

## II

*(Preparatory Acts)*

## COMMISSION

**Proposal for a Council Regulation (EEC) amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71**

*COM(89) 370 final**(Submitted by the Commission on 26 July 1989)**(89/C 206/02)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 51 and 235 thereof,

Having regard to the proposal submitted by the Commission after consulting the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas it is necessary to amend the provisions regulating the determination and calculation of pensions in Regulations (EEC) No 1408/71 and (EEC) No 574/72 of the Council, as determined in Regulation (EEC) No 2001/83<sup>(1)</sup>, as last amended by Regulation (EEC) No ... , that some of these amendments are linked to the case law of the Court of Justice in this matter, other amendments having been designed to fill existing loopholes;

Whereas it is necessary to delete the eighth preamble to Regulation (EEC) No 1408/71 rendered superfluous by the case law of the Court of Justice relating to Article 46 (3) of the said Regulation; that this deletion calls for a new text of the seventh preamble to Regulation (EEC) No 1408/71;

Whereas the amendments to be made to Chapter 3 of Title III of Regulation (EEC) No 1408/71 call for the adaptation of Article 12 (2) of the said Regulation;

Whereas it is necessary to amend Articles 38 and 45 of Regulation (EEC) No 1408/71 for the purpose of clarifying the rules for taking account of the periods of insurance or of residence completed in two or more

Member States as an employed person and a self-employed person and/or in the context a general scheme and a special scheme;

Whereas it is necessary to incorporate in Annex IV, B, all special schemes for self-employed persons within the meaning of Articles 38 and 45 of Regulation (EEC) No 1408/71;

Whereas it is necessary to insert in Article 39 of Regulation (EEC) No 1408/71 a provision stipulating that the rules of Chapter 3 of the Regulation in the case of overlapping of benefits of a different kind shall likewise be applicable to invalidity pensions determined under Chapter 2;

Whereas the new concept of benefits of the same kind within the meaning of Chapter 3 of Title III of Regulation (EEC) No 1408/71 call for a new text of Article 40 (2) of the said Regulation;

Whereas it is necessary to amend the text of subparagraph (a) (ii) of paragraph 3 of Article 40 of Regulation (EEC) No 1408/71 so that the said subparagraph can likewise be applied in the case where an invalidity benefit is awarded which is not called an invalidity benefit; that consequently it is necessary to make a textual amendment to subparagraph (b) (i) of paragraph 3 of Article 40 of Regulation (EEC) No 1408/71;

Whereas the new text of Article 43 (1) and the insertion of the new paragraph 3 in Article 43 call for an amendment to the title of Section 4 of Chapter 2 of Title III of Regulation (EEC) No 1408/71;

Whereas it is necessary to amplify the text of paragraph 2 of Article 43 of Regulation (EEC) No 1408/71 for the purpose of guaranteeing that where the legislation of a Member State does not provide for the conversion of an invalidity benefit into an old-age benefit, the benefit due under that legislation shall continue to be paid as long as the person concerned satisfies the necessary qualifying conditions;

<sup>(1)</sup> OJ No L 230, 22. 8. 1983, p. 6.

Whereas the experience gained from implementing Article 43 of Regulation (EEC) No 1408/71 has revealed the existence of a loophole in the case where an invalidity benefit awarded in accordance with Article 39 of the said Regulation is converted into an old-age benefit without the person concerned having satisfied the conditions regarding age required by the legislation of the other Member State for the purpose of acquiring a right to that benefit; that it is necessary to fill this loophole by inserting a new paragraph 3 in Article 43 stipulating that the competent institution in the Member State which hitherto had been exempted from payment of an invalidity pension from the date of the conversion in the other Member State shall award an invalidity pension in accordance with the provisions of Chapter 3 of Title III of Regulation (EEC) No 1408/71;

Whereas the present paragraph 3 of Article 43 of Regulation (EEC) No 1408/71 has become paragraph 4 and that the text thereof should be simplified;

Whereas a provision should be inserted in Article 45 of Regulation (EEC) No 1408/71 for the purpose of guaranteeing that for the acquisition, retention or recovery of the right to benefits, the insurance periods completed in the context of a special scheme of a Member State shall be taken into consideration in the context of the general scheme of another Member State, even in the case where these periods have already been taken into consideration in the latter State in the context of a special scheme;

Whereas, for reasons of simplicity and clarity, it is necessary to insert a provision in Article 45 of Regulation (EEC) No 1408/71 providing for the inclusion in Annex VI of all specific provisions which determine the methods of assimilation of certain insurance conditions for the acquisition, retention or recovery of the right to benefits taking account of the particular characteristics of the national legislations concerned;

Whereas in accordance with the constant case law of 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 the national legislation; that, according to the Court of Justice, it is for the national legislator to enact such rules, bearing in mind that it is for the Community legislator to fix the limits within which the national provisions concerning the reduction, suspension or withdrawal shall be applied; that provision be made for the purpose of determining the amount of a pension calculated in accordance with the methods used for aggregation and apportionment and guaranteed by Community law where the application of national legislation, including provisions governing reduction, suspension or withdrawal, is less favourable than the aforesaid method; that furthermore it must be made possible for the competent institutions to waive a calculation in accordance with the method for aggregation

and apportionment where the result of that calculation is equal to or lower than that yielded by the calculation according only to the national legislation; that, for each Member State, mention should be made in Annex IV, C, of all those cases where the two calculations could give rise to a result of this kind;

Whereas for the purpose of protecting migrant workers and their survivors against an excessively stringent application of the national provisions concerning reduction, suspension or withdrawal, it is necessary to include a provision in Regulation (EEC) No 1408/71 laying down strict rules for the application of these provisions;

Whereas, for the same reasons, it is necessary to insert a provision in Regulation (EEC) No 1408/71 stipulating that, in the case of overlapping of benefits of the same kind, these provisions shall be applicable only in the case of certain types of benefits and in certain specific cases;

Whereas it is necessary to list in Annex IV, D, the types of benefits to which the aforesaid provisions can be applied in the case of overlapping of benefits of the same kind;

Whereas it is necessary to insert in Regulation (EEC) No 1408/71 a provision permitting, in certain cases, two or more Member States to conclude a contract aimed at restricting the overlapping of benefits of the same kind; that these agreements should be mentioned in Annex IV, D;

Whereas it is necessary to insert a provision in Regulation (EEC) No 1408/71 stipulating that in the case of overlapping of benefits of the same kind, the provisions governing reduction, suspension or withdrawal provided for by the legislation of a Member State shall not be applicable to a benefit calculated in accordance with the method used for aggregation and apportionment;

Whereas, in accordance with the case law of the Court of Justice, it is necessary that the overlapping of benefits of the same kind within the meaning of Chapter 3 of Title III of Regulation (EEC) No 1408/71 be taken to mean the overlapping of invalidity benefits, old-age benefits and survivors' benefits calculated or awarded on the basis of periods of insurance and/or of residence completed by one and the same person and that overlapping of a different kind be taken to mean overlapping of benefits other than those of the same kind;

Whereas it is necessary that a provision be inserted in Regulation (EEC) No 1408/71 guaranteeing that the joint application of national provisions concerning reduction, suspension or withdrawal by two or more Member States in the case of overlapping of benefits of a different kind does not have any adverse effect on migrant workers or their dependants; that it is necessary to include a provision in Regulation (EEC) No 1408/71 for the purpose of avoiding a situation in which, under the legislation of a Member State, a pension is

withdrawn or suspended in full because the person in question is in receipt of a lower benefit of a different kind from another Member State; that the same reasons, which justify the abovementioned provisions, also justify the cases where, under the legislation of a Member State, a pension cannot be awarded in the case where the beneficiary is in receipt of a benefit of a different kind;

Whereas the text of paragraph 1 of Article 48 of Regulation (EEC) No 1408/71 should be clarified by specifying the conditions of application of this paragraph;

Whereas it is necessary to fill a loophole in the text of the first sentence of Article 49 (1) of Regulation (EEC) No 1408/71 by inserting a reference to Article 40 (3) of the Regulation; that it is necessary to amplify the two first paragraphs of Article 49 of Regulation (EEC) No 1408/71 so that they can be applied in the cases referred to in the second sentence of paragraph 2 of Article 44 of the Regulation;

Whereas the amendment to paragraph 2 of Article 12 calls for the insertion of a new subparagraph (d) in Article 60 (1) of Regulation (EEC) No 1408/71;

Whereas it is necessary to insert in Regulation (EEC) No 1408/71 the transitory provisions for the application of this Regulation;

Whereas the insertion of parts B, C and D in Annex IV of Regulation (EEC) No 1408/71 means that the present Annex IV becomes Annex IV part A;

Whereas it is necessary to delete from Annex VI of Regulation (EEC) No 1408/71 the provisions appearing at present in heading B, Denmark, point 7, heading G, Ireland, point 4 and heading L, United Kingdom, point 9 which have been rendered superfluous by the inclusion of the concept of benefits of the same kind within the meaning of Chapter 3 of Title III of the Regulation;

Whereas it would be pointless to impose on the competent Danish institution the application of the provisions of Regulations (EEC) No 1408/71 and (EEC) No 574/72, which protect migrant workers and their dependants against adverse effects of the joint application of provisions concerning reduction, suspension or withdrawal by two or more Member States in the case of overlapping of benefits of a different kind since a guarantee of this kind is already provided for in Danish legislation;

Whereas, in view of the particular nature of Danish legislation as regards pensions, it is necessary to include a provision in heading D, Denmark, of Annex VI of Regulation (EEC) No 1408/71 designed to extend, for the purpose of the application of Danish legislation, the concept of benefits of the same kind within the meaning of Chapter 3 of Title III of the Regulation;

Whereas it is necessary to include in Annex VI of Regulation (EEC) No 1408/71 provisions in heading D, Spain, heading E, France, and heading J, the Netherlands, for the purpose of specifying the methods

of assimilation of certain insurance conditions for the acquisition, retention or recovery of the right to benefits referred to in Article 45 of the Regulation for Spain, France and the Netherlands;

Whereas it is necessary to include a provision in heading D, Spain, of Annex VI of Regulation (EEC) No 1408/71 for the purpose of specifying the methods of applying Article 47 of the Regulation for Spain;

Whereas it is necessary, with a view to the particular nature of Greek legislation, to insert a provision in Annex VI, heading F, Greece, for the purpose of avoiding a situation in which the application of Article 49 (2) of the Regulation could have unfavourable consequences for employed persons who had been insured in Greece;

Whereas, as a consequence of an amendment to Netherlands legislation, point 4 of heading J, the Netherlands, of Annex VI of Regulation (EEC) No 1408/71 should be adapted;

Whereas it is necessary to amend the text of Article 15 (1) and of Articles 35, 39, 46, 47, 48, 49 and 107 of Regulation (EEC) No 574/72 for the purpose of taking account of amendments made by this Regulation;

Whereas the provisions provided for by Article 7 (1) (b) and (c) of Regulation (EEC) No 574/72 should be deleted as they have become superfluous in relation to new Articles 46 and 46c of Regulation (EEC) No 1408/71;

Whereas it is necessary to amend paragraph 1 of Article 7 of Regulation (EEC) No 574/72 by including a limit to the application of rules against overlapping, in particular in the case of mutual reduction, suspension or withdrawal of two or more benefits;

Whereas it is necessary to insert in paragraph 2 of Article 7 of Regulation (EEC) No 574/72 a reference to new Article 46a, 46b and 46c of Regulation (EEC) No 1408/71,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

The preambles to Regulation (EEC) No 1408/71 shall be amended as follows:

1. The seventh preamble shall be replaced by the following:

'Whereas the provisions for coordination adopted for the implementation of Article 51 of the Treaty must guarantee to workers who move within the Community their accrued rights and advantages;'

2. The eighth preamble shall be deleted.

*Article 2*

Regulation (EEC) No 1408/71 shall be amended as follows:

1. Article 12 (2) shall be replaced by the following:

'2. Save as otherwise provided in this Regulation, the provisions of the legislation of a Member State governing the reduction, suspension or withdrawal of benefits in cases of overlapping with other social security benefits or any other form of income may be invoked even where the right to such benefits was acquired under the legislation of another Member State or where such income is acquired in the territory of another Member State.'

2. Chapter 2 of Title III shall be replaced by the following:

'CHAPTER 2

INVALIDITY

Section 1

**Employed persons or self-employed persons subject only to legislations under which the amount of invalidity benefits is independent of the duration of periods of insurance**

*Article 37*

**General provisions**

1. An employed person or a self-employed person who has been successively or alternately subject to the legislations of two or more Member States and who has completed periods of insurance exclusively under legislations according to which the amount of invalidity benefits is independent of the duration of periods of insurance shall receive benefits in accordance with the provisions of Article 39. This Article shall not affect pension increases or income support in respect of children, granted in accordance with the provisions of Chapter 8.

2. Annex IV-A lists legislations of the kind mentioned in paragraph 1 which are in force in the territory of each of the Member States concerned.

*Article 38*

**Taking account of periods of insurance or of residence completed under the legislations to which an employed person or a self-employed person was subject for the acquisition, retention or recovery of the right to benefits**

1. Where the legislation of a Member State makes the acquisition, retention or recovery of the right to benefits, under a scheme which is not a special

scheme within the meaning of paragraphs 2 or 3, subject to the completion of periods of insurance or of residence, the competent institutions of that Member State shall take account, where necessary, of the periods of insurance or of residence completed under the legislation of any other Member State, be it under a general scheme or under a special scheme and either as an employed person or as a self-employed person. For that purpose, it shall take account of these periods as if they had been completed under its own legislation.

2. Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in an occupation which is subject to a special scheme for employed persons or, where appropriate, in a specific employment, periods completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing this, in the same occupation or, where appropriate, in the same employment.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate, subject to the condition that the person concerned has been affiliated to one or other of these schemes, as appropriate.

3. Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in an occupation subject to a special scheme for self-employed persons, periods completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing this, in the same occupation. The special schemes for self-employed persons referred to in this paragraph are listed in Annex IV-B for each Member State concerned.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate, subject to the condition that the person concerned has been affiliated to one or other of these schemes, as appropriate.

*Article 39***Award of benefits**

1. The institution of a Member State, whose legislation was applicable at the time when incapacity for work followed by invalidity occurred, shall determine, in accordance with that legislation, whether the person concerned satisfies the conditions for entitlement to benefits, taking account, where appropriate, of the provisions of Article 38.

2. A person who satisfies the conditions referred to in paragraph 1 shall receive the benefits only from the said institution, in accordance with the provisions of the legislation which it administers.

3. A person who is not entitled to benefits under paragraph 1 shall receive the benefits to which he is still entitled under the legislation of another Member State taking account, where appropriate, of the provisions of Article 38.

4. If the legislation referred to in paragraphs 2 or 3 provides that the amount of the benefits shall be determined taking into account the existence of members of the family (other than the children), the competent institution shall also take into consideration those members of the family of the person concerned who are residing in the territory of another Member State, as if they were residing in the territory of the competent State.

5. If the legislation referred to in paragraph 2 or 3 lays down provisions for the reduction, suspension or withdrawal of benefits in the case of overlapping with other income or with benefits of a different kind within the meaning of Article 46a (2), Article 46a (3) and Article 46c (5) shall apply *mutatis mutandis*.

6. A wholly unemployed employee to whom the provisions of Article 71 (1) (a) (ii) or of the first sentence of Article 71 (1) (b) (ii) apply shall receive the invalidity benefits provided by the competent institution of the Member State on whose territory he resides, in accordance with the legislation which it administers, as though he had been subject to that legislation during his last employment, account being taken, where appropriate, of the provisions of Article 38 and/or Article 25 (2). The institution of the country of residence shall be responsible for paying these benefits.

**Section 2**

**Employed persons or self-employed persons subject either only to legislations under which the amount of invalidity benefit depends on the duration of periods of insurance or residence or to legislations of this type and of the type referred to in Section 1**

*Article 40***General provisions**

1. An employed person or a self-employed person who has been successively or alternately subject to the legislations of two or more Member States, of which at least one is not of the type referred to in Article 37 (1), shall receive benefits under the provisions of Chapter 3, which shall apply, *mutatis mutandis*, taking into account the provisions of paragraph 4.

2. However, an employed or self-employed person who suffers incapacity for work followed by invalidity while subject to a legislation listed in Annex IV-A shall receive benefits in accordance with the provisions of Article 37 (1) on the following conditions:

— that he satisfies the conditions of that legislation or other legislations of the same type, taking account where appropriate of the provisions of Article 38, but without having recourse to periods of insurance completed under legislations not listed in Annex IV-A, and

— that he does not satisfy the conditions required for the acquirement of the right to invalidity benefits under a legislation not listed in Annex IV-A, and

— that he does not assert any claims to old-age benefits, account being taken of the provisions of the second sentence of Article 44 (2).

3. (a) For the purpose of determining the right to benefits under the legislation of a Member State, listed in Annex IV-A, which makes the granting of invalidity benefits conditional upon the person concerned having received cash sickness benefits or having been incapable of work during a specified period, where an employed person or a self-employed person who has been subject to that legislation suffers incapacity for work followed by invalidity while subject to the legislation of another Member State, account shall be taken of the following, without prejudice to Article 37 (1):

(i) any period during which, in respect of that incapacity for work, he has, under the legislation of the second Member State, received cash sickness benefits or, in lieu thereof, continued to receive a wage or salary,

(ii) any period during which, in respect of the invalidity which followed that incapacity for work, he has received benefits within the meaning of Chapters 2 and 3 of Title III of the Regulation granted in respect of invalidity under the legislation of the second Member State,

as if it were a period during which cash sickness benefits were paid to him under the legislation of the first Member State or during which he was incapable of working within the meaning of that legislation.

- (b) The right to invalidity benefits under the legislation of the first Member State shall be acquired either upon expiry of the preliminary period of compensation for sickness as required by that legislation or upon expiry of the preliminary period of incapacity for work as required by that legislation, but not before:
- (i) the date of acquisition of the right to invalidity benefits referred to in paragraph (a)
  - (ii) under the legislation of the second Member State; or
  - (ii) the day following the last day on which the person concerned is entitled to cash sickness benefits under the legislation of the the second Member State.

4. 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 legislations of these States on conditions relating to the degree of invalidity is acknowledged in Annex V.

### Section 3

#### Aggravation of invalidity

##### Article 41

1. In the case of aggravation of an invalidity for which an employed person or a self-employed person is receiving benefits under the legislation of a single Member State, the following provisions shall apply:

- (a) if the person concerned has not been subject to the legislation of another Member State since receiving benefits, the competent institution of the first State shall grant the benefits, taking the aggravation into account, in accordance with the provisions of the legislation which it administers;
- (b) if the person concerned has been subject to the legislation of one or more of the other Member States since receiving benefits, the benefits shall be granted to him, taking the aggravation into account, in accordance with the provisions of Article 37 (1) or 40 (1) or (2), as appropriate;

- (c) if the total amount of the benefit or benefits payable under the provisions of subparagraph (b) is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously liable for payment, such institution shall pay him an income support equal to the difference between the two amounts;
- (d) if, in the case referred to in subparagraph (b), the institution responsible for the initial incapacity is a Netherlands institution, and if:
  - (i) the illness which caused the aggravation is the same as the one which gave rise to the granting of benefits under Netherlands legislation;
  - (ii) this illness is an occupational disease within the meaning of the legislation of the Member State to which the person concerned was last subject and entitles him to payment of the income support referred to in Article 60 (1) (b); and
  - (iii) the legislation or legislations to which the person concerned has been subject since receiving benefits is or are listed in Annex IV-A,

the Netherlands institution shall continue to provide the initial benefit after the aggravation occurs, and the benefit due under the legislation of the last Member State to which the person concerned was subject shall be reduced by the amount of the Netherlands benefit;

- (e) if, in the case referred to in subparagraph (b), the person concerned is not entitled to benefits at the expense of an institution of another Member State, the competent institution of the first State shall grant the benefits, according to the provisions of the legislation of that State, taking into account the aggravation and, where appropriate, the provisions of Article 38.

2. In the case of aggravation of an invalidity for which an employed person or a self-employed person is receiving benefits under the legislation of two or more Member States, the benefits shall be granted to him, taking the aggravation into account, in accordance with the provisions of Article 40 (1).

### Section 4

#### Resumption of provision of benefits after suspension or withdrawal — Conversion of invalidity benefits into old-age benefits — Recalculation of benefits granted under Article 39

##### Article 42

#### Determination of the institution responsible for the provision of benefits where provision of invalidity benefits is resumed

1. If provision of benefits is to be resumed after suspension, such provision shall, without prejudice to the provisions of Article 43, be the responsibility of the institution or institutions which were responsible for provision of the benefits at the time of their suspension.

2. If, after withdrawal of benefits, the condition of the person concerned warrants the granting of further benefits, they shall be granted in accordance with the provisions of Article 37 (1) or 40 (1) or (2), as appropriate.

#### *Article 43*

##### **Conversion of invalidity benefits into old-age benefits — Recalculation of benefits granted under Article 39**

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 were granted, and in accordance with the provisions of Chapter 3.

2. Where a person receiving invalidity benefits can establish a claim to old-age benefits under the legislation of one or more Member States, in accordance with the provisions of Article 49, any institution which is responsible for providing invalidity benefits under the legislation of a Member State shall continue to provide such person with the invalidity benefits to which he is entitled under the legislation which it administers until the provisions of paragraph 1 become applicable as regards that institution or so long as the person concerned fulfils the qualifying conditions for such benefits.

3. Where invalidity benefits granted in accordance with the provisions of Article 39 under the legislation of a Member State are converted into old-age benefits and where the person concerned does not yet satisfy the conditions required by one or more national legislations to receive these benefits, the person concerned shall receive from this or these Member States, from the date of the conversion, invalidity benefits granted in accordance with the provisions of Chapter 3 as if this Chapter had been applicable at the time when his incapacity for work leading to invalidity occurred, until the person concerned satisfies the qualifying conditions for old-age benefit laid down by the national legislation or legislations concerned or, where such conversion is not provided for, as long as he has a right to invalidity benefits under the legislation or legislations concerned.

4. The invalidity benefits provided under Article 39 shall be recalculated as soon as the beneficiary satisfies the qualifying conditions for invalidity benefits laid down by a legislation not listed in Annex IV-A or as soon as he receives old-age benefits under the legislation of another Member State.

3. Chapter 3 of Title III shall be replaced by the following text:

#### **CHAPTER 3**

#### **OLD AGE AND DEATH (PENSIONS)**

#### *Article 44*

##### **General provisions for the award of benefits where an employed or self-employed person has been subject to the legislation of two or more Member States**

1. The rights to benefits of an employed or self-employed person who has been subject to the legislation of two or more Member States, or of his survivors, shall be determined in accordance with the provisions of this chapter.

2. Save as otherwise provided in Article 49, the processing of a claim for an award submitted by the person concerned shall have regard to all the legislations to which the employed or self-employed person has been subject. Exception shall be made to this rule if the person concerned expressly asks for postponement of the award of old-age benefits to which he would be entitled under the legislation of one or more Member States.

3. This chapter shall not apply to increases in pensions or to income supports for pensions in respect of children or to orphans' pensions granted in accordance with the provisions of Chapter 8.

#### *Article 45*

##### **Consideration of periods of insurance or of residence completed under the legislations to which an employed person or a self-employed person was subject, for the acquisition, retention or recovery of the right to benefits.**

1. Where the legislation of a Member State makes the acquisition, retention or recovery of the right to benefits, under a scheme which is not a special scheme within the meaning of paragraphs 2 or 3, subject to the completion of periods of insurance or of residence, the competent institution of that Member State shall take account, where necessary, of the periods of insurance or of residence completed under the legislation of any other Member State, be it under a general scheme or under a special scheme and either as an employed person or as a self-employed person. For that purpose, it shall take account of these periods as if they had been completed under its own legislation.

2. Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in an occupation which is subject to a special scheme for employed persons or, where appropriate, in a specific employment, periods completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing this, in the same occupation or, where appropriate, in the same employment. If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate, subject to the condition that the person has been affiliated to one or other of these schemes, as appropriate.

3. Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in an occupation subject to a special scheme for self-employed persons, periods completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing this, in the same occupation. The special schemes for self-employed persons referred to in this paragraph are listed in Annex IV-B. If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate, subject to the condition that the person concerned has been affiliated to one or other of these schemes, as appropriate.

4. The periods of insurance completed under a special scheme of a Member State shall be taken into account under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate, of another Member State for the acquisition, retention or recovery of the right to benefits, subject to the condition that the person concerned has been affiliated to one or other of these schemes, even if these periods have already been taken into account in the latter State under a scheme referred to in paragraph 2 or in the first sentence of paragraph 3.

5. Where the legislation 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 realization of the risk, this condition shall be regarded as having been satisfied in the case of insurance under the legislation of another Member State, in accordance with the procedures provided for in Annex VI for each Member State concerned.

#### Article 46

##### Award of benefits

1. Where the conditions required by the legislation of a Member State for entitlement to benefits have been satisfied without having to apply the provisions of Article 45 or of Article 40 (3), the following rules shall apply:

- (a) the competent institution shall calculate the amount of the benefit that would be due:
  - (i) on the one hand, only under the provisions of the legislation which it administers;
  - (ii) on the other hand, in application of the provisions of paragraph 2;
- (b) the competent institution may, however, waive the calculation to be carried out in accordance with the provisions of (a) (ii) if the result of this calculation, apart from differences arising from the use of round figures, is equal to or lower than the result of the calculation carried out in accordance with the provisions of (a) (i), in so far as this institution does not apply any legislation containing rules against overlapping as referred to in Articles 46b and 46c or if the aforementioned institution applies a legislation containing rules against overlapping in the case referred to in Article 46c provided that the said legislation lays down that benefits of a different kind shall be taken into consideration only in proportion to the periods of insurance or of residence completed only under this legislation.

In Section C of Annex IV mention is made for each Member State concerned of the case where the two calculations could lead to a result of this kind.

2. Where the conditions required by the legislation of a Member State for entitlement to benefits are satisfied only after application of the provisions of Article 45 and/or of those of Article 40 (3), the following rules shall apply:

- (a) the competent institution calculates the theoretical amount of the benefit to which the person concerned can lay claim provided all periods of insurance and/or of residence, which have been completed under the legislation of the Member States to which the employed person or self-employed person was subject, have been completed in the State in question under the legislation which it administers on the date of the award of the benefit. If, under this legislation, the amount of the benefit is independent of the duration of the periods completed, the amount shall be regarded as being the theoretical amount referred to in this paragraph;
- (b) the competent institution subsequently determines the actual amount of the benefit on the basis of the theoretical amount referred to in the preceding paragraph in accordance with the ratio of the duration of the periods of insurance or of residence completed before the realization of the risk under the legislation which it administers to the total duration of the periods of insurance and of residence completed before the realization of the risk under the legislation of all the Member States concerned.



3. The person concerned is entitled to the highest amount calculated in accordance with the provisions of paragraphs 1 and 2 from the competent institution of each Member State without prejudice to any application of the provisions concerning reduction, suspension or withdrawal provided for by the legislations under which this benefit is due. Where this is the case, the comparison to be carried out relates to the amounts determined after the application of the said provisions.

4. When in a case of invalidity, old-age or survivors' pensions, the total of the benefits due from the competent institutions of two or more Member States, under the provisions of a multilateral social security convention referred to in Article 6 (b), is lower than the total which would be due from such Member States under paragraphs 1 to 3, the person concerned shall benefit from the provisions of this chapter.

#### *Article 46a*

**General provisions relating to reduction, suspension or withdrawal applicable to benefits in respect of invalidity, old age or survivors under the legislations of the Member States.**

1. For the purposes of this chapter, overlapping of benefits of the same kind shall have the following meaning: all overlapping of benefits in respect of invalidity, old age and survivors calculated or provided on the basis of periods of insurance and/or residence completed by one and the same person.

2. For the purposes of this chapter, overlapping of benefits of different kinds means all overlapping of benefits that cannot be regarded as being of the same kind within the meaning of paragraph 1.

3. The following rules shall be applicable for the application of provisions on reduction, suspension or withdrawal 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) account shall be taken of the benefits acquired under the legislation of another Member State or of other income acquired in another Member State only where the legislation of the first Member State provides for the taking into account of benefits or income acquired abroad;
- (b) account shall be taken of the amount of benefits to be granted by another Member State before reduction of taxes, social security contributions and other individual levies or deductions;

- (c) no account shall be taken of the amount of benefits acquired under the legislation of another Member State which are awarded on the basis of voluntary insurance or continued optional insurance.

#### *Article 46b*

**Special provisions applicable in the case of overlapping of benefits of the same kind under the legislation of two or more Member States**

1. The provisions on reduction, suspension or withdrawal laid down by the legislation of a Member State shall not be applicable to a benefit calculated in accordance with the provisions of Article 46 (2).

2. The provisions on reduction, suspension or withdrawal laid down by the legislation of a Member State shall apply to a benefit calculated in accordance with the provisions of Article 46 (1) (a) (i) only if the benefit concerned is:

- (a) either a benefit, which is referred to in Section D of Annex IV, the amount of which does not depend on the length of the periods of insurance or of residence completed; or
- (b) a benefit, the amount of which is calculated on the basis of a credited period deemed to have been completed between the day on which the risk materialized and a later date. In the latter case, the said provisions shall apply in the case of overlapping of such a benefit:
  - (i) either with a benefit of the same kind, except where an agreement has been concluded between two or more Member States providing that one and the same credited period may not be taken into account two or more times;
  - (ii) or with a benefit of the type referred to in (a).

The benefits and agreements referred to in (b) are mentioned in Section D of Annex IV.

#### *Article 46c*

**Special provisions applicable in the case of overlapping of one or more benefits referred to in Article 46a (1) with one or more benefits of a different kind or with other income, where two or more Member States are concerned**

1. If the receipt of benefits of a different kind or other income entails the reduction, suspension or withdrawal of two or more benefits referred to in Article 46 (1) (a) (i), the amounts, which would not be paid in strict application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation of the Member States concerned, shall be divided by the number of benefits subject to reduction, suspension or withdrawal.

2. Where the benefit in question is calculated in accordance with Article 46 (2), the benefit or benefits of a different kind from other Member States or other income and all other elements provided for by the legislation of the Member State for the application of the provisions in respect of reduction, suspension or withdrawal shall be taken into account in proportion to the periods of insurance referred to in Article 46 (2) (b), and shall be used for the calculation of the said benefit.

3. If the receipt of benefits of a different kind or of other income entails the reduction, suspension or withdrawal of one or more benefits referred to in Article 46 (1) (a) (i), and of one or more benefits referred to in Article 46 (2), the following rules shall apply:

- (a) where it is a case of a benefit or benefits referred to in Article 46 (1) (a) (i), the amounts which would not be paid in strict application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation of the Member States concerned, shall be divided by the number of benefits subject to reduction, suspension or withdrawal;
- (b) where it is a case of a benefit or benefits calculated in accordance with Article 46 (2), the reduction, suspension or withdrawal shall be carried out in accordance with paragraph 2.

4. Where, in the case referred to in paragraph 1 and 3 (a), the legislation of a Member State provides that, for the application of provisions concerning reduction, suspension or withdrawal, account shall be taken of benefits of a different kind and/or other income and all other elements in proportion to the periods of insurance referred to in Article 46 (2) (b), the division provided for in the said paragraphs shall not apply in respect of that Member State.

5. Where the legislation of a Member State makes provision for the full withdrawal or suspension of a benefit on the grounds that the person concerned receives a benefit of a different kind under the legislation of another Member State, the first benefit may be reduced only by an amount not in excess of the benefit due from the second Member State.

6. All the abovementioned provisions shall apply, *mutatis mutandis*, where the legislation of one or more Member States provides that the right to a benefit cannot be acquired in the case where the person concerned is in receipt of a benefit of a different kind or of other income.

#### Article 47

##### Additional provisions for the calculation of benefits

1. For the calculation of the theoretical and pro rata amounts referred to in Article 46 (2), the following rules shall apply:

- (a) where the total length of the periods of insurance and of residence completed before the risk materialized under the legislations of all the Member States concerned is longer than the maximum period required by the legislation of one of these States for receipt of full benefit, the competent institution of that State shall take into consideration this maximum period instead of the total length of the periods completed. This method of calculation must not result in the imposition on that institution of the cost of a benefit greater than the full benefit provided for by the legislation which it administers; this provision shall not apply to benefits, the amount of which does not depend on the length of insurance;
- (b) the procedure for taking account of overlapping periods is laid down in the Implementing Regulation referred to in Article 98;
- (c) where, under the legislation of a Member State, benefits are calculated on the basis of average earnings, an average contribution, an average increase or on the ratio which existed, during the periods of insurance, between the claimant's gross earnings and the average gross earnings of all insured periods other than apprentices, such average figures or ratios shall be determined by the competent institution of that State solely on the basis of the periods of insurance completed under the legislation of the said State, or the gross earnings received by the person concerned during those periods only;
- (d) where, under the legislation of a Member State, benefits are calculated on the basis of the amount of earnings, contributions or increases, the competent institution of that State shall determine the earnings, contributions and increases to be taken into account in respect of the periods of insurance or residence completed under the legislation of other Member States on the basis of the average earnings, contributions or increases recorded in respect of the periods of insurance completed under the legislation which it administers;
- (e) where, under the legislation of a Member State, benefits are calculated on the basis of standard earnings or a fixed amount, the competent institution of that State shall consider the

standard earnings or the fixed amount to be taken into account by it in respect of periods of insurance or residence completed under the legislations of other Member States as being equal to the standard earnings or fixed amount or, where appropriate, to the average of the standard earnings or the fixed amount corresponding to the periods of insurance completed under its own legislation;

(f) where, under the legislation of a Member State, benefits are calculated for some periods on the basis of the amount of earnings, and, for other periods, on the basis of standard earnings or a fixed amount, the competent institution of that State shall, in respect of periods of insurance or residence completed under the legislations of other Member States, take into account the earnings or fixed amounts determined in accordance with the provisions referred to in (d) or (e) or, as appropriate, the average of these earnings or fixed amounts, where benefits are calculated on the basis of standard earnings or a fixed amount for all the periods completed under the legislation which it administers, the competent institution shall consider the earnings to be taken into account in respect of the periods of insurance or residence completed under the legislations of other Member States as being equal to the notional earnings corresponding to the standard earnings or fixed amount;

(g) where, under the legislation of a Member State, benefits are calculated on the basis of average contributions, the competent institution shall determine that average exclusively by reference to those periods of insurance completed under the legislation of the said State.

2. The provisions of the legislation of a Member State concerning the revalorization of the factors taken into account for the calculation of benefits shall apply, as appropriate, to the factors to be taken into account by the competent institution of that State, in accordance with the provisions of paragraph 1, in respect of the periods of insurance or residence completed under the legislation of another Member State.

3. If, under the legislation of a Member State, the amount of benefits is determined taking into account the existence of members of the family other than children, the competent institution of that State shall also take into consideration those members of the family of the person concerned who are residing in the territory of another Member State as if they were residing in the territory of the competent State.

#### *Article 48*

##### **Periods of insurance or of residence of less than one year**

1. Notwithstanding the provisions of Article 46 (2), the institution of a Member State shall not be bound

to award benefits in respect of periods completed under the legislation it administers, which are taken into account when the risk materializes, if:

- the duration of the said periods does not amount to one year, and
- if under that legislation no right to benefit is acquired by virtue only of the provisions of that legislation.

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 applying the provisions of Article 46 (2) excepting those of subparagraph (b).

3. If the effect of applying the provisions of paragraph 1 would be to relieve all the institutions of the Member States concerned of their obligations, benefits shall be awarded exclusively under the legislation of the last of those States whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with the provisions of Article 45 (1) to (4) had been completed under the legislation of that State.

#### *Article 49*

**Calculation of benefits where the person concerned does not simultaneously satisfy the conditions laid down by all the legislations under which periods of insurance or of residence have been completed or when he has expressly requested a postponement of the award of old-age benefits**

1. If, at a given time, the person concerned does not satisfy the conditions laid down for the provision of benefits by all the legislations of the Member States to which he has been subject, taking into account where appropriate the provisions of Article 45 and/or Article 40 (3), but satisfies the conditions of one or more of them only, the following provision shall apply:

(a) each of the competent institutions administering a legislation whose conditions are satisfied shall calculate the amount of the benefit due, in accordance with the provisions of Article 46;

(b) however:

(i) if the person concerned satisfies the conditions of at least two legislations without having recourse to periods of insurance or residence completed under the legislations whose conditions are not satisfied, these periods shall not be taken into account for the purposes of the provisions of Article 46 (2);

(ii) if the person concerned satisfies the conditions of only one legislation without having recourse to periods of insurance or residence completed under the legislations whose conditions are not satisfied, the amount of the benefit payable shall be

calculated in accordance with the provisions only of that legislation whose conditions are satisfied, taking account of the periods completed under that legislation only.

The provisions of this paragraph shall apply *mutatis mutandis* where the person concerned has expressly requested the postponement of the award of old-age benefits, in accordance with the provisions of the second sentence of Article 44 (2).

2. The benefit or benefits awarded under one or more of the legislations in question, in the case referred to in paragraph 1, shall be recalculated automatically in accordance with the provisions of Article 46, as and when the conditions required by one or more of the other legislations to which the person concerned has been subject are satisfied, taking into account, where appropriate, the provisions of Article 45 and taking into account once again, where appropriate, the provisions of paragraph 1. This paragraph shall apply *mutatis mutandis* where a person requests the award of old-age benefits acquired under the legislation of one or more Member States which had until then been postponed in accordance with the provisions of the second sentence of Article 44 (2).

3. A recalculation shall automatically be made in accordance with the provisions of paragraph 1, without prejudice to the provisions of Article 40 (2), where the conditions required by one or more of the legislations concerned are no longer satisfied.

#### Article 50

**Award of an income support where the total of benefits payable under the legislations of the various Member States does not amount to the minimum laid down by the legislation of the State in whose territory the recipient resides**

A recipient of benefits to whom this chapter applies may not, in the State in whose territory he resides and under whose legislation a benefit is payable to him, be awarded 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 of insurance taken into account for the payment in accordance with the provisions of the preceding Articles. The competent institution of that State shall, if necessary, pay him throughout the period of his residence on its territory an income support equal to the difference between the total of the benefits payable under this chapter and the amount of the minimum benefit.

#### Article 51

##### Revalorization and recalculation of benefits

1. If, by reason of an increase in the cost of living or changes in the level of wages or salaries or other reasons for adjustment, the benefits of the States concerned are altered by a fixed percentage or

amount, such percentage or amount must be applied directly to the benefits determined under the provisions of Article 46, without the need for a recalculation in accordance with the provisions of that Article.

2. On the other hand, if the method of determining benefits or the rules for calculating benefits should be altered, a recalculation shall be carried out in accordance with the provisions of Article 46.'

4. The following new subparagraph (d) shall be added to Article 60 (1):

'The provisions for reduction, suspension or withdrawal laid down by the legislation of a Member State shall not apply to persons receiving benefits awarded by institutions of two Member States in accordance with the provisions of subparagraph (b).'

5. The following Article shall be inserted:

#### Article 95a

##### Transitional provisions for... application of Regulation (EEC) No...

1. Under Regulation (EEC) No..., no right shall be acquired for a period prior to... (date of entry into force of the present regulation).

2. All insurance periods or periods of residence completed under the legislation of a Member State before... (date of entry into force of the present regulation) shall be taken into consideration for the determination of rights to benefits under the provisions of Regulation (EEC) No...

3. Subject to the provisions of paragraph 1, a right shall be acquired under Regulation (EEC) No... even though relating to a contingency which materialized prior to... (date of entry into force of this regulation).

4. The rights of a person to whom a pension was awarded prior to... (the date of entry into force of this regulation) may, on the application of the person concerned, be reviewed, taking into account the provisions of Regulation (EEC) No...

5. If an application referred to in paragraph 4 is submitted within two years from... (the date of entry into force of this regulation), the rights acquired under Regulation (EEC) No... shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.

6. If the application referred to in paragraph 4 is submitted after the expiry of the two-year period after... (the date of entry into force of this regulation), rights which have not been forfeited or not barred by limitation shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.'

6. Annex IV shall be replaced by the following.

*ANNEX IV*

(Articles 37 (2), 38 (3), 45 (3), 46 (1) (b) and 46b (2) of the Regulation)

A

**Legislations referred to in Article 37 (1) of the Regulation under which the amount of invalidity benefits is independent of the length of periods of insurance**

A. BELGIUM

The legislation relating to the general invalidity scheme, to the special invalidity scheme for miners and to the special scheme for sailors in the Merchant Navy and the legislation concerning insurance against incapacity for work for self-employed persons

B. DENMARK

None

C. GERMANY

None

D. SPAIN

Legislation relating to invalidity insurance under the general scheme and under the special schemes

E. FRANCE

1. Employed persons

All legislations on invalidity insurance, except for the legislation concerning the invalidity insurance of the social security scheme for miners

2. Self-employed persons

The legislation on invalidity insurance for persons self-employed in agriculture

F. GREECE

Legislation relating to the agricultural insurance scheme

G. IRELAND

Chapter 10 of Part II of the Social Welfare Consolidation Act — 1981

H. ITALY

None

I. LUXEMBOURG

None

J. THE NETHERLANDS

(a) The Law of 18 February 1966 on insurance against incapacity for work, as amended

(b) The Law of 11 December 1975 on general insurance against incapacity for work, as amended

K. PORTUGAL

None

## L. UNITED KINGDOM

## (a) Great Britain

Section 15 of the Social Security Act 1975

Sections 14 to 16 of the Social Security Pensions Act 1975

## (b) Northern Ireland

Section 15 of the Social Security (Northern Ireland) Act 1975

Articles 16 to 18 of the Social Security Pensions (Northern Ireland) Order 1975

## B

**Special schemes for self-employed persons within the meaning of Articles 38 (3) and 45 (3) of Regulation (EEC) No 1408/71**

## A. BELGIUM

None

## B. DENMARK

None

## C. GERMANY

Old-age insurance for farmers (Altershilfe für Landwirte)

## D. SPAIN

Scheme for lowering the retirement age of self-employed persons engaged in seafaring activities as described in Royal Decree No 2309 of 23 July 1970

## E. FRANCE

None

## F. GREECE

None

## G. IRELAND

None

## H. ITALY

Pension insurance schemes for (Assicurazione pensioni per):

— medical practitioners (medici)

— pharmacists (farmacisti)

— veterinarians (veterinari)

— midwives (ostetriche)

— engineers and architects (ingegneri ed architetti)

— surveyors (geometri)

— solicitors and barristers (avvocati e procuratori)

— economists (dottori commercialisti)

— accountants and industrial experts (ragionieri e periti commerciali)

— employment experts (consulenti del lavoro)

— notaries (notai)

— customs agents (spedizionieri doganali)

## I. LUXEMBOURG

None

## J. THE NETHERLANDS

None

## K. PORTUGAL

None

## L. UNITED KINGDOM

None

## C

**Cases referred to in Article 46 (1) (b) of the Regulation where the calculation of benefit in accordance with Article 46 (2) of the Regulation may be waived**

## A. BELGIUM

None

## B. DENMARK

All applications for pensions referred to in the law on social pensions, except for pensions mentioned in Section D of Annex IV

## C. GERMANY

None

## D. SPAIN

None

## E. FRANCE

None

## F. GREECE

None

## G. IRELAND

All applications for retirement pensions, contributory old-age pensions and widowhood pensions

## H. ITALY

Invalidity, retirement and survivors' pensions for employed persons and for the following categories of self-employed persons: farmers farming directly, share-croppers, farmers, craftsmen and persons engaged in commercial activities

## I. LUXEMBOURG

None

## J. THE NETHERLANDS

All applications for old-age pensions under the law of 31 May 1956 governing general old-age insurance, as amended

## K. PORTUGAL

Invalidity, old-age and widowhood pensions

## L. UNITED KINGDOM

All claims for retirement pension and widow's pension determined under the provisions of Chapter 3 of Title III of the Regulation except those in respect of which, in any relevant income tax year commencing on or after 6 April 1975, the person concerned has completed periods of insurance, employment or residence both under the legislation of the United Kingdom and under that of another Member State

## D

**Benefits and agreements referred to in Article 46b (2) of the Regulation**

1. Benefits referred to in Article 46b (2) (a) of the Regulation, the amount of which is independent of the length of periods of insurance or residence completed:
  - (a) The invalidity benefits provided for by the legislations referred to in Part A of this Annex, except for the benefits provided for by Greek legislation relating to the agricultural insurance scheme;
  - (b) 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 at the latest;
  - (c) The Netherlands widows' pension under the law of 9 April 1959 governing the general insurance for widows and orphans, as amended;
  - (d) The Spanish survivors' pensions granted under the general and special schemes.
2. Benefits referred to in Article 46b (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 materialized and a later date:
  - (a) Danish early-retirement pensions, the amount of which is determined in accordance with legislation in force before 1 October 1984;
  - (b) The German invalidity and survivors' pensions for which account is taken of a supplementary period and German old-age pensions for which account is taken of a supplementary period already acquired;
  - (c) The Luxembourg invalidity and survivors' pensions;
  - (d) The Italian pensions for total incapacity for work ('inabilita').
3. Agreements referred to in Article 46 (2) (b) (i) of the Regulation intended to prevent the same credited period being taken into account two or more times:

Agreement of 20 July 1978 between the Government of the Grand Duchy of Luxembourg and the Government of the Federal Republic of Germany concerning various social security matters.'

## 7. Annex VI shall be amended as follows:

## (a) The heading B (Denmark) shall be amended as follows:

## (i) Paragraph 7 shall be replaced by the following text:

'The provisions of Article 46c (1) and (3) of the Regulation and of Article 7 (1) of the Implementing Regulation shall not be applied to pensions awarded in the context of Danish legislation.'

## (ii) Paragraph 9 shall be replaced by the following text:

'Where the beneficiary of a Danish retirement pension or early retirement 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 46a (1) of the 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 has also completed periods of residence in Denmark.'

## (b) Under heading D (Spain) the following new paragraphs should be added:

3. Any employed person or self-employed person who is no longer insured under Spanish legislation shall be considered to be still insured when the risk materializes, for the purposes of the implementation of the provisions of Chapter 3 of Title III of the Regulation, if he is insured under the legislation of another Member State at the time of materialization of the risk or, failing that, in the case where a benefit is due, in pursuance of the legislation of another Member State for the same risk. The latter condition shall be deemed to have been fulfilled, however, in the case referred to in Article 48 (1).



4. (a) Under Article 47 of the Regulation, the calculation of the theoretical Spanish benefit shall be carried out on the basis of the actual contributions of the insured person during the years immediately preceding payment of the last contribution to the Spanish social security.
- (b) The amount of the pension obtained shall be increased by the amount of the increases and revalorizations calculated for each year after and up to the year preceding the realization of the risk for pensions of the same kind.'
- (c) Under heading E (France), the following new paragraph 7 should be added:
- 'Any employed person who is no longer subject to French legislation governing widowhood insurance shall be deemed to have the status of an insured person under such legislation when the risk materializes, for the purposes of the implementation of the provisions of Chapter 3 of Title III of the Regulation, if that person is insured as an employed person under the legislation of another Member State at the time of the materialization of the risk or, failing that, in the case where a survivor's benefit is due in pursuance of the legislation on employed persons of another Member State. This condition shall be deemed to have been fulfilled, however, in the case referred to in Article 48 (1).'
- (d) Under heading F (Greece), the following new point 4 shall be added:
- 'In the context of Greek legislation, the application of Article 49 (2) of the Regulation is subject to the condition that the new calculation referred to in the aforementioned Article shall not adversely affect the interests of the person concerned.'
- (e) Under heading G (Ireland)
- (i) point 4 shall be deleted;
- (ii) points 5 to 8 shall consequently be renumbered.
- (f) Heading J (The Netherlands) shall be amended as follows:
- (i) point 3 shall be replaced by the following text:
- '(a) Any employed person or self-employed person who is no longer subject to the Netherlands legislation governing widowhood insurance shall be deemed to be insured under such legislation when the risk materializes, for the purposes of the implementation of the provisions of Chapter 3 of Title III of the Regulation, if that person is insured under the legislation of another Member State for the same risk or, failing that, in the case where a survivor's benefit is due in pursuance of the legislation of another Member State. The latter condition shall be deemed to have been fulfilled, however, in the case referred to in Article 48 (1).
- (b) Where in application of subparagraph (a) of this paragraph, a widow has the right to a widow's pension under Netherlands legislation relating to general insurance for widows and for orphans, that pension shall be calculated in accordance with the provisions of Article 46 (2) of the Regulation.'
- For the application of these provisions, the periods of insurance completed before 1 October 1959 during which the employed person or self-employed person resided on the territory of the Netherlands before attaining the age of 15 years or during which, while still resident on the territory of another Member State, he carried out a gainful activity in the Netherlands for an employer established in that country, shall also be regarded as periods of insurance completed under the aforementioned Netherlands legislation.'
- (c) Account shall not be taken of the periods to be taken into consideration under the provisions of subparagraph (b), which coincide with periods of insurance completed under the legislation of another Member State in respect of survivors' pensions.'
- (ii) Paragraph 4 shall be replaced by the following text:
- '(a) Any employed person or self-employed person who is no longer insured under the Law of 18 February 1966 relating to insurance against incapacity for work (WAO) and/or under the Law of 11 December 1975 relating to incapacity for work (AAW) shall be considered to be still insured at the time of the materialization of the risk for the purposes of the implementation of the provisions of Chapter 3 of Title III of the Regulation, if he is insured for the same risk under the legislation of another Member State or, failing that, in the case where a benefit is due under the legislation of another Member State for the same risk. The latter condition shall be considered to be fulfilled, however, in the case referred to in Article 48 (1).
- (b) If in application of subparagraph (a) of this paragraph, the person concerned is entitled to a Netherlands invalidity benefit, that benefit shall be awarded in accordance with rules laid down by Article 46 (2) of the Regulation:

- (i) in accordance with the provisions laid down by the abovementioned law of 18 February 1966 (WAO), if, at the time of occurrence of the incapacity for work he had been insured for the same risk under the legislation of another Member State as an employed person within the meaning of Article 1 (a) of the Regulation;
- (ii) in accordance with the provisions laid down by the abovementioned law of 11 December 1975 (AAW), if the person concerned at the time when the incapacity for work arose:
  - was insured for the risk under the legislation of another Member State but not in the capacity of employed person within the meaning of Article 1 (a) of the Regulation, or
  - was not insured for the risk under the legislation of another Member State, but can assert a claim to benefits under the legislation of another Member State.

If the amount of the benefit calculated in application of the provision laid down in (i) is less than that resulting from the application of the provision laid down in (ii), the last-mentioned benefit shall be payable.

- (c) For the calculation of the benefits awarded in accordance with the abovementioned law of 18 February 1966 (WAO) or in accordance with the abovementioned law of 11 December 1975 (AAW), 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 abovementioned law of 18 February 1966 (WAO),
  - periods of insurance completed under the abovementioned law of 11 December 1975 (AAW) in so far as these do not coincide with the periods of insurance completed under the abovementioned law of 18 February 1966 (WAO).
- (d) For the calculation of the Netherlands invalidity benefit in application of Article 40 (1) of the Regulation, the Netherlands institutions do not take account of any supplements to be awarded under the provisions of the Law on supplements. The right to that supplement and the amount thereof are calculated only on the basis of the provisions of the Law on supplements.'

(g) In heading L (United Kingdom):

- (i) point 9 shall be deleted;
- (ii) points 10 to 15 shall consequently be renumbered.

### Article 3

Regulation (EEC) No 574/72 shall be amended as follows:

1. Article 7 shall be replaced by the following text:

'1. Where the benefits due under the legislation of two or more Member States are conditional upon mutual reductions, suspensions or withdrawals, the amounts which would not be paid in strict application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation of the Member States concerned, shall be divided by the number of benefits subject to reduction, suspension or withdrawal.

2. In order to implement the provisions of Article 12 (2), (3) and (4), of Article 46a, of Article 46b and Article 46c of the Regulation, the competent institutions concerned shall provide each other, at their own request, with all appropriate information.'

2. In Article 15 (1) (a), the words 'and Article 46 (2) (c) of the Regulation' shall be replaced by 'and Article 47 (1) (a) of the Regulation'.

3. The title of Article 35 shall read as follows:

**'Applications for invalidity benefits where an employed person or a self-employed person has been subject only to the legislations mentioned in Part A of Annex IV to the Regulation and also in the case referred to in Article 40 (2) of the Regulation'.**

4. The title of Article 39 shall read as follows:

**'Investigation of applications for invalidity benefits where an employed person or a self-employed person has been subject only to the legislations mentioned in Part A of Annex IV to the Regulation.'**

5. Article 46 shall read as follows:

**'Amounts due for periods of voluntary insurance or optional continued insurance, which must not be taken into consideration under the provisions of Article 15 (1) (b) of the implementing Regulation.'**

For the calculation of the theoretical amount and of the actual amount of the benefit in accordance with the provisions of Article 46 (2) (a) and (b) of the Regulation, the rules laid down in the provisions of Article 15 (1) (b), (c) and (d) of the implementing Regulation shall be applicable.

The amount actually due, calculated in accordance with the provisions of Article 46 (2) of the Regulation, shall be increased by the amount which corresponds to the periods of voluntary or optional continued insurance, which have not been taken into account under the provisions of Article 15 (1) (b) of the implementing Regulation. This increase shall be calculated in accordance with the provisions of the Member State's legislation under which the periods of voluntary insurance or of optional continued insurance have been completed.

The comparison referred to in Article 46 (3) of the Regulation must be made bearing the aforesaid increase in mind.'

6. Article 47 shall read as follows:

**'Calculation of the amounts due corresponding to the periods of voluntary or optional continued insurance**

In accordance with the legislation it applies, the institution of each Member State shall calculate the amount corresponding to the periods of voluntary or optional continued insurance, which, under Article 46a (3) (c) of the Regulation, is not subject to the provisions for withdrawal, reduction or suspension of another Member State.'

7. Article 48 (1) shall read as follows:

'1. The final decision taken by each of the institutions concerned shall be notified to the investigating institution. Each of these decisions must specify the grounds and time-limits for appeal provided for by the legislation in question. When all these decisions have been received, the investigating institution shall communicate them to the claimant in his own language by means of a summarized statement to which the aforesaid decisions shall be appended. Periods allowed for appeals shall commence only on the date of receipt of the summarized statement by the claimant.'

8. Article 49 shall read as follows:

**'Recalculation of benefits**

1. In pursuance of the provisions of Article 43 (3) and (4) of Article 49 (2) and (3) and of Article 51 (2) of the Regulation shall apply *mutatis mutandis*.

2. In the case of the recalculation, withdrawal or suspension of a benefit, the institution which has taken such a decision shall notify immediately the person concerned and each of the institutions on which the person concerned has a claim, if necessary through the good offices of the investigating institution. The decision must specify the grounds and time limits for appeal provided for by the legislation in question. Periods allowed for appeals shall commence only on the date of receipt of the decision by the person concerned.

9. Paragraph 1 of Article 107 shall read as follows:

'1. For the purpose of implementing the following provisions:

(a) Regulation: Article 12 (2), (3) and (4), Article 19 (1) (b) last sentence, Article 22 (1) (ii) last sentence, Article 25 (1) (b) penultimate sentence Article 41 (1) (c) and (d), Article 46a (3), Article 50, Article 52 (b) last sentence, Article 55 (1) (ii) last sentence, Article 70 (1) first subparagraph, Article 71 (1) (b) (ii) penultimate sentence;

(b) implementing Regulation Article 34 (1) and Article 120 (2),

the rate for the conversion into a national currency of amounts denominated in another national currency shall be the rate calculated by the Commission and based on the monthly average, during the reference period specified in paragraph 2, of rates of exchange of such currencies which are communicated to the Commission for the application of the European Monetary System.'

*Article 4*

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.