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## Legislation

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## CORRIGENDA

**Corrigendum to Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems***(Official Journal of the European Union L 166 of 30 April 2004)*

Regulation (EC) No 883/2004 should read as follows:

**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)**

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 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.

<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).

- (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.
- (18) In specific situations which justify other criteria of applicability, it is necessary to derogate from that general rule.
- (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 parental benefits and can be assimilated to maternity benefits *strictu sensu* in that they are provided during the first months of a newborn 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;
- (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 social and medical assistance or to benefit schemes for victims of war or its consequences.

#### 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 Commission of the European Communities in writing of the declarations referred to in Article 1(1), the legislation and schemes referred to in Article 3, the conventions entered into as referred to in Article 8(2) and the minimum benefits referred to in Article 58, as well as substantive amendments made subsequently. Such notifications shall indicate the date of entry into force of the laws and schemes in question or, in the case of the declarations provided for in Article 1(1), the date from which this Regulation will apply to the schemes specified in the declarations by the Member States.

2. These notifications shall be submitted to the Commission of the European Communities every year and published in the *Official Journal of the European Union*.

#### 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.

#### 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 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 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 if he/she is employed by various undertakings or various employers whose registered office or place of business is in different Member States,

or

(b) the legislation of the Member State in which the registered office or place of business of the undertaking or employer employing him/her is situated, if he/she does not pursue a substantial part of his/her activities in 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. If the legislation of any Member State makes admission to voluntary insurance or optional continued insurance conditional upon residence in that Member State, the equal treatment of residence in another Member State as provided under Article 5(b) shall apply only to persons who have been subject, at some earlier stage, to the legislation of the first Member State on the basis of an activity as an employed or self-employed person.

*Article 15***Auxiliary staff of the European Communities**

Auxiliary 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, unless this Member State is listed in Annex III. In this event, the members of the family of a frontier worker shall be entitled to benefits in kind in the competent Member State 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 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 retires is entitled in case 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. The term 'continuation of treatment' means the continued investigation, diagnosis and treatment of an illness.

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 paragraph 2 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.

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/she 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/she 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 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 in the case of insurance under the legislation of another Member State, in accordance with the procedures provided for in Annex XI for each Member State concerned.

## 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 subparagraph 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 subparagraph 1(b), the competent institution may waive the pro rata calculation, under the conditions provided for in the Implementing Regulation. Such situations are set out in Annex VIII.

## 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).

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;

in accordance with the procedures laid down in Annex XI for the Member State 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.

#### 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 frontier workers 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 purposes of this Chapter, Article 7 shall apply only in the cases provided for by Articles 64 and 65 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.

#### 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 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 Commission of the European Communities shall be made up of a government representative from each of the Member States, assisted, where necessary, by expert advisers. A representative of the Commission of the European Communities shall attend the meetings of the Administrative Commission in an advisory capacity.

2. The rules of the Administrative Commission shall be drawn up by mutual agreement among its members.

Decisions on questions of interpretation referred to in Article 72(a) shall be adopted under the voting rules established by the Treaty and shall be given the necessary publicity.

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

#### 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 cross-border 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 Commission of the European Communities 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 Commission of the European Communities. The Advisory Committee shall draw up its Rules of Procedure.

2. The Advisory Committee shall be empowered, at the request of the Commission of the European Communities, 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 Commission of the European Communities 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 Commission of the European Communities 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 the one determined in accordance with Title II of Regulation (EEC) No 1408/71, that legislation shall continue to apply as long as the relevant situation remains unchanged, unless the person concerned requests that he/she be subject to the legislation applicable under this Regulation. The request shall be submitted within three 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 changeover 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.

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 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>(1)</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>(2)</sup>, for as long as that Regulation has not been repealed or modified;

- (c) the Agreement on the European Economic Area <sup>(3)</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>(4)</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>(5)</sup> are to be read as referring to this Regulation.

*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.

Done at Strasbourg, 29 April 2004.

*For the European Parliament*  
The President  
P. COX

*For the Council*  
The President  
M. McDOWELL

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

<sup>(2)</sup> OJ L 160, 20.6.1985, p. 7.

<sup>(3)</sup> OJ L 1, 3.1.1994, p. 1.

<sup>(4)</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>(5)</sup> OJ L 209, 25.7.1998, p. 46.

## ANNEX I

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

(Article 1(z))

**I. Advances of maintenance payments****A. BELGIUM**

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

**B. 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

**C. GERMANY**

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

**D. 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

**E. AUSTRIA**

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

**F. PORTUGAL**

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

**G. FINLAND**

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

**H. SWEDEN**

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

**II. Special childbirth and adoption allowances**

## A. BELGIUM

Childbirth allowance and adoption grant

## B. SPAIN

Single payment birth grants

## C. FRANCE

Birth or adoption grants as part of the 'early childhood benefit'

## D. LUXEMBOURG

Antenatal allowances

Childbirth allowances

## E. 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.

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## ANNEX II

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

(Article 8(1))

The content of this Annex shall be determined by the European Parliament and by the Council in accordance with the Treaty as soon as possible and at the latest by the date of application of this Regulation referred to in Article 91.

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ANNEX III

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

(Article 18(2))

DENMARK

SPAIN

IRELAND

NETHERLANDS

FINLAND

SWEDEN

UNITED KINGDOM

—

ANNEX IV

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

(Article 27(2))

BELGIUM

GERMANY

GREECE

SPAIN

FRANCE

ITALY

LUXEMBOURG

AUSTRIA

SWEDEN

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## 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))

## A. GREECE

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

## B. IRELAND

Part II, Chapter 15 of the Social Welfare (Consolidation) Act, 1993

## C. FINLAND

Invalidity pensions determined according to the National Pensions Act of 8 June 1956 and awarded under the transitional rules of the National Pensions Act (547/93)

National pensions to persons who are disabled or become disabled at an early age (the National Pensions Act (547/93))

## D. SWEDEN

Income-related sickness benefit and activity compensation (Act 1962:381 as amended by Act 2001:489)

## E. UNITED KINGDOM

## (a) Great Britain

Sections 30A(5), 40, 41 and 68 of the Contributions and Benefits Act 1992

## (b) Northern Ireland

Sections 30A(5), 40, 41 and 68 of the Contributions and Benefits (Northern Ireland) Act 1992.

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## 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 institutions of 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		Mariners' scheme	Ossom
			General invalidity	Occupational invalidity		
FRANCE	1. General scheme:					
	– Group III (constant attendance)	Concordance	Concordance	Concordance	Concordance	No concordance
	– Group II	Concordance	Concordance	Concordance	Concordance	No concordance
	– Group I	Concordance	Concordance	Concordance	Concordance	No concordance
	2. Agricultural scheme					
	– Total, general invalidity	Concordance	Concordance	Concordance	Concordance	No concordance
	– Two-thirds general invalidity	Concordance	Concordance	Concordance	Concordance	No concordance
	– Constant attendance	Concordance	Concordance	Concordance	Concordance	No concordance
	3. Miners' scheme:					
	– Partial, general invalidity	Concordance	Concordance	Concordance	Concordance	No concordance
	– Constant attendance	Concordance	Concordance	Concordance	Concordance	No concordance
	– Occupational invalidity	No concordance	No concordance	Concordance	No concordance	No concordance
	4. Mariners' scheme:					
– General invalidity	Concordance	Concordance	Concordance	Concordance	No concordance	
– Constant attendance	Concordance	Concordance	Concordance	Concordance	No concordance	
– Occupational invalidity	No concordance	No concordance	No concordance	No concordance	No concordance	
ITALY	1. General scheme:					
	– Invalidity — manual workers	No concordance	Concordance	Concordance	Concordance	No concordance
	– Invalidity — clerical staff	No concordance	Concordance	Concordance	Concordance	No concordance
2. Mariners' scheme:						
– Unfitness for seafaring	No concordance	No concordance	No concordance	No concordance	No concordance	
LUXEMBOURG <sup>(1)</sup>	Workers' invalidity — manual workers	Concordance	Concordance	Concordance	Concordance	No concordance
	Invalidity — clerical staff	Concordance	Concordance	Concordance	Concordance	No concordance

<sup>(1)</sup> Entries concerning concordance between Luxembourg and France or Belgium will be the subject of technical re-examination taking account of the changes which have been made to national legislation in Luxembourg.

**FRANCE**

Member State	Schemes administered by institutions of Member States which have taken a decision recognising the degree of invalidity	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	1. General scheme	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
	– partial general invalidity												
	– occupational invalidity	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	Concordance <sup>(2)</sup>			
3. Mariners' scheme	Concordance <sup>(1)</sup>	No concordance	No concordance	Concordance <sup>(1)</sup>	No concordance	No concordance	Concordance <sup>(1)</sup>	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance
ITALY	1. General scheme	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	– invalidity — manual workers												
	– invalidity — clerical staff	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
2. Mariners' scheme	– unfit for seafaring	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance
LUXEMBOURG <sup>(3)</sup>	Invalidity — manual workers	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	Invalidity — clerical staff	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance

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

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

<sup>(3)</sup> Entries concerning concordance between Luxembourg and France or Belgium will be the subject of technical re-examination taking account of the changes which have been made to national legislation in Luxembourg.

## 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	No concordance
	– constant attendance	No concordance	No concordance	No concordance
	– occupational invalidity			

LUXEMBOURG <sup>(1)</sup>

Member State	Schemes administered by institutions of Member States which have taken a decision recognising the degree of invalidity	Schemes administered by Luxembourg institutions on which the decision is binding in cases of concordance	
		Invalidity — manual workers	Invalidity — clerical staff
BELGIUM	1. General scheme	Concordance	Concordance
	2. Miners' scheme:		
	– partial general invalidity	No concordance	No concordance
	– occupational invalidity	No concordance	No concordance
	3. Mariners' scheme	Concordance <sup>(1)</sup>	Concordance <sup>(1)</sup>
FRANCE	1. General scheme:		
	– Group III (constant attendance)	Concordance	Concordance
	– Group II	Concordance	Concordance
	– Group I	Concordance	Concordance
	2. Agricultural scheme:		
	– total general invalidity	Concordance	Concordance
	– two-thirds general invalidity	Concordance	Concordance
	– constant attendance	Concordance	Concordance
	3. Miners' scheme:		
	– two-thirds general invalidity	Concordance	Concordance
	– constant attendance	Concordance	Concordance
	– total general invalidity	No concordance	No concordance
	4. Mariners' scheme:		
	– partial general invalidity	Concordance	Concordance
	– constant attendance	Concordance	concordance
	– occupational invalidity	No concordance	No concordance

<sup>(1)</sup> In so far as the invalidity recognised by the Belgian institution is general invalidity.

<sup>(1)</sup> Entries concerning concordance between Luxembourg and France or Belgium will be the subject of technical re-examination taking account of the changes which have been made to national legislation in Luxembourg.

## ANNEX VIII

**CASES IN WHICH THE INDEPENDENT BENEFIT IS EQUAL TO OR HIGHER  
THAN THE PRO RATA BENEFIT**

(Article 52(4))

## A. DENMARK

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

## B. FRANCE

All applications for pension benefits or survivor's benefits under supplementary retirement schemes for employees or self-employed workers, with the exception of applications for old-age or widow's pensions under the supplementary retirement scheme for professional cabin crew in civil aviation

## C. IRELAND

All applications for retirement pensions, old-age (contributory) pensions, widow's (contributory) pension and widow's (contributory) pension

## D. NETHERLANDS

Where a person is entitled to a pension on the basis of the Netherlands' law on general old-age insurance (AOW)

## E. PORTUGAL

Invalidity, old-age and survivors' pension claims, except for the cases where the total periods of insurance completed under the legislation of more than one Member State are equal to or longer than 21 calendar years, the national periods of insurance are equal to, or less than, 20 years, and the calculation is made under Article 11 of Decree Law No 35/2002, 19 February, which defines the rules for the determination of the pension amount. In such cases, by applying more favourable pension formation rates, the amount resulting from the pro rata calculation may be higher than that resulting from the independent calculation.

## F. SWEDEN

Earnings-related old-age pension (Act 1998:674), earnings-related survivor's pension in the form of adjustment pension and child's pension allowance when the death occurred before 1 January 2003 and widow's pension (Act 2000:461 and Act 2000:462)

## G. UNITED KINGDOM

All applications for retirement pension, widows' and bereavement benefits determined pursuant to the provisions of Title III, Chapter 5 of the Regulation, with the exception of those for which:

- (a) 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
  - (ii) one (or more) of the tax years referred to in (i) was not considered a qualifying year within the meaning of the legislation of the United Kingdom;
- (b) 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.

## 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****A. 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

**B. 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

**C. GREECE**

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

**D. SPAIN**

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

**E. 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)

**F. IRELAND**

Type A Invalidity pension

**G. NETHERLANDS**

The law of 18 February 1966 on invalidity insurance for employees, as amended (WAO)

The law of 24 April 1997 on invalidity insurance for self-employed persons, as amended (WAZ)

The law of 21 December 1995 on general insurance for surviving dependants (ANW)

## H. FINLAND

National pensions to persons who are born disabled or become disabled at an early age (National Pensions Act 547/93)

National pensions determined according to the National Pensions Act of 8 June 1956 and awarded under the transitional rules of the National Pensions Act (547/93)

The additional amount of the child's pension in accordance with the Survivors Pension Act of 17 January 1969

## I. SWEDEN

Earnings-related survivor's pension in the form of child's pension allowance and adjustment pension when the death occurred on 1 January 2003 or later when the deceased was born in 1938 or later (Act 2000:461)

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**

## A. 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

## B. 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

## C. ITALY

Italian pensions for total incapacity for work (inabilità)

## D. LUXEMBOURG

Invalidity and survivors' pensions

## E. FINLAND

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

## F. SWEDEN

Sickness benefit and activity compensation in the form of guarantee benefit (Act 1962:381)

Survivor's pension calculated on the basis of assumed insurance periods (Act 2000:461 and 2000:462)

Old-age pension in the form of guarantee pension calculated on the basis of assumed periods previously counted (Act 1998:702)

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 of 15 June 1992 on social security.

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## ANNEX X

**SPECIAL NON-CONTRIBUTORY CASH BENEFITS**

(Article 70(2)(c))

The content of this Annex shall be determined by the European Parliament and by the Council in accordance with the Treaty as soon as possible and at the latest before the date of application of this Regulation as referred to in Article 91.

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## ANNEX XI

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

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

The content of this Annex shall be determined by the European Parliament and by the Council in accordance with the Treaty as soon as possible and at the latest before the date of application of this Regulation as referred to in Article 91.

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**Corrigendum to Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community**

*(Official Journal of the European Union L 166 of 30 April 2004)*

Directive 2004/52/EC should read as follows:

**DIRECTIVE 2004/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 29 April 2004  
on the interoperability of electronic road toll systems in the Community  
(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 7(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

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

Whereas:

(1) By its Resolution of 17 June 1997 on the development of telematics in road transport, in particular with respect to electronic fee collection (EFC) <sup>(4)</sup>, the Council called on the Commission and Member States to develop a strategy for the convergence of EFC systems in order to achieve an

appropriate level of interoperability at a European level. The communication of the Commission on interoperable electronic fee collection systems in Europe was the first stage of this strategy.

(2) The majority of Member States which have installed electronic toll systems to finance road infrastructure costs or to collect road usage fees (jointly referred to hereinafter as 'electronic toll systems') use short-range microwave technology and frequencies close to 5,8 GHz, but these systems are currently not totally compatible. The work on microwave technology undertaken by the European Committee for Standardisation (CEN) resulted in January 2003 in the preparation of technical standards making for the compatibility of 5,8 GHz microwave electronic toll systems, following the adoption of technical pre-standards in 1997. However, these pre-standards do not cover all the dedicated short-range communications (DSRC) 5,8 GHz systems in operation in the Community and encompass two variants which are not totally compatible. They are based on the open systems interconnection model defined by the International Standardisation Organisation for communication between computer systems.

(3) Manufacturers of equipment and infrastructure managers have nonetheless agreed, within the Community, to develop interoperable products based on existing DSRC 5,8 GHz systems. The equipment that will need to be made available to users should accordingly be capable of communicating with the technologies that may only be used in new electronic toll systems to be deployed in the Community after 1 January 2007, namely satellite positioning technology, mobile communications technology using the GSM-GPRS standard and 5,8 GHz microwave technology.

(4) It is essential that the standardisation work be completed as quickly as possible to establish technical standards ensuring technical compatibility among electronic toll systems based on 5,8 GHz microwave technology and on satellite positioning and mobile communications technologies, in order to avoid further fragmentation of the market.

<sup>(1)</sup> OJ C 32, 5.2.2004, p. 36.

<sup>(2)</sup> OJ C 73, 23.3.2004, p. 54.

<sup>(3)</sup> Opinion of the European Parliament of 18 December 2003 (not yet published in the Official Journal), Council Common Position of 22 March 2004 (OJ C 95 E, 20.4.2004, p. 53) and Position of the European Parliament of 20 April 2004.

<sup>(4)</sup> OJ C 194, 25.6.1997, p. 5.

- (5) It is necessary to provide for the widespread deployment of electronic toll systems in the Member States and neighbouring countries, and the need is arising to have interoperable systems suited to the future development of road-charging policy at Community level and to future technical developments.
- (6) The electronic toll systems should be interoperable and based on open and public standards, available on a non-discriminatory basis to all system suppliers.
- (7) In introducing new electronic toll systems, sufficient equipment should be made available to avoid discrimination between the undertakings concerned.
- (8) In particular, owing to their great flexibility and versatility, application of the new satellite positioning (GNSS) and mobile communications (GSM/GPRS) technologies to electronic toll systems may serve to meet the requirements of the new road-charging policies planned at Community and Member State level. These technologies enable the number of kilometres covered per category of road to be counted without requiring costly investment in infrastructure. They also open the door to additional new safety and information services for travellers, such as the automatic alarm triggered by a vehicle involved in an accident and indicating its position, and real-time information on traffic conditions, traffic levels and journey times. With regard to satellite positioning, the Galileo project launched by the Community in 2002 is designed to provide, as of 2008, information services of higher quality than that provided by the current satellite navigation systems and which are optimal for road telematic services. The European geostationary navigation overlay service (EGNOS) precursor system will already be operational in 2004, providing similar results. However, these innovative systems could raise problems concerning the reliability of checks and with regard to fraud prevention. However, owing to the considerable advantages referred to above, the application of satellite positioning and mobile communications technologies is in principle to be recommended in introducing new electronic toll systems.
- (9) The proliferation of technologies for electronic toll systems already in use or planned in the coming years (mainly 5,8 GHz microwave, satellite positioning and mobile communications) and the proliferation of specifications imposed by the Member States and neighbouring countries for their electronic toll systems may compromise both the smooth operation of the internal market and transport policy objectives. Such a situation is liable to lead to the proliferation of incompatible and expensive electronic boxes in the driving cabs of heavy goods vehicles, and to drivers making mistakes when using them with the result, for example, of unintentionally avoiding payment. Such a proliferation is unacceptable to users and to manufacturers of vehicles for cost, safety and legal reasons.
- (10) Artificial barriers to the operation of the internal market should be removed, while still allowing the Member States and the Community to implement a variety of road-charging policies for all types of vehicles at local, national or international level. The equipment installed in vehicles should allow such road-charging policies to be implemented in accordance with the principles of non-discrimination between the citizens of all Member States. The interoperability of electronic toll systems at Community level therefore needs to be ensured as soon as possible.
- (11) Drivers are legitimately concerned to see improved quality of service on the road infrastructure, in particular in terms of safety, as well as a substantial reduction in congestion at toll plazas, especially on busy days and at certain particularly congested points in the road network. The definition of the European electronic toll service needs to address that concern. Provision should, moreover, be made to ensure that the technologies and components provided for can, as far as technically possible, also be combined with other vehicle components, in particular the electronic tachograph and emergency call capabilities. Intermodal systems should not be excluded at a later stage.
- (12) The option of accessing other, future applications in addition to toll collection should be ensured by fitting appropriate equipment.
- (13) A European electronic toll service should provide interoperability at technical, contractual and procedural level, covering:
- (a) a single contract between the clients and the operators offering the service, complying with a contractual set of rules allowing all operators and/or issuers to provide the service, giving access to the whole network;
  - (b) a set of technical standards and requirements allowing the industry to provide the necessary equipment for the provision of the service.

- (14) Contractual interoperability provides the potential for important facilitation to some road users and for significant economies in administration for commercial road users.
- (15) Electronic toll systems contribute significantly to reducing the risk of accidents, thus increasing road safety, to reducing the number of cash transactions and to reducing congestion at toll plazas, especially on busy days. They also reduce the negative environmental impact of waiting and restarting vehicles and congestion, as well as the environmental impact related to the installation of new toll gates or expansion of existing toll stations.
- (16) The White Paper on European Transport Policy for 2010 contains objectives of safety and fluidity of road traffic. Interoperable intelligent transport services and systems are a key tool in the achievement of these objectives.
- (17) The introduction of electronic toll systems will entail the processing of personal data. Such processing needs to be carried out in accordance with Community rules, as set out, *inter alia*, in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup> and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector <sup>(2)</sup>. The right to protection of personal data is explicitly recognised by Article 8 of the Charter of Fundamental Rights of the European Union.
- (18) Automatic debiting of toll charges to bank accounts or credit/debit card accounts which are domiciled anywhere, in the Community and beyond, is conditional on a fully operational Community payments area with non-discriminatory service charges.
- (19) Systems of electronic toll collection which are put in place in the Member States should meet the following fundamental criteria: the system should be amenable to ready incorporation of future technological and systems improvements and developments without costly redundancy of older models and methods, the costs of its adoption by commercial and private road users should be insignificant compared with the benefits to those road users as well as to society as a whole, and its implementation in any Member State should be non-discriminatory in all respects between domestic road users and road users from other Member States.
- (20) Since the objectives of this Directive, in particular, the interoperability of electronic toll systems in the internal market and the introduction of a European electronic toll service covering the entire Community road network on which tolls are charged, cannot be sufficiently achieved by the Member States and can therefore, by reason of their European dimension, be better achieved at Community level, the Community may take 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 Directive does not go beyond what is necessary in order to achieve those objectives.
- (21) The inclusion of interested parties (such as toll-service operators, infrastructure managers, electronics and motor industries and users) in Commission consultations on technical and contractual aspects of creating the European electronic toll service should be provided for. Where appropriate, the Commission should also consult non-governmental organisations active in the field of privacy protection, road safety and the environment.
- (22) To set up the European electronic toll service it will first be necessary to establish guidelines to be laid down by the Electronic Toll Committee established by this Directive.
- (23) This Directive does not affect the Member States' freedom to lay down rules governing road infrastructure charging and taxation matters.
- (24) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>.

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

#### Objective and scope

1. This Directive lays down the conditions necessary to ensure the interoperability of electronic road toll systems in the Community. It applies to the electronic collection of all types of road fees, on the entire Community road network, urban and interurban, motorways, major and minor roads, and various structures such as tunnels, bridges and ferries.

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

<sup>(2)</sup> OJ L 201, 31.7.2002, p. 37.

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

2. This Directive does not apply to:
- (a) road toll systems for which no electronic means of toll collection exists;
  - (b) electronic road toll systems which do not need the installation of on-board equipment;
  - (c) small, strictly local road toll systems for which the costs of compliance with the requirements of this Directive would be disproportionate to the benefits.
3. To achieve the objective set in paragraph 1, a European electronic toll service shall be created. This service, which is complementary to the national electronic toll services of the Member States, shall ensure the interoperability throughout the Community, for users, of the electronic toll systems that have already been introduced in the Member States and of those to be introduced in the future in the framework of this Directive.

#### Article 2

##### Technological solutions

1. All new electronic toll systems brought into service on or after 1 January 2007 shall, for carrying out electronic toll transactions, use one or more of the following technologies:
- (a) satellite positioning;
  - (b) mobile communications using the GSM-GPRS standard (reference GSM TS 03.60/23.060);
  - (c) 5,8 GHz microwave technology
2. The European electronic toll service shall be brought into service pursuant to Article 3(1). Operators shall make available to interested users on-board equipment which is suitable for use with all electronic toll systems in service in the Member States using the technologies referred to in paragraph 1 and which is suitable for use in all types of vehicle, in accordance with the timetable set out in Article 3(4). This equipment shall at least be interoperable and capable of communicating with all the systems operating in the Member States using one or more of the technologies listed in paragraph 1. The detailed arrangements in this respect shall be determined by the Committee referred to in Article 5(1), including arrangements for the availability of on-board equipment to meet the demand of interested users.

3. It is recommended that new electronic toll systems brought into service after the adoption of this Directive use the satellite positioning and mobile communications technologies listed in paragraph 1. In respect of the possible migration to systems using such technologies by systems using other technologies, the Commission, in liaison with the Committee referred to in Article 5(1), shall draw up a report by 31 December 2009. This report shall include a study of use of each of the technologies referred to in paragraph 1, as well as a cost-benefit analysis. If appropriate, the Commission shall accompany the report with a proposal to the European Parliament and the Council for a migration strategy.

4. Without prejudice to paragraph 1, on-board equipment may also be suitable for other technologies, on condition that this does not lead to an additional burden for users or create discrimination between them. Where relevant, on-board equipment may also be linked to the vehicle's electronic tachograph.

5. Where Member States have toll systems, they shall take the necessary measures to increase the use of electronic toll systems. They shall endeavour to ensure that, by 1 January 2007 at the latest, at least 50 % of traffic flow in each toll station can use electronic toll systems. Lanes used for electronic toll collection may also be used for toll collection by other means, with due regard to safety.

6. Interoperability work on existing toll technologies undertaken in connection with the European electronic toll service shall ensure the full compatibility and interfacing of those technologies with the technologies referred to in paragraph 1 and of their equipment with each other.

7. Member States shall ensure that processing of personal data necessary for the operation of the European electronic toll service is carried out in accordance with the Community rules protecting the freedoms and fundamental rights of individuals, including their privacy, and that, in particular, the provisions of Directives 95/46/EC and 2002/58/EC are complied with.

#### Article 3

##### Setting-up of a European electronic toll service

1. A European electronic toll service shall be set up which encompasses all the road networks in the Community on which tolls or road-usage fees are collected electronically. This electronic toll service will be defined by a contractual set of rules allowing all operators and/or issuers to provide the service, a set of technical standards and requirements and a single subscription contract between the clients and the operators and/or issuers offering the service. This contract shall give access to the service on the whole of the network and subscriptions shall be available from the operator of any part of the network and/or from the issuer.

2. The European electronic toll service shall be independent of the fundamental decisions taken by Member States to levy tolls on particular types of vehicles, of the level of charges and of the purpose for which such charges are levied. It shall concern only the method of collecting tolls or fees. The service shall allow for contracts to be concluded irrespective of the place of registration of the vehicle, the nationality of the parties to the contract, and the zone or point on the road network in respect of which the toll is due.

3. The system shall allow intermodality to develop without creating disadvantages for other modes of transport.

4. Where Member States have national systems of electronic toll collection, they shall ensure that operators and/or issuers offer the European electronic toll service to their customers in accordance with the following timetable:

- (a) for all vehicles exceeding 3,5 tonnes and for all vehicles which are allowed to carry more than nine passengers (driver + 8), at the latest three years after the decisions on the definition of the European electronic toll service, as referred to in Article 4(4), have been taken;
- (b) for all other types of vehicle, at the latest five years after the decisions on the definition of the European electronic toll service, as referred to in Article 4(4), have been taken.

#### Article 4

##### Features of the European electronic toll service

1. The European electronic toll service shall be based on the items listed in the Annex to this Directive.

2. Where appropriate, this Annex may be modified for technical reasons in accordance with the procedure referred to in Article 5(2).

3. The European electronic toll service shall employ the technological solutions referred to in Article 2, using specifications which shall be publicly available.

4. The decisions relating to the definition of the European electronic toll service shall be taken by the Commission in accordance with the procedure referred to in Article 5(2), by 1 July 2006. Such decisions shall only be taken if all the conditions, evaluated on the basis of appropriate studies, are in place to enable interoperability to work from all points of view, including technical, legal and commercial.

5. If the decisions referred to in paragraph 4 are not taken by 1 July 2006, the Commission shall, in accordance with the procedure referred to in Article 5(2), set a new date by which such decisions are to be taken.

6. Technical decisions relating to the realisation of the European electronic toll service shall be taken by the Commission in accordance with the procedure referred to in Article 5(2).

7. The Commission shall ask the relevant standardisation bodies, in particular the CEN, in accordance with the procedure laid down by Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations <sup>(1)</sup>, to make every necessary effort rapidly to adopt standards applicable to electronic toll systems with regard to the technologies listed in Article 2(1).

8. Equipment for the European electronic toll service shall comply in particular with the requirements of Directives 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity <sup>(2)</sup> and Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility <sup>(3)</sup>.

#### Article 5

##### Committee procedure

1. The Commission shall be assisted by an Electronic Toll Committee (hereinafter the Committee).

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

<sup>(1)</sup> OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

<sup>(2)</sup> OJ L 91, 7.4.1999, p. 10. Directive as amended by Regulation (EC) No 1882/2003.

<sup>(3)</sup> OJ L 139, 23.5.1989, p. 19. Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

3. The Committee shall adopt its Rules of Procedure.

*Article 6*

**Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 20 November 2005. They shall immediately forward to the Commission the text of those provisions, together with a table correlating those provisions with this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference

on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 7*

**Entry into force**

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

*Article 8*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 29 April 2004.

*For the European Parliament*  
*The President*  
P. COX

*For the Council*  
*The President*  
M. McDOWELL

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## ANNEX

**Items required for the definition and deployment of the European electronic toll service**

The matters listed below are essential for the definition and deployment of the European electronic toll service set up under the Directive. These matters are distinguished between technical, procedural and legal issues:

Technical issues:

- (a) operational procedures for the service: subscription, instructions for use, installation and attachment of on-board equipment in vehicles, processing of transactions at toll stations or for continuous charging, procedures for recovering transaction data in the event of equipment breakdown or malfunction, control systems, invoicing and collection of sums due, after-sales service, customer assistance, definition of the level of service offered to customers; when establishing such operational procedures, the existing procedures in the Member States shall be taken into account;
- (b) functional specifications of the service: description of the functions of on-board equipment and ground-based equipment;
- (c) technical specifications of ground-based and on-board equipment supporting the service, and the standards, certification procedures and constraints to be observed;
- (d) launching and following up work involving relevant standardisation bodies, and any technical additions to the standards or pre-standards used, in order to ensure interoperability,
- (e) specifications for installing on-board equipment;
- (f) transactional models: precise definition of transactional algorithms for each different type of toll (fixed-point tolls or continuous charging), and definition of the data exchanged between on-board and ground-based equipment and of the data formats;
- (g) arrangements for the availability of on-board equipment to meet the demand of all interested users;

Procedural issues:

- (h) procedures for verification of technical performance of on-board equipment, roadside equipment and the way equipment is installed in vehicles;
- (i) parameters for vehicle classification: validation of a Community list of technical parameters from which each Member State will select those it wishes to use for its charging policy. The parameters will represent vehicles' physical, engine and environmental characteristics. Establishment of vehicle classes based on those parameters will be a matter for Member States;
- (j) implementation of procedures for dealing with particular cases, such as any type of malfunction. This relates in particular to cases in which the road toll operators and the customer come from different countries;

Legal issues:

- (k) validation of the chosen technical solutions vis-à-vis the Community rules protecting the freedoms and fundamental rights of individuals, including their privacy. In particular, it will be necessary to ensure compliance with Directive 95/46/EC and Directive 2002/58/EC;
  - (l) setting non-discriminatory common rules and minimum requirements which potential service providers should respect when providing the service;
  - (m) assessment of the possibility of harmonising the rules of enforcement relating to electronic road tolls;
  - (n) a memorandum of understanding between road toll operators, enabling the European electronic toll service to be implemented, including conflict resolution procedures.
-