 2007 and Welfare Reform Act (Northern Ireland) 2007).

## ANNEX XI

### SPECIAL PROVISIONS FOR THE APPLICATION OF THE LEGISLATION OF THE MEMBER STATES

(Articles 51(3), 56(1) and 83)

#### *BULGARIA*

Article 33(1) of the Bulgarian Health Insurance Act shall apply to all persons for whom Bulgaria is the competent Member State under Chapter 1 of Title III of this Regulation.

#### *CZECH REPUBLIC*

For the purposes of defining members of the family according to Article 1(i), 'spouse' also includes registered partners as defined in the Czech act no. 115/2006 Coll., on registered partnership.

#### *DENMARK*

1.

- (a) For the purpose of calculating the pension under the 'lov om social pension' (Social Pension Act), periods of activity as an employed or self-employed person completed under Danish legislation by a frontier worker or a worker who has gone to Denmark to do work of a seasonal nature are regarded as periods of residence completed in Denmark by the surviving spouse in so far as, during those periods, the surviving spouse was linked to the abovementioned worker by marriage without separation from bed and board or de facto separation on grounds of incompatibility, and provided that, during those periods, the spouse resided in the territory of another Member State. For the purposes of this point, 'work of a seasonal nature' means work which, being dependent on the succession of the seasons, automatically recurs each year.
- (b) For the purpose of calculating the pension under the 'lov om social pension' (Social Pension Act), periods of activity as an employed or self-employed person completed under Danish legislation before 1 January 1984 by a person to whom point 1(a) does not apply shall be regarded as periods of residence completed in Denmark by the surviving spouse, in so far as, during those periods, the surviving spouse was linked to the person by marriage without separation from bed and board or de facto separation on grounds of incompatibility, and provided that, during those periods, the spouse resided in the territory of another Member State.
- (c) Periods to be taken into account under points (a) and (b) shall not be taken into consideration if they coincide with the periods taken into account for the calculation of the pension due to the person concerned under the legislation on compulsory insurance of another Member State or with the

periods during which the person concerned received a pension under such legislation. These periods shall, however, be taken into consideration if the annual amount of the said pension is less than half the basic amount of the social pension.

2.

- (a) Notwithstanding the provisions of Article 6 of this Regulation, persons who have not been gainfully employed in one or more Member States are entitled to a Danish social pension only if they have been, or have previously been, permanent residents of Denmark for at least 3 years, subject to the age limits prescribed by Danish legislation. Subject to Article 4 of this Regulation, Article 7 does not apply to a Danish social pension to which entitlement has been acquired by such persons.
- (b) The abovementioned provisions do not apply to Danish social pension entitlement for the members of the family of persons who are or have been gainfully employed in Denmark, or for students or the members of their families.

- 3. The temporary benefit for unemployed persons who have been admitted to the ledighedsydelse (flexible job' scheme) (Law No 455 of 10 June 1997) is covered by Title III, Chapter 6 of this Regulation. As regards unemployed persons going to another Member State, Articles 64 and 65 will be applicable when this Member State has similar employment schemes for the same category of persons.
- 4. Where the beneficiary of a Danish social pension is also entitled to a survivor's pension from another Member State, these pensions for the implementation of Danish legislation shall be regarded as benefits of the same kind within the meaning of Article 53(1) of this Regulation, subject to the condition, however, that the person whose periods of insurance or of residence serve as the basis for the calculation of the survivor's pension had also acquired a right to a Danish social pension.

#### *GERMANY*

- 1. Notwithstanding Article 5(a) of this Regulation and Article 5(4) point 1 of the Sozialgesetzbuch VI (Volume VI of the Social Code), a person who receives a full old-age pension under the legislation of another Member State may request to be compulsorily insured under the German pension insurance scheme.
- 2. Notwithstanding Article 5(a) of this Regulation and Article 7 of the Sozialgesetzbuch VI (Volume VI of the Social Code), a person who is compulsorily insured in another Member State or receives an old-age pension under the legislation of another Member State may join the voluntary insurance scheme in Germany.
- 3. For the purpose of granting cash benefits under §47(1) of SGB V, §47(1) of SGB VII and §200(2) of the Reichsversicherungsordnung to insured persons who live in another Member State, German insurance schemes calculate net pay, which is

used to assess benefits, as if the insured person lived in Germany, unless the insured person requests an assessment on the basis of the net pay which he actually receives.

4. Nationals of other Member States whose place of residence or usual abode is outside Germany and who fulfil the general conditions of the German pension insurance scheme may pay voluntary contributions only if they had been voluntarily or compulsorily insured in the German pension insurance scheme at some time previously; this also applies to stateless persons and refugees whose place of residence or usual abode is in another Member State.
5. The pauschale Anrechnungszeit (fixed credit period) pursuant to Article 253 of the Sozialgesetzbuch VI (Volume VI of the Social Code) shall be determined exclusively with reference to German periods.
6. In cases where the German pension legislation, in force on 31 December 1991, is applicable for the recalculation of a pension, only the German legislation applies for the purposes of crediting German Ersatzzeiten (substitute periods).
7. The German legislation on accidents at work and occupational diseases to be compensated for under the law governing foreign pensions and on benefits for insurance periods which can be credited under the law governing foreign pensions in the territories named in paragraph 1(2)(3) of the Act on affairs of displaced persons and refugees (Bundesvertriebenengesetz) continues to apply within the scope of application of this Regulation, notwithstanding the provisions of paragraph 2 of the Act on foreign pensions (Fremdrentengesetz).
8. For the calculation of the theoretical amount referred to in Article 52(1)(b)(i) of this Regulation, in pension schemes for liberal professions, the competent institution shall take as a basis, in respect of each of the years of insurance completed under the legislation of any other Member State, the average annual pension entitlement acquired during the period of membership of the competent institution through the payment of contributions.

#### *ESTONIA*

For the purpose of calculating parental benefits, periods of employment in Member States other than Estonia shall be considered to be based on the same average amount of Social Tax as paid during the periods of employment in Estonia with which they are aggregated. If during the reference year the person has been employed only in other Member States, the calculation of the benefit shall be considered to be based on the average Social Tax paid in Estonia between the reference year and the maternity leave.

#### *IRELAND*

1. Notwithstanding Articles 21(2) and 62 of this Regulation, for the purposes of calculating the prescribed reckonable weekly earnings of an insured person for the grant of sickness or unemployment benefit under Irish legislation, an amount equal to the average weekly wage of employed persons in the relevant prescribed

year shall be credited to that insured person in respect of each week of activity as an employed person under the legislation of another Member State during that prescribed year.

2. Where Article 46 of this Regulation applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, Ireland shall, for the purposes of Section 118(1)(a) of the Social Welfare Consolidation Act 2005, take account of any periods during which, in respect of the invalidity that followed that incapacity for work, he/she would have been regarded as being incapable of work under Irish legislation.

#### *GREECE*

1. Law No 1469/84 concerning voluntary affiliation to the pension insurance scheme for Greek nationals and foreign nationals of Greek origin is applicable to nationals of other Member States, stateless persons and refugees, where the persons concerned, regardless of their place of residence or stay, have at some time in the past been compulsorily or voluntarily affiliated to the Greek pension insurance scheme.
2. Notwithstanding Article 5(a) of this Regulation and Article 34 of Law 1140/1981, a person who receives a pension in respect of accidents at work or occupational diseases under the legislation of another Member State may request to be compulsorily insured under the legislation applied by OGA, to the extent that he/she pursues an activity falling within the scope of that legislation.

#### *SPAIN*

1. For the purposes of implementing Article 52(1)(b)(i) of this Regulation, the years which the worker lacks to reach the pensionable or compulsory retirement age as stipulated under Article 31(4) of the consolidated version of the Ley de Clases Pasivas del Estado (Law on State Pensioners) shall be taken into account as actual years of service to the State only if at the time of the event in respect of which invalidity or death pensions are due, the beneficiary was covered by Spain's special scheme for civil servants or was performing an activity assimilated under the scheme, or if, at the time of the event in respect of which the pensions are due, the beneficiary was performing an activity that would have required the person concerned to be included under the State's special scheme for civil servants, the armed forces or the judiciary, had the activity been performed in Spain.
2.
  - (a) Under Article 56(1)(c) of this Regulation, the calculation of the theoretical Spanish benefit shall be carried out on the basis of the actual contributions of the person during the years immediately preceding payment of the last contribution to Spanish social security. Where, in the calculation of the basic amount for the pension, periods of insurance and/or residence under

the legislation of other Member States have to be taken into account, the contribution basis in Spain which is closest in time to the reference periods shall be used for the aforementioned periods, taking into account the development of the retail price index.

- (b) The amount of the pension obtained shall be increased by the amount of the increases and revaluations calculated for each subsequent year for pensions of the same nature.
3. Periods completed in other Member States which must be calculated in the special scheme for civil servants, the armed forces and the judicial administration, will be treated in the same way, for the purposes of Article 56 of this Regulation, as the periods closest in time covered as a civil servant in Spain.
  4. The additional amounts based on age referred to in the Second Transitional Provision of the General Law on Social Security shall be applicable to all beneficiaries of the Regulation who have contributions to their name under the Spanish legislation prior to 1 January 1967; it shall not be possible, by application of Article 5 of this Regulation, to treat periods of insurance credited in another Member State prior to the aforementioned date as being the same as contributions paid in Spain, solely for the present purposes. The date corresponding to 1 January 1967 shall be 1 August 1970 for the Special Scheme for Seafarers and 1 April 1969 for the Special Social Security Scheme for Coal Mining.

#### *FRANCE*

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2. For persons receiving benefits in kind in France pursuant to Articles 17, 24 or 26 of this Regulation who are resident in the French departments of Haut-Rhin, Bas-Rhin or Moselle, benefits in kind provided on behalf of the institution of another Member State which is responsible for bearing their cost include benefits provided by both the general sickness insurance scheme and the obligatory supplementary local sickness insurance scheme of Alsace-Moselle.
  3. French legislation applicable to a person engaged, or formerly engaged, in an activity as an employed or self-employed person for the application of Chapter 5 of Title III of this Regulation includes both the basic old-age insurance scheme(s) and the supplementary retirement scheme(s) to which the person concerned was subject.

#### *CYPRUS*

For the purpose of applying the provisions of Articles 6, 51 and 61 of this Regulation, for any period commencing on or after 6 October 1980, a week of insurance under the legislation of the Republic of Cyprus is determined by dividing the total insurable earnings for the relevant period by the weekly amount of the basic insurable earnings

applicable in the relevant contribution year, provided that the number of weeks so determined shall not exceed the number of calendar weeks in the relevant period.

#### *MALTA*

##### Special provisions for civil servants

- (a) Solely for the purposes of the application of Articles 49 and 60 of this Regulation, persons employed under the Malta Armed Forces Act (Chapter 220 of the Laws of Malta), the Police Act (Chapter 164 of the Laws of Malta) and the Prisons Act (Chapter 260 of the Laws of Malta) shall be treated as civil servants.
- (b) Pensions payable under the above Acts and under the Pensions Ordinance (Chapter 93 of the Laws of Malta) shall, solely for the purposes of Article 1(e) of the Regulation, be considered as ‘special schemes for civil servants’.

#### *NETHERLANDS*

##### 1. Health care insurance

- (a) As regards entitlement to benefits in kind under Dutch legislation, persons entitled to benefits in kind for the purpose of the implementation of Chapters 1 and 2 of Title III of this Regulation shall mean:
  - (i) persons who, under Article 2 of the Zorgverzekeringswet (Health Care Insurance Act), are obliged to take out insurance under a health care insurer; and
  - (ii) in so far as they are not already included under point (i), members of the family of active military personnel who are living in another Member State and persons who are resident in another Member State and who, under this Regulation are entitled to health care in their state of residence, the costs being borne by the Netherlands.
- (b) The persons referred to in point 1(a)(i) must, in accordance with the provisions of the Zorgverzekeringswet (Health Care Insurance Act) take out insurance with a health care insurer, and the persons referred to in point 1(a)(ii) must register with the College voor zorgverzekeringen (Health Care Insurance Board).
- (c) The provisions of the Zorgverzekeringswet (Health Care Insurance Act) and the Algemene Wet Bijzondere Ziektekosten (General Act on Exceptional Medical Expenses) concerning liability for the payment of contributions shall apply to the persons referred to in point (a) and the members of their families. In respect of members of the family, the contributions shall be levied on the person from whom the right to health care is derived with the exception of the members of the family of military personnel living in another Member State, who shall be levied directly.
- (d) The provisions of the Zorgverzekeringswet (Health Care Insurance Act) concerning late insurance shall apply *mutatis mutandis* in the event of late registration with the College voor zorgverzekeringen (Health Care Insurance Board) in respect of the persons referred to in point 1(a)(ii).

- (e) Persons entitled to benefits in kind by virtue of the legislation of a Member State other than the Netherlands who reside in the Netherlands or stay temporarily in the Netherlands shall be entitled to benefits in kind in accordance with the policy offered to insured persons in the Netherlands by the institution of the place of residence or the place of stay, taking into account Article 11(1), (2) and (3) and Article 19(1) of the Zorgverzekeringswet (Health Care Insurance Act), as well as to benefits in kind provided for by the Algemene Wet Bijzondere Ziektekosten (General Act on Exceptional Medical Expenses).
- (f) For the purposes of Articles 23 to 30 of this Regulation, the following benefits (in addition to pensions covered by Title III, Chapters 4 and 5 of this Regulation) shall be treated as pensions due under Dutch legislation:
- pensions awarded under the Law of 6 January 1966 on pensions for civil servants and their survivors (Algemene burgerlijke pensioenwet) (Netherlands Civil Service Pensions Act),
  - pensions awarded under the Law of 6 October 1966 on pensions for military personnel and their survivors (Algemene militaire pensioenwet) (Military Pensions Act),
  - benefits for incapacity for work awarded under the Law of 7 June 1972 on benefits for incapacity for work for military personnel (Wetarbeidsongeschiktheidsvoorziening militairen) (Military Personnel Incapacity for Work Act),
  - pensions awarded under the Law of 15 February 1967 on pensions for employees of the NV Nederlandse Spoorwegen (Dutch Railway Company) and their survivors (Spoorwegpensioenwet) (Railway Pensions Act),
  - pensions awarded under the Reglement Dienstvoorwaarden Nederlandse Spoorwegen (Regulation governing conditions of employment of the Netherlands Railway Company),
  - benefits awarded to retired persons before reaching the pensionable age of 65 years under a pension designed to provide income for former employed persons in their old age, or benefits provided in the event of premature exit from the labour market under a scheme set up by the state or by an industrial agreement for persons aged 55 or over,
  - benefits awarded to military personnel and civil servants under a scheme applicable in the event of redundancy, superannuation and early retirement.
- (fa) Any person as referred to in Article 69(1) of the Zorgverzekeringswet (Health Care Insurance Act) who, on the last day of the month preceding that in which he or she reaches the age of 65, is receiving a pension or benefit which, on the basis of paragraph 1(f) of this Section is treated as a pension payable under Dutch legislation, shall be regarded as a pension claimant as referred to in Article 22 of this

Regulation until he or she reaches the pension age as referred to in Article 7a of the Algemene Ouderdomswet (General Old Age Pensions Act).

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(h) For the purposes of Article 18(1) of this Regulation, the persons referred to in point 1(a)(ii) of this Annex who stay temporarily in the Netherlands shall be entitled to benefits in kind in accordance with the policy offered to insured persons in the Netherlands by the institution of the place of stay, taking into account Article 11(1), (2) and (3) and Article 19(1) of the Zorgverzekeringswet (Health Care Insurance Act), as well as to benefits in kind provided for by the Algemene Wet Bijzondere Ziektekosten (General Act on Exceptional Medical Expenses).

2. Application of the Algemene Ouderdomswet (AOW) (General Old Age Pensions Act)

(a) The reduction referred to in Article 13(1) of the Algemene Ouderdomswet (AOW) (General Old Age Pensions Act) shall not be applied for calendar years before 1 January 1957 during which a recipient not satisfying the conditions for having such years treated as periods of insurance:

- resided in the Netherlands between the ages of 15 and 65, or
- while residing in another Member State, worked in the Netherlands for an employer established in the Netherlands, or
- worked in another Member State during periods regarded as periods of insurance under the Dutch social security system.

By way of derogation from Article 7 of the AOW, anyone who resided or worked in the Netherlands in accordance with the above conditions only prior to 1 January 1957 shall also be regarded as being entitled to a pension.

(b) The reduction referred to in Article 13(1) of the AOW shall not apply to calendar years prior to 2 August 1989 during which, between the ages of 15 and 65, a person who is or was married was not insured under the above legislation, while being resident in the territory of a Member State other than the Netherlands, if these calendar years coincide with periods of insurance completed by the person's spouse under the above legislation or with calendar years to be taken into account under point 2(a), provided that the couple's marriage subsisted during that time.

By way of derogation from Article 7 of the AOW, such a person shall be regarded as entitled to a pension.

(c) The reduction referred to in Article 13(2) of the AOW shall not apply to calendar years before 1 January 1957 during which a pensioner's spouse who fails to satisfy the conditions for having such years treated as periods of insurance:

- resided in the Netherlands between the ages of 15 and 65, or
  - while residing in another Member State, worked in the Netherlands for an employer established in the Netherlands, or
  - worked in another Member State during periods regarded as periods of insurance under the Netherlands social security system.
- (d) The reduction referred to in Article 13(2) of the AOW shall not apply to calendar years prior to 2 August 1989 during which, between the ages of 15 and 65, a pensioner's spouse resident in a Member State other than the Netherlands was not insured under the above legislation, if those calendar years coincide with periods of insurance completed by the pensioner under that legislation or with calendar years to be taken into account under point 2(a), provided that the couple's marriage subsisted during that time.
- (e) Points 2(a), 2(b), 2(c) and 2(d) shall not apply to periods which coincide with:
- periods which may be taken into account for calculating pension rights under the old-age insurance legislation of a Member State other than the Netherlands, or
  - periods for which the person concerned has drawn an old-age pension under such legislation.

Periods of voluntary insurance under the system of another Member State shall not be taken into account for the purposes of this provision.

- (f) Points 2(a), 2(b), 2(c) and 2(d) shall apply only if the person concerned has resided in one or more Member States for 6 years after the age of 59 and only for such time as that person is resident in one of those Member States.
- (g) By way of derogation from Chapter IV of the AOW, anyone resident in a Member State other than the Netherlands whose spouse is covered by compulsory insurance under that legislation shall be authorised to take out voluntary insurance under that legislation for periods during which the spouse is compulsorily insured.

This authorisation shall not cease where the spouse's compulsory insurance is terminated as a result of his death and where the survivor receives only a pension under the Algemene nabestaandenwet (General Surviving Relatives Act).

In any event, the authorisation in respect of voluntary insurance ceases on the date on which the person reaches the age of 65.

The contribution to be paid for voluntary insurance shall be set in accordance with the provisions relating to the determination of the contribution for voluntary insurance under the AOW. However, if the voluntary insurance follows on from a period of insurance as referred to in

point 2(b), the contribution shall be set in accordance with the provisions relating to the determination of the contribution for compulsory insurance under the AOW, with the income to be taken into account being deemed to have been received in the Netherlands.

- (h) The authorisation referred to in point 2(g) shall not be granted to anyone insured under another Member State's legislation on pensions or survivors' benefits.
  - (i) Anyone wishing to take out voluntary insurance under point 2(g) shall be required to apply for it to the Social Insurance Bank (Sociale Verzekeringsbank) not later than 1 year after the date on which the conditions for participation are fulfilled.
3. Application of the Algemene nabestaandenwet (ANW) (General Surviving Relatives Act)
- (a) Where the surviving spouse is entitled to a survivor's pension under the Algemene Nabestaandenwet (ANW) (General Surviving Relatives Act) pursuant to Article 51(3) of this Regulation, that pension shall be calculated in accordance with Article 52(1)(b) of this Regulation.

For the application of these provisions, periods of insurance prior to 1 October 1959 shall also be regarded as periods of insurance completed under Dutch legislation if during those periods the insured person, after the age of 15:

- resided in the Netherlands, or
  - while resident in another Member State, worked in the Netherlands for an employer established in the Netherlands, or
  - worked in another Member State during periods regarded as periods of insurance under the Dutch social security system.
- (b) Account shall not be taken of the periods to be taken into consideration under point 3(a) which coincide with periods of compulsory insurance completed under the legislation of another Member State in respect of survivor's pensions.
  - (c) For the purposes of Article 52(1)(b) of this Regulation, only periods of insurance completed under Dutch legislation after the age of 15 shall be taken into account as periods of insurance.
  - (d) By way of derogation from Article 63a(1) of the ANW, a person resident in a Member State other than the Netherlands whose spouse is compulsorily insured under the ANW shall be authorised to take out voluntary insurance under the above legislation, provided that such insurance has already begun by the date of application of this Regulation, but only for periods during which the spouse is compulsorily insured.

This authorisation shall cease as from the date of termination of the spouse's compulsory insurance under the ANW, unless the spouse's compulsory insurance is terminated as a result of his death and where the survivor only receives a pension under the ANW.

In any event, the authorisation in respect of voluntary insurance ceases on the date on which the person reaches the age of 65.

The contribution to be paid for voluntary insurance shall be set in accordance with the provisions relating to the determination of contributions for voluntary insurance under the ANW. However, if the voluntary insurance follows on from a period of insurance as referred to in point 2(b), the contribution shall be set in accordance with the provisions relating to the determination of contributions for compulsory insurance under the ANW, with the income to be taken into account being deemed to have been received in the Netherlands.

4. Application of Dutch legislation relating to incapacity for work

(a) Where, pursuant to Article 51(3) of this Regulation, the person concerned is entitled to a Netherlands invalidity benefit, the amount referred to in Article 52(1)(b) of this Regulation for calculating that benefit shall be determined:

(i) where, prior to the occurrence of incapacity for work, the person last exercised an activity as an employed person within the meaning of Article 1(a) of this Regulation:

— in accordance with the provisions laid down in the Wet op arbeidsongeschiktheidsverzekering (WAO) (Disability Insurance Act) if the incapacity for work occurred before 1 January 2004, or

— in accordance with the provisions laid down in the Wet Werk en inkomen naar arbeidsvermogen (WIA) (Work and Income according to labour capacity Act) if the incapacity for work occurred on or after 1 January 2004;

(ii) where, prior to the occurrence of the incapacity for work, the person concerned last exercised an activity as a self-employed person within the meaning of Article 1 (b) of this Regulation, in accordance with the provisions laid down in the Wet arbeidsongeschiktheidsverzekering zelfstandigen (WAZ) (Self-employed Persons Disablement Benefits Act) if the incapacity for work occurred before 1 August 2004.

(b) In calculating benefits under either the WAO, WIA or the WAZ, the Netherlands institutions shall take account of:

— periods of paid employment, and periods treated as such, completed in the Netherlands before 1 July 1967,

— periods of insurance completed under the WAO,

- periods of insurance completed by the person concerned, after the age of 15, under the Algemene Arbeidsongeschiktheidswet (AAW) (General Act on Incapacity for Work), in so far as these do not coincide with the periods of insurance completed under the WAO,
- periods of insurance completed under the WAZ,
- periods of insurance completed under the WIA.

#### *AUSTRIA*

1. For the purpose of acquiring periods in the pension insurance, attendance at a school or comparable educational establishment in another Member State shall be regarded as equivalent to attendance at a school or educational establishment pursuant to Articles 227(1)(1) and 228(1)(3) of the Allgemeines Sozialversicherungsgesetz (ASVG) (General Social Security Act), Article 116(7) of the Gewerbliches Sozialversicherungsgesetz (GSVG) (Federal Act on Social Insurance for Persons engaged in Trade and Commerce) and Article 107(7) of the Bauern-Sozialversicherungsgesetz (BSVG) (Social Security Act for Farmers), when the person concerned was subject at some time to Austrian legislation on the grounds that he pursued an activity as an employed or self-employed person, and the special contributions provided for under Article 227(3) of the ASVG, Article 116(9) of the GSVG and Article 107(9) of the BSVG for the purchase of such periods of education, are paid.
2. For the calculation of the pro rata benefit referred to in Article 52(1)(b) of this Regulation, special increments for contributions for supplementary insurance and the miners' supplementary benefit under Austrian legislation shall be disregarded. In these cases the pro rata benefit calculated without those contributions shall, if appropriate, be increased by unreduced special increments for contributions for supplementary insurance and the miners' supplementary benefit.
3. Where pursuant to Article 6 of this Regulation substitute periods under an Austrian pension insurance scheme have been completed, but these cannot form a basis for calculation pursuant to Articles 238 and 239 of the Allgemeines Sozialversicherungsgesetz (ASVG) (General Social Security Act), Articles 122 and 123 of the Gewerbliches Sozialversicherungsgesetz (GSVG) (Federal Act on Social Insurance for Persons engaged in Trade and Commerce) and Articles 113 and 114 of the Bauern-Sozialversicherungsgesetz (BSVG) (Social Security Act for Farmers), the calculation basis for periods of childcare pursuant to Article 239 of the ASVG, Article 123 of the GSVG and Article 114 of the BSVG shall be used.

#### *FINLAND*

1. For the purposes of determining entitlement and of calculating the amount of the Finnish national pension under Articles 52 to 54 of this Regulation, pensions acquired under the legislation of another Member State are treated in the same way as pensions acquired under Finnish legislation.

2. When applying Article 52(1)(b)(i) of this Regulation for the purpose of calculating earnings for the credited period under Finnish legislation on earnings-related pensions, where an individual has pension insurance periods based on activity as an employed or self-employed person in another Member State for part of the reference period under Finnish legislation, the earnings for the credited period shall be equivalent to the sum of earnings obtained during the part of the reference period in Finland, divided by the number of months for which there were insurance periods in Finland during the reference period.

*SWEDEN*

1. When parental leave allowance is paid under Article 67 of this Regulation to a member of the family who is not employed, the parental leave allowance is paid at a level corresponding to the basic or lowest level.
2. For the purpose of calculating parental leave allowance in accordance with Chapter 4, paragraph 6 of the Lag (1962:381) om allmän försäkring (the National Insurance Act) for persons eligible for a work-based parental leave allowance, the following shall apply:

For a parent for whom sickness benefit generating income is calculated on the basis of income from gainful employment in Sweden, the requirement to have been insured for sickness benefit above the minimum level for at least 240 consecutive days preceding the child's birth shall be satisfied if, during the period mentioned, the parent had income from gainful employment in another Member State corresponding to insurance above the minimum level.

3. The provisions of this Regulation on the aggregation of insurance periods and periods of residence shall not apply to the transitional provisions in the Swedish legislation on entitlement to guarantee pension for persons born in or before 1937 who have been resident in Sweden for a specified period before applying for a pension (Act 2000:798).
4. For the purpose of calculating income for notional income-related sickness compensation and income-related activity compensation in accordance with Chapter 8 of the Lag (1962:381) om allmän försäkring (the National Insurance Act), the following shall apply:
  - (a) where the insured person, during the reference period, has also been subject to the legislation of one or more other Member States on account of activity as an employed or self-employed person, income in the Member State(s) concerned shall be deemed to be equivalent to the insured person's average gross income in Sweden during the part of the reference period in Sweden, calculated by dividing the earnings in Sweden by the number of years over which those earnings accrued;
  - (b) where the benefits are calculated pursuant to Article 46 of this Regulation and persons are not insured in Sweden, the reference period shall be determined in accordance with Chapter 8, paragraphs 2 and 8 of the abovementioned Act as if the person concerned were insured in Sweden. If the person concerned has no pension-generating income during this period

under the Act on income-based old-age pension (1998:674), the reference period shall be permitted to run from the earlier point in time when the insured person had income from gainful activity in Sweden.

5.

- (a) For the purpose of calculating notional pension assets for income-based survivor's pension (Act 2000:461), if the requirement in Swedish legislation for pension entitlement in respect of at least three out of the 5 calendar years immediately preceding the insured person's death (reference period) is not met, account shall also be taken of insurance periods completed in other Member States as if they had been completed in Sweden. Insurance periods in other Member States shall be regarded as based on the average Swedish pension base. If the person concerned has only 1 year in Sweden with a pension base, each insurance period in another Member State shall be regarded as constituting the same amount.
- (b) For the purpose of calculating notional pension credits for widows' pensions relating to deaths on or after 1 January 2003, if the requirement in Swedish legislation for pension credits in respect of at least two out of the 4 years immediately preceding the insured person's death (reference period) is not met and insurance periods were completed in another Member State during the reference period, those years shall be regarded as being based on the same pension credits as the Swedish year.

#### *UNITED KINGDOM*

- 1. Where, in accordance with United Kingdom legislation, a person may be entitled to a retirement pension if:
  - (a) the contributions of a former spouse are taken into account as if they were that person's own contributions; or
  - (b) the relevant contribution conditions are satisfied by that person's spouse or former spouse, then provided, in each case, that the spouse or former spouse is or had been exercising an activity as an employed or self-employed person, and had been subject to the legislation of two or more Member States, the provisions of Chapter 5 of Title III of this Regulation shall apply in order to determine entitlement under United Kingdom legislation. In this case, references in the said Chapter 5 to 'periods of insurance' shall be construed as references to periods of insurance completed by:
    - (i) a spouse or former spouse where a claim is made by:
      - a married woman, or
      - a person whose marriage has terminated otherwise than by the death of the spouse; or
    - (ii) a former spouse, where a claim is made by:

- a widower who immediately before pensionable age is not entitled to widowed parent's allowance, or
  - a widow who immediately before pensionable age is not entitled to widowed mother's allowance, widowed parent's allowance or widow's pension, or who is only entitled to an age-related widow's pension calculated pursuant to Article 52(1)(b) of this Regulation, and for this purpose 'age-related widow's pension' means a widow's pension payable at a reduced rate in accordance with section 39(4) of the Social Security Contributions and Benefits Act 1992.
2. For the purposes of applying Article 6 of this Regulation to the provisions governing entitlement to attendance allowance, carer's allowance and disability living allowance, a period of employment, self-employment or residence completed in the territory of a Member State other than the United Kingdom shall be taken into account in so far as is necessary to satisfy conditions as to required periods of presence in the United Kingdom, prior to the day on which entitlement to the benefit in question first arises.
  3. For the purposes of Article 7 of this Regulation, in the case of invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants, any beneficiary under United Kingdom legislation who is staying in the territory of another Member State shall, during that stay, be considered as if he resided in the territory of that other Member State.
  4. Where Article 46 of this Regulation applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, the United Kingdom shall, for the purposes of Section 30A (5) of the Social Security Contributions and Benefits Act 1992, take account of any periods during which the person concerned has received, in respect of that incapacity for work:
    - (i) cash sickness benefits or wages or salary in lieu thereof; or
    - (ii) benefits within the meaning of Chapters 4 and 5 of Title III of this Regulation granted in respect of the invalidity which followed that incapacity for work, under the legislation of the other Member State, as though they were periods of short-term incapacity benefit paid in accordance with Sections 30A (1)-(4) of the Social Security Contributions and Benefits Act 1992.

In applying this provision, account shall only be taken of periods during which the person would have been incapable of work within the meaning of United Kingdom legislation.

5.
  - (1) For the purpose of calculating an earnings factor in order to determine entitlement to benefits under United Kingdom legislation, for each week of activity as an employed person under the legislation of another Member State, and which commenced during the relevant income tax year within the

meaning of United Kingdom legislation, the person concerned shall be deemed to have paid contributions as an employed earner, or have earnings on which contributions have been paid, on the basis of earnings equivalent to two-thirds of that year's upper earnings limit.

- (2) For the purposes of Article 52(1)(b)(ii) of this Regulation, where:
  - (a) in any income tax year starting on or after 6 April 1975, a person carrying out activity as an employed person has completed periods of insurance, employment or residence exclusively in a Member State other than the United Kingdom, and the application of point 5(1) above results in that year being counted as a qualifying year within the meaning of United Kingdom legislation for the purposes of Article 52(1)(b)(i) of this Regulation, he shall be deemed to have been insured for 52 weeks in that year in that other Member State;
  - (b) any income tax year starting on or after 6 April 1975 does not count as a qualifying year within the meaning of United Kingdom legislation for the purposes of Article 52(1)(b)(i) of this Regulation, any periods of insurance, employment or residence completed in that year shall be disregarded.
- (3) For the purpose of converting an earnings factor into periods of insurance, the earnings factor achieved in the relevant income tax year within the meaning of United Kingdom legislation shall be divided by that year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated shall be treated as representing the number of weeks of insurance completed under United Kingdom legislation during that year, provided that such figure shall not exceed the number of weeks during which in that year the person was subject to that legislation.