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⁽¹⁾ Text with relevance for the EEA and for Switzerland

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

REGULATION (EC) No 987/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 16 September 2009****laying down the procedure for implementing Regulation (EC) No 883/2004 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 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ⁽¹⁾, and in particular Article 89 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

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

Whereas:

- (1) Regulation (EC) No 883/2004 modernises the rules on the coordination of Member States' social security systems, specifying the measures and procedures for implementing them and simplifying them for all the players involved. Implementing rules should be laid down.
- (2) Closer and more effective cooperation between social security institutions is a key factor in allowing the persons covered by Regulation (EC) No 883/2004 to access their rights as quickly as possible and under optimum conditions.

- (3) Electronic communication is a suitable means of rapid and reliable data exchange between Member States' institutions. Processing data electronically should help speed up the procedures for everyone involved. The persons concerned should also benefit from all the guarantees provided for in the Community provisions on the protection of natural persons with regard to the processing and free movement of personal data.

- (4) Availability of the details (including electronic details) of those national bodies likely to be involved in implementing Regulation (EC) No 883/2004, in a form which allows them to be updated in real time, should facilitate exchanges between Member States' institutions. This approach, which focuses on the relevance of purely factual information and its immediate accessibility to citizens, is a valuable simplification which should be introduced by this Regulation.

- (5) Achieving the smoothest possible operation and the efficient management of the complex procedures implementing the rules on the coordination of social security systems requires a system for the immediate updating of Annex 4. The preparation and application of provisions to that effect calls for close cooperation between the Member States and the Commission, and their implementation should be carried out rapidly, in view of the consequences of delays for citizens and administrative authorities alike. The Commission should therefore be empowered to establish and manage a database and ensure that it is operational at least from the date of entry into force of this Regulation. The Commission should, in particular, take the necessary steps to integrate into that database the information listed in Annex 4.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ C 324, 30.12.2006, p. 59.

⁽³⁾ Opinion of the European Parliament of 9 July 2008 (not yet published in the Official Journal), Council Common Position of 17 December 2008 (OJ C 38 E, 17.2.2009, p. 26) and Position of the European Parliament of 22 April 2009. Council Decision of 27 July 2009.

- (6) Strengthening certain procedures should ensure greater legal certainty and transparency for the users of Regulation (EC) No 883/2004. For example, setting common deadlines for fulfilling certain obligations or completing certain administrative tasks should assist in clarifying and structuring relations between insured persons and institutions.
- (7) The persons covered by this Regulation should receive from the competent institution a timely response to their requests. The response should be provided at the latest within the time-limits prescribed by the social security legislation of the Member State in question, where such time-limits exist. It would be desirable for Member States whose social security legislation does not make provision for such time-limits to consider adopting them and making them available to the persons concerned as necessary.
- (8) The Member States, their competent authorities and the social security institutions should have the option of agreeing among themselves on simplified procedures and administrative arrangements which they consider to be more effective and better suited to the circumstances of their respective social security systems. However, such arrangements should not affect the rights of the persons covered by Regulation (EC) No 883/2004.
- (9) The inherent complexity of the field of social security requires all institutions of the Member States to make a particular effort to support insured persons in order to avoid penalising those who have not submitted their claim or certain information to the institution responsible for processing this application in accordance with the rules and procedures set out in Regulation (EC) No 883/2004 and in this Regulation.
- (10) To determine the competent institution, namely the one whose legislation applies or which is liable for the payment of certain benefits, the circumstances of the insured person and those of the family members must be examined by the institutions of more than one Member State. To ensure that the person concerned is protected for the duration of the necessary communication between institutions, provision should be made for provisional membership of a social security system.
- (11) Member States should cooperate in determining the place of residence of persons to whom this Regulation and Regulation (EC) No 883/2004 apply and, in the event of a dispute, should take into consideration all relevant criteria to resolve the matter. These may include criteria referred to in the appropriate Article of this Regulation.
- (12) Many measures and procedures provided for in this Regulation are intended to ensure greater transparency concerning the criteria which the institutions of the Member States must apply under Regulation (EC) No 883/2004. Such measures and procedures are the result of the case-law of the Court of Justice of the European Communities, the decisions of the Administrative Commission and the experience of more than 30 years of application of the coordination of social security systems in the context of the fundamental freedoms enshrined in the Treaty.
- (13) This Regulation provides for measures and procedures to promote the mobility of employees and unemployed persons. Frontier workers who have become wholly unemployed may make themselves available to the employment services in both their country of residence and the Member State where they were last employed. However, they should be entitled to benefits only from their Member State of residence.
- (14) Certain specific rules and procedures are required in order to define the legislation applicable for taking account of periods during which an insured person has devoted time to bringing up children in the various Member States.
- (15) Certain procedures should also reflect the need for a balanced sharing of costs between Member States. In particular in the area of sickness, such procedures should take account of the position of Member States which bear the costs of allowing insured persons access to their healthcare system and the position of Member States whose institutions bear the cost of benefits in kind received by their insured persons in a Member State other than that in which they are resident.
- (16) In the specific context of Regulation (EC) No 883/2004, it is necessary to clarify the conditions for meeting the costs of sickness benefits in kind as part of scheduled treatments, namely treatments for which an insured person goes to a Member State other than that in which he is insured or resident. The obligations of the insured person with regard to the application for prior authorisation should be specified, as should the institution's obligations towards the patient with regard to the conditions of authorisation. The consequences for the chargeability of the costs of care received in another Member State on the basis of an authorisation should also be clarified.
- (17) This Regulation, and especially the provisions concerning the stay outside the competent Member State and concerning scheduled treatment, should not prevent the application of more favourable national provisions, in particular with regard to the reimbursement of costs incurred in another Member State.
- (18) More binding procedures to reduce the time needed for payment of these claims between Member States' institutions are essential in order to maintain confidence in the exchanges and meet the need for sound management of Member States' social security systems. Procedures for the processing of claims relating to sickness and unemployment benefits should therefore be strengthened.
- (19) Procedures between institutions for mutual assistance in recovery of social security claims should be strengthened in order to ensure more effective recovery and smooth functioning of the coordination rules. Effective recovery is also a means of preventing and tackling abuses and fraud and a way of ensuring the sustainability of social security schemes. This involves the adoption of new procedures,

taking as a basis a number of existing provisions in Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures ⁽¹⁾. Such new recovery procedures should be reviewed in the light of the experience after five years of implementation and adjusted if necessary, in particular to ensure they are fully operable.

- (20) For the purposes of provisions on mutual assistance regarding the recovery of benefits provided but not due, the recovery of provisional payments and contributions and the offsetting and assistance with recovery, the jurisdiction of the requested Member State is limited to actions regarding enforcement measures. Any other action falls under the jurisdiction of the applicant Member State.
- (21) The enforcement measures taken in the requested Member State do not imply the recognition by that Member State of the substance or basis of the claim.
- (22) Informing the persons concerned of their rights and obligations is a crucial component of a relationship of trust with the competent authorities and the Member States' institutions. Information should include guidance on

administrative procedures. The persons concerned may include, depending on the situation, the insured persons, their family members and/or their survivors or other persons.

- (23) Since the objective of this Regulation, namely the adoption of coordination measures in order to guarantee the effective exercise of the free movement of persons, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, 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 to achieve that objective.
- (24) This Regulation should replace Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community ⁽²⁾,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

CHAPTER I

Definitions

Article 1

Definitions

- 1. For the purposes of this Regulation:
 - (a) 'basic Regulation' means Regulation (EC) No 883/2004;
 - (b) 'implementing Regulation' means this Regulation; and
 - (c) the definitions set out in the basic Regulation shall apply.
- 2. In addition to the definitions referred to in paragraph 1,
 - (a) 'access point' means an entity providing:
 - (i) an electronic contact point;
 - (ii) automatic routing based on the address; and

(iii) intelligent routing based on software that enables automatic checking and routing (for example, an artificial intelligence application) and/or human intervention;

- (b) 'liaison body' means any body designated by the competent authority of a Member State for one or more of the branches of social security referred to in Article 3 of the basic Regulation to respond to requests for information and assistance for the purposes of the application of the basic Regulation and the implementing Regulation and which has to fulfil the tasks assigned to it under Title IV of the implementing Regulation;
- (c) 'document' means a set of data, irrespective of the medium used, structured in such a way that it can be exchanged electronically and which must be communicated in order to enable the operation of the basic Regulation and the implementing Regulation;
- (d) 'Structured Electronic Document' means any structured document in a format designed for the electronic exchange of information between Member States;
- (e) 'transmission by electronic means' means the transmission of data using electronic equipment for the processing (including digital compression) of data and employing wires, radio transmission, optical technologies or any other electromagnetic means;

⁽¹⁾ OJ L 150, 10.6.2008, p. 28.

⁽²⁾ OJ L 74, 27.3.1972, p. 1.

- (f) 'Audit Board' means the body referred to in Article 74 of the basic Regulation.

CHAPTER II

Provisions concerning cooperation and exchanges of data

Article 2

Scope and rules for exchanges between institutions

1. For the purposes of the implementing Regulation, exchanges between Member States' authorities and institutions and persons covered by the basic Regulation shall be based on the principles of public service, efficiency, active assistance, rapid delivery and accessibility, including e-accessibility, in particular for the disabled and the elderly.
2. The institutions shall without delay provide or exchange all data necessary for establishing and determining the rights and obligations of persons to whom the basic Regulation applies. Such data shall be transferred between Member States directly by the institutions themselves or indirectly via the liaison bodies.
3. Where a person has mistakenly submitted information, documents or claims to an institution in the territory of a Member State other than that in which the institution designated in accordance with the implementing Regulation is situated, the information, documents or claims shall be resubmitted without delay by the former institution to the institution designated in accordance with the implementing Regulation, indicating the date on which they were initially submitted. That date shall be binding on the latter institution. Member State institutions shall not, however, be held liable, or be deemed to have taken a decision by virtue of their failure to act as a result of the late transmission of information, documents or claims by other Member States' institutions.
4. Where data are transferred indirectly via the liaison body of the Member State of destination, time limits for responding to claims shall start from the date when that liaison body received the claim, as if it had been received by the institution in that Member State.

Article 3

Scope and rules for exchanges between the persons concerned and institutions

1. Member States shall ensure that the necessary information is made available to the persons concerned in order to inform them of the changes introduced by the basic Regulation and by the implementing Regulation to enable them to assert their rights. They shall also provide for user friendly services.
2. Persons to whom the basic Regulation applies shall be required to forward to the relevant institution the information, documents or supporting evidence necessary to establish their

situation or that of their families, to establish or maintain their rights and obligations and to determine the applicable legislation and their obligations under it.

3. When collecting, transmitting or processing personal data pursuant to their legislation for the purposes of implementing the basic Regulation, Member States shall ensure that the persons concerned are able to exercise fully their rights regarding personal data protection, in accordance with Community provisions on the protection of individuals with regard to the processing of personal data and the free movement of such data.

4. To the extent necessary for the application of the basic Regulation and the implementing Regulation, the relevant institutions shall forward the information and issue the documents to the persons concerned without delay and in all cases within any time limits specified under the legislation of the Member State in question.

The relevant institution shall notify the claimant residing or staying in another Member State of its decision directly or through the liaison body of the Member State of residence or stay. When refusing the benefits it shall also indicate the reasons for refusal, the remedies and periods allowed for appeals. A copy of this decision shall be sent to other involved institutions.

Article 4

Format and method of exchanging data

1. The Administrative Commission shall lay down the structure, content, format and detailed arrangements for exchange of documents and structured electronic documents.
2. The transmission of data between the institutions or the liaison bodies shall be carried out by electronic means either directly or indirectly through the access points under a common secure framework that can guarantee the confidentiality and protection of exchanges of data.
3. In their communications with the persons concerned, the relevant institutions shall use the arrangements appropriate to each case, and favour the use of electronic means as far as possible. The Administrative Commission shall lay down the practical arrangements for sending information, documents or decisions by electronic means to the person concerned.

Article 5

Legal value of documents and supporting evidence issued in another Member State

1. Documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of the basic Regulation and of the implementing Regulation, and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued.

2. Where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the institution of the Member State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal of that document. The issuing institution shall reconsider the grounds for issuing the document and, if necessary, withdraw it.

3. Pursuant to paragraph 2, where there is doubt about the information provided by the persons concerned, the validity of a document or supporting evidence or the accuracy of the facts on which the particulars contained therein are based, the institution of the place of stay or residence shall, insofar as this is possible, at the request of the competent institution, proceed to the necessary verification of this information or document.

4. Where no agreement is reached between the institutions concerned, the matter may be brought before the Administrative Commission by the competent authorities no earlier than one month following the date on which the institution that received the document submitted its request. The Administrative Commission shall endeavour to reconcile the points of view within six months of the date on which the matter was brought before it.

Article 6

Provisional application of legislation and provisional granting of benefits

1. Unless otherwise provided for in the implementing Regulation, where there is a difference of views between the institutions or authorities of two or more Member States concerning the determination of the applicable legislation, the person concerned shall be made provisionally subject to the legislation of one of those Member States, the order of priority being determined as follows:

- (a) the legislation of the Member State where the person actually pursues his employment or self-employment, if the employment or self-employment is pursued in only one Member State;
- (b) the legislation of the Member State of residence where the person concerned performs part of his activity/activities or where the person is not employed or self-employed;
- (c) the legislation of the Member State the application of which was first requested where the person pursues an activity or activities in two or more Member States.

2. Where there is a difference of views between the institutions or authorities of two or more Member States about which institution should provide the benefits in cash or in kind, the person concerned who could claim benefits if there was no dispute shall be entitled, on a provisional basis, to the benefits provided for by the legislation applied by the institution of his place of residence or, if that person does not reside on the territory of one of the Member States concerned, to the benefits provided for by the legislation applied by the institution to which the request was first submitted.

3. Where no agreement is reached between the institutions or authorities concerned, the matter may be brought before the Administrative Commission by the competent authorities no earlier than one month after the date on which the difference of views, as referred to in paragraph 1 or 2 arose. The Administrative Commission shall seek to reconcile the points of view within six months of the date on which the matter was brought before it.

4. Where it is established either that the applicable legislation is not that of the Member State of provisional membership, or the institution which granted the benefits on a provisional basis was not the competent institution, the institution identified as being competent shall be deemed retroactively to have been so, as if that difference of views had not existed, at the latest from either the date of provisional membership or of the first provisional granting of the benefits concerned.

5. If necessary, the institution identified as being competent and the institution which provisionally paid the cash benefits or provisionally received contributions shall settle the financial situation of the person concerned as regards contributions and cash benefits paid provisionally, where appropriate, in accordance with Title IV, Chapter III, of the implementing Regulation.

Benefits in kind granted provisionally by an institution in accordance with paragraph 2 shall be reimbursed by the competent institution in accordance with Title IV of the implementing Regulation.

Article 7

Provisional calculation of benefits and contributions

1. Unless otherwise provided for in the implementing Regulation, where a person is eligible for a benefit, or is liable to pay a contribution in accordance with the basic Regulation, and the competent institution does not have all the information concerning the situation in another Member State which is necessary to calculate definitively the amount of that benefit or contribution, that institution shall, on request of the person concerned, award this benefit or calculate this contribution on a provisional basis, if such a calculation is possible on the basis of the information at the disposal of that institution.

2. The benefit or the contribution concerned shall be recalculated once all the necessary supporting evidence or documents are provided to the institution concerned.

CHAPTER III

Other general provisions for the application of the basic Regulation

Article 8

Administrative arrangements between two or more Member States

1. The provisions of the implementing Regulation shall replace those laid down in the arrangements for the application of the conventions referred to in Article 8(1) of the basic Regulation, except the provisions concerning the arrangements concerning the conventions referred to in Annex II to the basic Regulation, provided that the provisions of those arrangements are included in Annex 1 to the implementing Regulation.

2. Member States may conclude between themselves, if necessary, arrangements pertaining to the application of the conventions referred to in Article 8(2) of the basic Regulation provided that these arrangements do not adversely affect the rights and obligations of the persons concerned and are included in Annex 1 to the implementing Regulation.

Article 9

Other procedures between authorities and institutions

1. Two or more Member States, or their competent authorities, may agree procedures other than those provided for by the implementing Regulation, provided that such procedures do not adversely affect the rights or obligations of the persons concerned.

2. Any agreements concluded to this end shall be notified to the Administrative Commission and listed in Annex 1 to the implementing Regulation.

3. Provisions contained in implementing agreements concluded between two or more Member States with the same purpose as, or which are similar to, those referred to in paragraph 2, which are in force on the day preceding the entry into force of the implementing Regulation and are included in Annex 5 to Regulation (EEC) No 574/72, shall continue to apply, for the purposes of relations between those Member States, provided they are also included in Annex 1 to the implementing Regulation.

Article 10

Prevention of overlapping of benefits

Notwithstanding other provisions in the basic Regulation, when benefits due under the legislation of two or more Member States are mutually reduced, suspended or withdrawn, any amounts that would not be paid in the event of strict application of the rules concerning reduction, suspension or withdrawal laid down by the legislation of the Member States concerned shall be divided by the number of benefits subjected to reduction, suspension or withdrawal.

Article 11

Elements for determining residence

1. Where there is a difference of views between the institutions of two or more Member States about the determination of the residence of a person to whom the basic Regulation applies, these institutions shall establish by common agreement the centre of interests of the person concerned, based on an overall assessment of all available information relating to relevant facts, which may include, as appropriate:

(a) the duration and continuity of presence on the territory of the Member States concerned;

(b) the person's situation, including:

(i) the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract;

(ii) his family status and family ties;

(iii) the exercise of any non-remunerated activity;

(iv) in the case of students, the source of their income;

(v) his housing situation, in particular how permanent it is;

(vi) the Member State in which the person is deemed to reside for taxation purposes.

2. Where the consideration of the various criteria based on relevant facts as set out in paragraph 1 does not lead to agreement between the institutions concerned, the person's intention, as it appears from such facts and circumstances, especially the reasons that led the person to move, shall be considered to be decisive for establishing that person's actual place of residence.

Article 12

Aggregation of periods

1. For the purposes of applying Article 6 of the basic Regulation, the competent institution shall contact the institutions of the Member States to whose legislation the person concerned has also been subject in order to determine all the periods completed under their legislation.

2. The respective periods of insurance, employment, self-employment or residence completed under the legislation of a Member State shall be added to those completed under the legislation of any other Member State, insofar as necessary for the purposes of applying Article 6 of the basic Regulation, provided that these periods do not overlap.

3. Where a period of insurance or residence which is completed in accordance with compulsory insurance under the legislation of a Member State coincides with a period of insurance completed on the basis of voluntary insurance or continued optional insurance under the legislation of another Member State, only the period completed on the basis of compulsory insurance shall be taken into account.

4. Where a period of insurance or residence other than an equivalent period completed under the legislation of a Member State coincides with an equivalent period on the basis of the legislation of another Member State, only the period other than an equivalent period shall be taken into account.

5. Any period regarded as equivalent under the legislation of two or more Member States shall be taken into account only by the institution of the Member State to whose legislation the person concerned was last compulsorily subject before that period. In the event that the person concerned was not compulsorily subject to the legislation of a Member State before that period, the latter shall be taken into account by the institution of the Member State to whose legislation the person concerned was compulsorily subject for the first time after that period.

6. In the event that the time in which certain periods of insurance or residence were completed under the legislation of a Member State cannot be determined precisely, it shall be presumed that these periods do not overlap with periods of insurance or residence completed under the legislation of another Member State, and account shall be taken thereof, where advantageous to the person concerned, insofar as they can reasonably be taken into consideration.

Article 13

Rules for conversion of periods

1. Where periods completed under the legislation of a Member State are expressed in units different from those provided for by the legislation of another Member State, the conversion needed for the purpose of aggregation under Article 6 of the basic Regulation shall be carried out under the following rules:

- (a) the period to be used as the basis for the conversion shall be that communicated by the institution of the Member State under whose legislation the period was completed;
- (b) in the case of schemes where the periods are expressed in days the conversion from days to other units, and vice versa, as well as between different schemes based on days shall be calculated according to the following table:

Scheme based on	1 day corresponds to	1 week corresponds to	1 month corresponds to	1 quarter corresponds to	Maximum of days in one calendar year
5 days	9 hours	5 days	22 days	66 days	264 days
6 days	8 hours	6 days	26 days	78 days	312 days
7 days	6 hours	7 days	30 days	90 days	360 days

- (c) in the case of schemes where the periods are expressed in units other than days,
 - (i) three months or 13 weeks shall be equivalent to one quarter, and vice versa;
 - (ii) one year shall be equivalent to four quarters, 12 months or 52 weeks, and vice versa;
 - (iii) for the conversion of weeks into months, and vice versa, weeks and months shall be converted into days in accordance with the conversion rules for the schemes based on six days in the table in point (b);
- (d) in the case of periods expressed in fractions, those figures shall be converted into the next smaller integer unit applying the rules laid down in points (b) and (c). Fractions of years shall be converted into months unless the scheme involved is based on quarters;
- (e) if the conversion under this paragraph results in a fraction of a unit, the next higher integer unit shall be taken as the result of the conversion under this paragraph.

2. The application of paragraph 1 shall not have the effect of producing, for the total sum of the periods completed during one calendar year, a total exceeding the number of days indicated in the last column in the table in paragraph 1(b), 52 weeks, 12 months or four quarters.

If the periods to be converted correspond to the maximum annual amount of periods under the legislation of the Member State in which they have been completed, the application of paragraph 1 shall not result within one calendar year in periods that are shorter than the possible maximum annual amount of periods provided under the legislation concerned.

3. The conversion shall be carried out either in one single operation covering all those periods which were communicated as an aggregate, or for each year, if the periods were communicated on a year-by-year basis.

4. Where an institution communicates periods expressed in days, it shall at the same time indicate whether the scheme it administers is based on five days, six days or seven days.

TITLE II

DETERMINATION OF THE LEGISLATION APPLICABLE

Article 14

Details relating to Articles 12 and 13 of the basic Regulation

1. For the purposes of the application of Article 12(1) of the basic Regulation, 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' shall include a person

who is recruited with a view to being posted to another Member State, provided that, immediately before the start of his employment, the person concerned is already subject to the legislation of the Member State in which his employer is established.

2. For the purposes of the application of Article 12(1) of the basic Regulation, the words 'which normally carries out its activities there' shall refer to an employer that ordinarily performs substantial activities, other than purely internal management

activities, in the territory of the Member State in which it is established, taking account of all criteria characterising the activities carried out by the undertaking in question. The relevant criteria must be suited to the specific characteristics of each employer and the real nature of the activities carried out.

3. For the purposes of the application of Article 12(2) of the basic Regulation, the words 'who normally pursues an activity as a self-employed person' shall refer to a person who habitually carries out substantial activities in the territory of the Member State in which he is established. In particular, that person must have already pursued his activity for some time before the date when he wishes to take advantage of the provisions of that Article and, during any period of temporary activity in another Member State, must continue to fulfil, in the Member State where he is established, the requirements for the pursuit of his activity in order to be able to pursue it on his return.

4. For the purposes of the application of Article 12(2) of the basic Regulation, the criterion for determining whether the activity that a self-employed person goes to pursue in another Member State is 'similar' to the self-employed activity normally pursued shall be that of the actual nature of the activity, rather than of the designation of employed or self-employed activity that may be given to this activity by the other Member State.

5. For the purposes of the application of Article 13(1) of the basic Regulation a person who 'normally pursues an activity as an employed person in two or more Member States' shall refer, in particular, to a person who:

- (a) while maintaining an activity in one Member State, simultaneously exercises a separate activity in one or more other Member States, irrespective of the duration or nature of that separate activity;
- (b) continuously pursues alternating activities, with the exception of marginal activities, in two or more Member States, irrespective of the frequency or regularity of the alternation.

6. For the purposes of the application of Article 13(2) of the basic Regulation, a person who 'normally pursues an activity as a self-employed person in two or more Member States' shall refer, in particular, to a person who simultaneously or in alternation pursues one or more separate self-employed activities, irrespective of the nature of those activities, in two or more Member States.

7. For the purpose of distinguishing the activities under paragraphs 5 and 6 from the situations described in Article 12(1) and (2) of the basic Regulation, the duration of the activity in one or more other Member States (whether it is permanent or of an ad hoc or temporary nature) shall be decisive. For these purposes, an overall assessment shall be made of all the relevant facts including, in particular, in the case of an employed person, the place of work as defined in the employment contract.

8. For the purposes of the application of Article 13(1) and (2) of the basic Regulation, a 'substantial part of employed or self-employed activity' pursued in a Member State shall mean a quantitatively substantial part of all the activities of the employed or

self-employed person pursued there, without this necessarily being the major part of those activities.

To determine whether a substantial part of the activities is pursued in a Member State, the following indicative criteria shall be taken into account:

- (a) in the case of an employed activity, the working time and/or the remuneration; and
- (b) in the case of a self-employed activity, the turnover, working time, number of services rendered and/or income.

In the framework of an overall assessment, a share of less than 25 % in respect of the criteria mentioned above shall be an indicator that a substantial part of the activities is not being pursued in the relevant Member State.

9. For the purposes of the application of Article 13(2)(b) of the basic Regulation, the 'centre of interest' of the activities of a self-employed person shall be determined by taking account of all the aspects of that person's occupational activities, notably the place where the person's fixed and permanent place of business is located, the habitual nature or the duration of the activities pursued, the number of services rendered, and the intention of the person concerned as revealed by all the circumstances.

10. For the determination of the applicable legislation under paragraphs 8 and 9, the institutions concerned shall take into account the situation projected for the following 12 calendar months.

11. If a person pursues his activity as an employed person in two or more Member States on behalf of an employer established outside the territory of the Union, and if this person resides in a Member State without pursuing substantial activity there, he shall be subject to the legislation of the Member State of residence.

Article 15

Procedures for the application of Article 11(3)(b) and (d), Article 11(4) and Article 12 of the basic Regulation (on the provision of information to the institutions concerned)

1. Unless otherwise provided for by Article 16 of the implementing Regulation, where a person pursues his activity in a Member State other than the Member State competent under Title II of the basic Regulation, the employer or, in the case of a person who does not pursue an activity as an employed person, the person concerned shall inform the competent institution of the Member State whose legislation is applicable thereof, whenever possible in advance. That institution shall without delay make information concerning the legislation applicable to the person concerned, pursuant to Article 11(3)(b) or Article 12 of the basic Regulation, available to the person concerned and to the institution designated by the competent authority of the Member State in which the activity is pursued.

2. Paragraph 1 shall apply *mutatis mutandis* to persons covered by Article 11(3)(d) of the basic Regulation.

3. An employer within the meaning of Article 11(4) of the basic Regulation who has an employee on board a vessel flying the flag of another Member State shall inform the competent institution of the Member State whose legislation is applicable thereof whenever possible in advance. That institution shall, without delay, make information concerning the legislation applicable to the person concerned, pursuant to Article 11(4) of the basic Regulation, available to the institution designated by the competent authority of the Member State whose flag, the vessel on which the employee is to perform the activity, is flying.

Article 16

Procedure for the application of Article 13 of the basic Regulation

1. A person who pursues activities in two or more Member States shall inform the institution designated by the competent authority of the Member State of residence thereof.

2. The designated institution of the place of residence shall without delay determine the legislation applicable to the person concerned, having regard to Article 13 of the basic Regulation and Article 14 of the implementing Regulation. That initial determination shall be provisional. The institution shall inform the designated institutions of each Member State in which an activity is pursued of its provisional determination.

3. The provisional determination of the applicable legislation, as provided for in paragraph 2, shall become definitive within two months of the institutions designated by the competent authorities of the Member States concerned being informed of it, in accordance with paragraph 2, unless the legislation has already been definitively determined on the basis of paragraph 4, or at least one of the institutions concerned informs the institution designated by the competent authority of the Member State of residence by the end of this two-month period that it cannot yet accept the determination or that it takes a different view on this.

4. Where uncertainty about the determination of the applicable legislation requires contacts between the institutions or authorities of two or more Member States, at the request of one or more of the institutions designated by the competent authorities of the Member States concerned or of the competent authorities themselves, the legislation applicable to the person concerned shall be determined by common agreement, having regard to Article 13 of the basic Regulation and the relevant provisions of Article 14 of the implementing Regulation.

Where there is a difference of views between the institutions or competent authorities concerned, those bodies shall seek agreement in accordance with the conditions set out above and Article 6 of the implementing Regulation shall apply.

5. The competent institution of the Member State whose legislation is determined to be applicable either provisionally or definitively shall without delay inform the person concerned.

6. If the person concerned fails to provide the information referred to in paragraph 1, this Article shall be applied at the initiative of the institution designated by the competent authority of the Member State of residence as soon as it is appraised of that person's situation, possibly via another institution concerned.

Article 17

Procedure for the application of Article 15 of the basic Regulation

Contract staff of the European Communities shall exercise the right of option provided for in Article 15 of the basic Regulation when the employment contract is concluded. The authority empowered to conclude the contract shall inform the designated institution of the Member State for whose legislation the contract staff member of the European Communities has opted.

Article 18

Procedure for the application of Article 16 of the basic Regulation

A request by the employer or the person concerned for exceptions to Articles 11 to 15 of the basic Regulation shall be submitted, whenever possible in advance, to the competent authority or the body designated by the authority of the Member State, whose legislation the employee or person concerned requests be applied.

Article 19

Provision of information to persons concerned and employers

1. The competent institution of the Member State whose legislation becomes applicable pursuant to Title II of the basic Regulation shall inform the person concerned and, where appropriate, his employer(s) of the obligations laid down in that legislation. It shall provide them with the necessary assistance to complete the formalities required by that legislation.

2. At the request of the person concerned or of the employer, the competent institution of the Member State whose legislation is applicable pursuant to Title II of the basic Regulation shall provide an attestation that such legislation is applicable and shall indicate, where appropriate, until what date and under what conditions.

Article 20

Cooperation between institutions

1. The relevant institutions shall communicate to the competent institution of the Member State whose legislation is applicable to a person pursuant to Title II of the basic Regulation the necessary information required to establish the date on which that legislation becomes applicable and the contributions which that person and his employer(s) are liable to pay under that legislation.

2. The competent institution of the Member State whose legislation becomes applicable to a person pursuant to Title II of the basic Regulation shall make the information indicating the date on which the application of that legislation takes effect available to the institution designated by the competent authority of the Member State to whose legislation that person was last subject.

Article 21

Obligations of the employer

1. An employer who has his registered office or place of business outside the competent Member State shall fulfil all the obligations laid down by the legislation applicable to his employees,

notably the obligation to pay the contributions provided for by that legislation, as if he had his registered office or place of business in the competent Member State.

2. An employer who does not have a place of business in the Member State whose legislation is applicable and the employee may agree that the latter may fulfil the employer's obligations on its behalf as regards the payment of contributions without prejudice to the employer's underlying obligations. The employer shall send notice of such an arrangement to the competent institution of that Member State.

TITLE III

SPECIAL PROVISIONS CONCERNING THE VARIOUS CATEGORIES OF BENEFITS

CHAPTER I

Sickness, maternity and equivalent paternity benefits

Article 22

General implementing provisions

1. The competent authorities or institutions shall ensure that any necessary information is made available to insured persons regarding the procedures and conditions for the granting of benefits in kind where such benefits are received in the territory of a Member State other than that of the competent institution.

2. Notwithstanding Article 5(a) of the basic Regulation, a Member State may become responsible for the cost of benefits in accordance with Article 22 of the basic Regulation only if, either the insured person has made a claim for a pension under the legislation of that Member State, or in accordance with Articles 23 to 30 of the basic Regulation, he receives a pension under the legislation of that Member State.

Article 23

Regime applicable in the event of the existence of more than one regime in the Member State of residence or stay

If the legislation of the Member State of residence or stay comprises more than one scheme of sickness, maternity and paternity insurance for more than one category of insured persons, the provisions applicable under Articles 17, 19(1), 20, 22, 24 and 26 of the basic Regulation shall be those of the legislation on the general scheme for employed persons.

Article 24

Residence in a Member State other than the competent Member State

1. For the purposes of the application of Article 17 of the basic Regulation, the insured person and/or members of his family shall be obliged to register with the institution of the place of residence. Their right to benefits in kind in the Member State of residence shall be certified by a document issued by the competent institution upon request of the insured person or upon request of the institution of the place of residence.

2. The document referred to in paragraph 1 shall remain valid until the competent institution informs the institution of the place of residence of its cancellation.

The institution of the place of residence shall inform the competent institution of any registration under paragraph 1 and of any change or cancellation of that registration.

3. This Article shall apply *mutatis mutandis* to the persons referred to in Articles 22, 24, 25 and 26 of the basic Regulation.

Article 25

Stay in a Member State other than the competent Member State

A. Procedure and scope of right

1. For the purposes of the application of Article 19 of the basic Regulation, the insured person shall present to the health care provider in the Member State of stay a document issued by the competent institution indicating his entitlement to benefits in kind. If the insured person does not have such a document, the institution of the place of stay, upon request or if otherwise necessary, shall contact the competent institution in order to obtain one.

2. That document shall indicate that the insured person is entitled to benefits in kind under the conditions laid down in Article 19 of the basic Regulation on the same terms as those applicable to persons insured under the legislation of the Member State of stay.

3. The benefits in kind referred to in Article 19(1) of the basic Regulation shall refer to the benefits in kind which are provided in the Member State of stay, in accordance with its legislation, and which become necessary on medical grounds with a view to preventing an insured person from being forced to return, before the end of the planned duration of stay, to the competent Member State to obtain the necessary treatment.

B. Procedure and arrangements for meeting the costs and providing reimbursement of benefits in kind

4. If the insured person has actually borne the costs of all or part of the benefits in kind provided within the framework of Article 19 of the basic Regulation and if the legislation applied by the institution of the place of stay enables reimbursement of those costs to an insured person, he may send an application for reimbursement to the institution of the place of stay. In that case, that institution shall reimburse directly to that person the amount of the costs corresponding to those benefits within the limits of and under the conditions of the reimbursement rates laid down in its legislation.

5. If the reimbursement of such costs has not been requested directly from the institution of the place of stay, the costs incurred shall be reimbursed to the person concerned by the competent institution in accordance with the reimbursement rates administered by the institution of the place of stay or the amounts which would have been subject to reimbursement to the institution of the place of stay, if Article 62 of the implementing Regulation had applied in the case concerned.

The institution of the place of stay shall provide the competent institution, upon request, with all necessary information about these rates or amounts.

6. By way of derogation from paragraph 5, the competent institution may undertake the reimbursement of the costs incurred within the limits of and under the conditions of the reimbursement rates laid down in its legislation, provided that the insured person has agreed to this provision being applied to him/her.

7. If the legislation of the Member State of stay does not provide for reimbursement pursuant to paragraphs 4 and 5 in the case concerned, the competent institution may reimburse the costs within the limits of and under the conditions of the reimbursement rates laid down in its legislation, without the agreement of the insured person.

8. The reimbursement to the insured person shall not, in any event, exceed the amount of costs actually incurred by him/her.

9. In the case of substantial expenditure, the competent institution may pay the insured person an appropriate advance as soon as that person submits the application for reimbursement to it.

C. Family Members

10. Paragraphs 1 to 9 shall apply *mutatis mutandis* to the members of the family of the insured person.

Article 26

Scheduled treatment

A. Authorisation procedure

1. For the purposes of the application of Article 20(1) of the basic Regulation, the insured person shall present a document issued by the competent institution to the institution of the place of stay. For the purposes of this Article, the competent institution shall mean the institution which bears the cost of the scheduled treatment; in the cases referred to in Article 20(4) and 27(5) of the basic Regulation, in which the benefits in kind provided in the Member State of residence are reimbursed on the basis of fixed amounts, the competent institution shall mean the institution of the place of residence.

2. If an insured person does not reside in the competent Member State, he shall request authorisation from the institution of the place of residence, which shall forward it to the competent institution without delay.

In that event, the institution of the place of residence shall certify in a statement whether the conditions set out in the second sentence of Article 20(2) of the basic Regulation are met in the Member State of residence.

The competent institution may refuse to grant the requested authorisation only if, in accordance with the assessment of the institution of the place of residence, the conditions set out in the second sentence of Article 20(2) of the basic Regulation are not met in the Member State of residence of the insured person, or if the same treatment can be provided in the competent Member State itself, within a time-limit which is medically justifiable, taking into account the current state of health and the probable course of illness of the person concerned.

The competent institution shall inform the institution of the place of residence of its decision.

In the absence of a reply within the deadlines set by its national legislation, the authorisation shall be considered to have been granted by the competent institution.

3. If an insured person who does not reside in the competent Member State is in need of urgent vitally necessary treatment, and the authorisation cannot be refused in accordance with the second sentence of Article 20(2) of the basic Regulation, the authorisation shall be granted by the institution of the place of residence on behalf of the competent institution, which shall be immediately informed by the institution of the place of residence.

The competent institution shall accept the findings and the treatment options of the doctors approved by the institution of the place of residence that issues the authorisation, concerning the need for urgent vitally necessary treatment.

4. At any time during the procedure granting the authorisation, the competent institution shall retain the right to have the insured person examined by a doctor of its own choice in the Member State of stay or residence.

5. The institution of the place of stay shall, without prejudice to any decision regarding authorisation, inform the competent institution if it appears medically appropriate to supplement the treatment covered by the existing authorisation.

B. *Meeting the cost of benefits in kind incurred by the insured person*

6. Without prejudice to paragraph 7, Article 25(4) and (5) of the implementing Regulation shall apply *mutatis mutandis*.

7. If the insured person has actually borne all or part of the costs for the authorised medical treatment him or herself and the costs which the competent institution is obliged to reimburse to the institution of the place of stay or to the insured person according to paragraph 6 (actual cost) are lower than the costs which it would have had to assume for the same treatment in the competent Member State (notional cost), the competent institution shall reimburse, upon request, the cost of treatment incurred by the insured person up to the amount by which the notional cost exceeds the actual cost. The reimbursed sum may not, however, exceed the costs actually incurred by the insured person and may take account of the amount which the insured person would have had to pay if the treatment had been delivered in the competent Member State.

C. *Meeting the costs of travel and stay as part of scheduled treatment*

8. Where the national legislation of the competent institution provides for the reimbursement of the costs of travel and stay which are inseparable from the treatment of the insured person, such costs for the person concerned and, if necessary, for a person who must accompany him/her, shall be assumed by this institution when an authorisation is granted in the case of treatment in another Member State.

D. *Family members*

9. Paragraphs 1 to 8 shall apply *mutatis mutandis* to the members of the family of the insured persons.

Article 27

Cash benefits relating to incapacity for work in the event of stay or residence in a Member State other than the competent Member State

A. *Procedure to be followed by the insured person*

1. If the legislation of the competent Member State requires that the insured person presents a certificate in order to be entitled to cash benefits relating to incapacity for work pursuant to Article 21(1) of the basic Regulation, the insured person shall ask the doctor of the Member State of residence who established his state of health to certify his incapacity for work and its probable duration.

2. The insured person shall send the certificate to the competent institution within the time limit laid down by the legislation of the competent Member State.

3. Where the doctors providing treatment in the Member State of residence do not issue certificates of incapacity for work, and where such certificates are required under the legislation of the competent Member State, the person concerned shall apply directly to the institution of the place of residence. That institution shall immediately arrange for a medical assessment of the

person's incapacity for work and for the certificate referred to in paragraph 1 to be drawn up. The certificate shall be forwarded to the competent institution forthwith.

4. The forwarding of the document referred to in paragraphs 1, 2 and 3 shall not exempt the insured person from fulfilling the obligations provided for by the applicable legislation, in particular with regard to his employer. Where appropriate, the employer and/or the competent institution may call upon the employee to participate in activities designed to promote and assist his return to employment.

B. *Procedure to be followed by the institution of the Member State of residence*

5. At the request of the competent institution, the institution of the place of residence shall carry out any necessary administrative checks or medical examinations of the person concerned in accordance with the legislation applied by this latter institution. The report of the examining doctor concerning, in particular, the probable duration of the incapacity for work, shall be forwarded without delay by the institution of the place of residence to the competent institution.

C. *Procedure to be followed by the competent institution*

6. The competent institution shall reserve the right to have the insured person examined by a doctor of its choice.

7. Without prejudice to the second sentence of Article 21(1) of the basic Regulation, the competent institution shall pay the cash benefits directly to the person concerned and shall, where necessary, inform the institution of the place of residence thereof.

8. For the purposes of the application of Article 21(1) of the basic Regulation, the particulars of the certificate of incapacity for work of an insured person drawn up in another Member State on the basis of the medical findings of the examining doctor or institution shall have the same legal value as a certificate drawn up in the competent Member State.

9. If the competent institution refuses the cash benefits, it shall notify its decision to the insured person and at the same time to the institution of the place of residence.

D. *Procedure in the event of a stay in a Member State other than the competent Member State*

10. Paragraphs 1 to 9 shall apply *mutatis mutandis* when the insured person stays in a Member State other than the competent Member State.

Article 28

Long-term care benefits in cash in the event of stay or residence in a Member State other than the competent Member State

A. *Procedure to be followed by the insured person*

1. In order to be entitled to long-term care benefits in cash pursuant to Article 21(1) of the basic Regulation, the insured person shall apply to the competent institution. The competent institution shall, where necessary, inform the institution of the place of residence thereof.

B. *Procedure to be followed by the institution of the place of residence*

2. At the request of the competent institution, the institution of the place of residence shall examine the condition of the insured person with respect to his need for long-term care. The competent institution shall give the institution of the place of residence all the information necessary for such an examination.

C. *Procedure to be followed by the competent institution*

3. In order to determine the degree of need for long-term care, the competent institution shall have the right to have the insured person examined by a doctor or any other expert of its choice.

4. Article 27(7) of the implementing Regulation shall apply *mutatis mutandis*.

D. *Procedure in the event of a stay in a Member State other than the competent Member State*

5. Paragraphs 1 to 4 shall apply *mutatis mutandis* when the insured person stays in a Member State other than the competent Member State.

E. *Family members*

6. Paragraphs 1 to 5 shall apply *mutatis mutandis* to the members of the family of the insured person.

Article 29

Application of Article 28 of the basic Regulation

If the Member State where the former frontier worker last pursued his activity is no longer the competent Member State, and the former frontier worker or a member of his family travels there with the purpose of receiving benefits in kind pursuant to Article 28 of the basic Regulation, he shall submit to the institution of the place of stay a document issued by the competent institution.

Article 30

Contributions by pensioners

If a person receives a pension from more than one Member State, the amount of contributions deducted from all the pensions paid shall under no circumstances be greater than the amount deducted in respect of a person who receives the same amount of pension from the competent Member State.

Article 31

Application of Article 34 of the basic Regulation

A. *Procedure to be followed by the competent institution*

1. The competent institution shall inform the person concerned of the provision contained in Article 34 of the basic Regulation regarding the prevention of overlapping of benefits. The application of such rules shall ensure that the person not residing in the competent Member State is entitled to benefits of at least the same total amount or value as those to which he would be entitled if he resided in that Member State.

2. The competent institution shall also inform the institution of the place of residence or stay about the payment of long-term care cash benefits where the legislation applied by the latter institution provides for the long-term care benefits in kind included in the list referred to in Article 34(2) of the basic Regulation.

B. *Procedure to be followed by the institution of the place of residence or stay*

3. Having received the information provided for in paragraph 2, the institution of the place of residence or stay shall without delay inform the competent institution of any long-term care benefit in kind intended for the same purpose granted under its legislation to the person concerned and of the rate of reimbursement applicable thereto.

4. The Administrative Commission shall lay down implementing measures for this Article where necessary.

Article 32

Special implementing measures

1. When a person or a group of persons are exempted upon request from compulsory sickness insurance and such persons are thus not covered by a sickness insurance scheme to which the basic Regulation applies, the institution of another Member State shall not, solely because of this exemption, become responsible for bearing the costs of benefits in kind or in cash provided to such persons or to a member of their family under Title III, Chapter I, of the basic Regulation.

2. For the Member States referred to in Annex 2, the provisions of Title III, Chapter I, of the basic Regulation relating to benefits in kind shall apply to persons entitled to benefits in kind solely on the basis of a special scheme for civil servants only to the extent specified therein.

The institution of another Member State shall not, on those grounds alone, become responsible for bearing the costs of benefits in kind or in cash provided to those persons or to members of their family.

3. When the persons referred to in paragraphs 1 and 2 and the members of their families reside in a Member State where the right to receive benefits in kind is not subject to conditions of insurance, or of activity as an employed or self-employed person, they shall be liable to pay the full costs of benefits in kind provided in their country of residence.

CHAPTER II

Benefits in respect of accidents at work and occupational diseases

Article 33

Right to benefits in kind and in cash in the event of residence or stay in a Member State other than the competent Member State

1. For the purposes of the application of Article 36 of the basic Regulation, the procedures laid down in Articles 24 to 27 of the implementing Regulation shall apply *mutatis mutandis*.

2. When providing special benefits in kind in connection with accidents at work and occupational diseases under the national legislation of the Member State of stay or residence, the institution of that Member State shall without delay inform the competent institution.

Article 34

Procedure in the event of an accident at work or occupational disease which occurs in a Member State other than the competent Member State

1. If an accident at work occurs or an occupational disease is diagnosed for the first time in a Member State other than the competent Member State, the declaration or notification of the accident at work or the occupational disease, where the declaration or notification exists under national legislation, shall be carried out in accordance with the legislation of the competent Member State, without prejudice, where appropriate, to any other applicable legal provisions in force in the Member State in which the accident at work occurred or in which the first medical diagnosis of the occupational disease was made, which remain applicable in such cases. The declaration or notification shall be addressed to the competent institution.

2. The institution of the Member State in the territory of which the accident at work occurred or in which the occupational disease was first diagnosed, shall notify the competent institution of medical certificates drawn up in the territory of that Member State.

3. Where, as a result of an accident while travelling to or from work which occurs in the territory of a Member State other than the competent Member State, an inquiry is necessary in the territory of the first Member State in order to determine any entitlement to relevant benefits, a person may be appointed for that purpose by the competent institution, which shall inform the authorities of that Member State. The institutions shall cooperate with each other in order to assess all relevant information and to consult the reports and any other documents relating to the accident.

4. Following treatment, a detailed report accompanied by medical certificates relating to the permanent consequences of the accident or disease, in particular the injured person's present state and the recovery or stabilisation of injuries, shall be sent upon request of the competent institution. The relevant fees shall be paid by the institution of the place of residence or of stay, where appropriate, at the rate applied by that institution to the charge of the competent institution.

5. At the request of the institution of the place of residence or stay, where appropriate, the competent institution shall notify it of the decision setting the date for the recovery or stabilisation of injuries and, where appropriate, the decision concerning the granting of a pension.

Article 35

Disputes concerning the occupational nature of the accident or disease

1. Where the competent institution disputes the application of the legislation relating to accidents at work or occupational diseases under Article 36(2) of the basic Regulation, it shall without delay inform the institution of the place of residence or stay which provided the benefits in kind, which will then be considered as sickness insurance benefits.

2. When a final decision has been taken on that subject, the competent institution shall without delay inform the institution of the place of residence or stay which provided the benefits in kind.

Where an accident at work or occupational disease is not established, benefits in kind shall continue to be provided as sickness benefits if the person concerned is entitled to them.

Where an accident at work or occupational disease is established, sickness benefits in kind provided to the person concerned shall be considered as accident at work or occupational disease benefits from the date on which the accident at work occurred or the occupational disease was first medically diagnosed.

3. The second subparagraph of Article 6(5) of the implementing Regulation shall apply *mutatis mutandis*.

Article 36

Procedure in the event of exposure to the risk of an occupational disease in more than one Member State

1. In the case referred to in Article 38 of the basic Regulation, the declaration or notification of the occupational disease shall be sent to the competent institution for occupational diseases of the last Member State under the legislation of which the person concerned pursued an activity likely to cause that disease.

When the institution to which the declaration or notification was sent establishes that an activity likely to cause the occupational disease in question was last pursued under the legislation of another Member State, it shall send the declaration or notification and all accompanying certificates to the equivalent institution in that Member State.

2. Where the institution of the last Member State under the legislation of which the person concerned pursued an activity likely to cause the occupational disease in question establishes that the person concerned or his survivors do not meet the requirements of that legislation, *inter alia*, because the person concerned had never pursued in that Member State an activity which caused the occupational disease or because that Member State does not recognise the occupational nature of the disease, that institution shall forward without delay the declaration or notification and all accompanying certificates, including the findings and reports of medical examinations performed by the first institution to the institution of the previous Member State under the legislation of which the person concerned pursued an activity likely to cause the occupational disease in question.

3. Where appropriate, the institutions shall reiterate the procedure set out in paragraph 2 going back as far as the equivalent institution in the Member State under whose legislation the person concerned first pursued an activity likely to cause the occupational disease in question.

Article 37

Exchange of information between institutions and advance payments in the event of an appeal against rejection

1. In the event of an appeal against a decision to refuse benefits taken by the institution of one of the Member States under the legislation of which the person concerned pursued an activity likely to cause the occupational disease in question, that institution shall inform the institution to which the declaration or notification was sent, in accordance with the procedure provided for in Article 36(2) of the implementing Regulation, and shall subsequently inform it when a final decision is reached.

2. Where a person is entitled to benefits under the legislation applied by the institution to which the declaration or notification was sent, that institution shall make the advance payments, the amount of which shall be determined, where appropriate, after consulting the institution which made the decision against which the appeal was lodged, and in such a way that overpayments are avoided. The latter institution shall reimburse the advance payments made if, as a result of the appeal, it is obliged to provide those benefits. That amount will then be deducted from the benefits due to the person concerned, in accordance with the procedure provided for in Articles 72 and 73 of the implementing Regulation.

3. The second subparagraph of Article 6(5) of the implementing Regulation shall apply *mutatis mutandis*.

Article 38

Aggravation of an occupational disease

In the cases covered by Article 39 of the basic Regulation, the claimant must provide the institution in the Member State from which he is claiming entitlement to benefits with details concerning benefits previously granted for the occupational disease in question. That institution may contact any other previously competent institution in order to obtain the information it considers necessary.

Article 39

Assessment of the degree of incapacity in the event of occupational accidents or diseases which occurred previously or subsequently

Where a previous or subsequent incapacity for work was caused by an accident which occurred when the person concerned was subject to the legislation of a Member State which makes no distinction according to the origin of the incapacity to work, the competent institution or the body designated by the competent authority of the Member State in question shall:

- (a) upon request by the competent institution of another Member State, provide information concerning the degree of the previous or subsequent incapacity for work, and where possible, information making it possible to determine whether the incapacity is the result of an accident at work within the meaning of the legislation applied by the institution in the other Member State;
- (b) take into account the degree of incapacity caused by these previous or subsequent cases when determining the right to benefits and the amount, in accordance with the applicable legislation.

Article 40

Submission and investigation of claims for pensions or supplementary allowances

In order to receive a pension or supplementary allowance under the legislation of a Member State, the person concerned or his survivors residing in the territory of another Member State shall submit, where appropriate, a claim either to the competent institution or to the institution of the place of residence, which shall send it to the competent institution.

The claim shall contain the information required under the legislation applied by the competent institution.

Article 41

Special implementing measures

1. In relation to the Member States referred to in Annex 2, the provisions of Title III, Chapter 2 of the basic Regulation relating to benefits in kind shall apply to persons entitled to benefits in kind solely on the basis of a special scheme for civil servants, and only to the extent specified therein.

2. Article 32(2) second subparagraph and Article 32(3) of the implementing Regulation shall apply *mutatis mutandis*.

CHAPTER III

Death grants

Article 42

Claim for death grants

For the purposes of applying Articles 42 and 43 of the basic Regulation, the claim for death grants shall be sent either to the competent institution or to the institution of the claimant's place of residence, which shall send it to the competent institution.

The claim shall contain the information required under the legislation applied by the competent institution.

CHAPTER IV

Invalidity benefits and old-age and survivors' pensions

Article 43

Additional provisions for the calculation of benefit

1. For the purposes of calculating the theoretical amount and the actual amount of the benefit in accordance with Article 52(1)(b) of the basic Regulation, the rules provided for in Article 12(3), (4), (5) and (6) of the implementing Regulation shall apply.

2. Where periods of voluntary or optional continued insurance have not been taken into account under Article 12(3) of the implementing Regulation, the institution of the Member State under whose legislation those periods were completed shall calculate the amount corresponding to those periods under the legislation it applies. The actual amount of the benefit, calculated in accordance with Article 52(1)(b) of the basic Regulation, shall be increased by the amount corresponding to periods of voluntary or optional continued insurance.

3. The institution of each Member State shall calculate, under the legislation it applies, the amount due corresponding to periods of voluntary or optional continued insurance which, under Article 53(3)(c) of the basic Regulation, shall not be subject to another Member State's rules relating to withdrawal, reduction or suspension.

Where the legislation applied by the competent institution does not allow it to determine this amount directly, on the grounds that that legislation allocates different values to insurance periods, a notional amount may be established. The Administrative Commission shall lay down the detailed arrangements for the determination of that notional amount.

Article 44

Taking into account of child raising-periods

1. For the purposes of this Article, 'child-raising period' refers to any period which is credited under the pension legislation of a Member State or which provides a supplement to a pension explicitly for the reason that a person has raised a child, irrespective of the method used to calculate those periods and whether they accrue during the time of child-raising or are acknowledged retroactively.

2. Where, under the legislation of the Member State which is competent under Title II of the basic Regulation, no child-raising period is taken into account, the institution of the Member State whose legislation, according to Title II of the basic Regulation, was applicable to the person concerned on the grounds that he or she was pursuing an activity as an employed or self-employed person at the date when, under that legislation, the child-raising period started to be taken into account for the child concerned, shall remain responsible for taking into account that period as a child-raising period under its own legislation, as if such child-raising took place in its own territory.

3. Paragraph 2 shall not apply if the person concerned is, or becomes, subject to the legislation of another Member State due to the pursuit of an employed or self-employed activity.

Article 45

Claim for benefits**A. Submission of the claim for benefits under type A legislation under Article 44(2) of the basic Regulation**

1. In order to receive benefits under type A legislation under Article 44(2) of the basic Regulation, the claimant shall submit a claim to the institution of the Member State, whose legislation was applicable at the time when the incapacity for work occurred followed by invalidity or the aggravation of such invalidity, or to the institution of the place of residence, which shall forward the claim to the first institution.

2. If sickness benefits in cash have been awarded, the expiry date of the period for awarding these benefits shall, where appropriate, be considered as the date of submission of the pension claim.

3. In the case referred to in Article 47(1) of the basic Regulation, the institution with which the person concerned was last insured shall inform the institution which initially paid the benefits of the amount and the date of commencement of the benefits under the applicable legislation. From that date benefits due before aggravation of the invalidity shall be withdrawn or reduced to the supplement referred to in Article 47(2) of the basic Regulation.

B. Submission of other claims for benefits

4. In situations other than those referred to in paragraph 1, the claimant shall submit a claim to the institution of his place of residence or to the institution of the last Member State whose legislation was applicable. If the person concerned was not, at any time, subject to the legislation applied by the institution of the place of residence, that institution shall forward the claim to the institution of the last Member State whose legislation was applicable.

5. The date of submission of the claim shall apply in all the institutions concerned.

6. By way of derogation from paragraph 5, if the claimant does not, despite having been asked to do so, notify the fact that he has been employed or has resided in other Member States, the date on which the claimant completes his initial claim or submits a new claim for his missing periods of employment or/and residence in a Member State shall be considered as the date of submission of the claim to the institution applying the legislation in question, subject to more favourable provisions of that legislation.

Article 46

Certificates and information to be submitted with the claim by the claimant

1. The claim shall be submitted by the claimant in accordance with the provisions of the legislation applied by the institution referred to in Article 45(1) or (4) of the implementing Regulation and be accompanied by the supporting documents required by that legislation. In particular, the claimant shall supply all available relevant information and supporting documents relating to periods of insurance (institutions, identification numbers), employment (employers) or self-employment (nature and place of activity) and residence (addresses) which may have been completed under other legislation, as well as the length of those periods.

2. Where, in accordance with Article 50(1) of the basic Regulation, the claimant requests deferment of the award of old-age benefits under the legislation of one or more Member States, he shall state that in his claim and specify under which legislation the deferment is requested. In order to enable the claimant to exercise that right, the institutions concerned shall, upon the request of the claimant, notify him of all the information available to them so that he can assess the consequences of concurrent or successive awards of benefits which he might claim.

3. Should the claimant withdraw a claim for benefits provided for under the legislation of a particular Member State, that withdrawal shall not be considered as a concurrent withdrawal of claims for benefits under the legislation of other Member States.

Article 47

Investigation of claims by the institutions concerned*A. Contact institution*

1. The institution to which the claim for benefits is submitted or forwarded in accordance with Article 45(1) or (4) of the implementing Regulation shall be referred to hereinafter as the 'contact institution'. The institution of the place of residence shall not be referred to as the contact institution if the person concerned has not, at any time, been subject to the legislation which that institution applies.

In addition to investigating the claim for benefits under the legislation which it applies, this institution shall, in its capacity as contact institution, promote the exchange of data, the communication of decisions and the operations necessary for the investigation of the claim by the institutions concerned, and supply the claimant, upon request, with any information relevant to the Community aspects of the investigation and keep him/her informed of its progress.

B. Investigation of claims for benefits under type A legislation under Article 44 of the basic Regulation

2. In the case referred to in Article 44(3) of the basic Regulation, the contact institution shall send all the documents relating to the person concerned to the institution with which he was previously insured, which shall in turn examine the case.

3. Articles 48 to 52 of the implementing Regulation shall not be applicable to the investigation of claims referred to in Article 44 of the basic Regulation.

C. Investigation of other claims for benefits

4. In situations other than those referred to in paragraph 2, the contact institution shall, without delay, send claims for benefits and all the documents which it has available and, where appropriate, the relevant documents supplied by the claimant to all the institutions in question so that they can all start the investigation of the claim concurrently. The contact institution shall notify the other institutions of periods of insurance or residence subject to its legislation. It shall also indicate which documents shall be submitted at a later date and supplement the claim as soon as possible.

5. Each of the institutions in question shall notify the contact institution and the other institutions in question, as soon as possible, of the periods of insurance or residence subject to their legislation.

6. Each of the institutions in question shall calculate the amount of benefits in accordance with Article 52 of the basic Regulation and shall notify the contact institution and the other institutions concerned of its decision, of the amount of benefits due and of any information required for the purposes of Articles 53 to 55 of the basic Regulation.

7. Should an institution establish, on the basis of the information referred to in paragraphs 4 and 5 of this Article, that Article 46(2) or Article 57(2) or (3) of the basic Regulation is applicable, it shall inform the contact institution and the other institutions concerned.

Article 48

Notification of decisions to the claimant

1. Each institution shall notify the claimant of the decision it has taken in accordance with the applicable legislation. Each decision shall specify the remedies and periods allowed for appeals. Once the contact institution has been notified of all decisions taken by each institution, it shall send the claimant and the other institutions concerned a summary of those decisions. A model summary shall be drawn up by the Administrative Commission. The summary shall be sent to the claimant in the language of the institution or, at the request of the claimant, in any language of his choice recognised as an official language of the Community institutions in accordance with Article 290 of the Treaty.

2. Where it appears to the claimant following receipt of the summary that his rights may have been adversely affected by the interaction of decisions taken by two or more institutions, the claimant shall have the right to a review of the decisions by the institutions concerned within the time limits laid down in the respective national legislation. The time limits shall commence on the date of receipt of the summary. The claimant shall be notified of the result of the review in writing.

Article 49

Determination of the degree of invalidity

1. Where Article 46(3) of the basic Regulation is applicable, the only institution authorised to take a decision concerning the claimant's degree of invalidity shall be the contact institution, if the legislation applied by that institution is included in Annex VII to the basic Regulation, or failing that, the institution whose legislation is included in that Annex and to whose legislation the claimant was last subject. It shall take that decision as soon as it can determine whether the conditions for eligibility laid down in the applicable legislation are met, taking into account, where appropriate, Articles 6 and 51 of the basic Regulation. It shall without delay notify the other institutions concerned of that decision.

Where the eligibility criteria, other than those relating to the degree of invalidity, laid down in the applicable legislation are not met, taking into account Articles 6 and 51 of the basic Regulation, the contact institution shall without delay inform the competent institution of the last Member State to whose legislation the claimant was subject. The latter institution shall be authorised to take the decision concerning the degree of invalidity of the claimant if the conditions for eligibility laid down in the applicable legislation are met. It shall without delay notify the other institutions concerned of that decision.

When determining eligibility, the matter may, if necessary have to be referred back, under the same conditions, to the competent institution in respect of invalidity of the Member State to whose legislation the claimant was first subject.

2. Where Article 46(3) of the basic Regulation is not applicable, each institution shall, in accordance with its legislation, have the possibility of having the claimant examined by a medical doctor or other expert of its choice to determine the degree of invalidity. However, the institution of a Member State shall take into consideration documents, medical reports and administrative information collected by the institution of any other Member State as if they had been drawn up in its own Member State.

Article 50

Provisional instalments and advance payment of benefit

1. Notwithstanding Article 7 of the implementing Regulation, any institution which establishes, while investigating a claim for benefits, that the claimant is entitled to an independent benefit under the applicable legislation, in accordance with Article 52(1)(a) of the basic Regulation, shall pay that benefit without delay. That payment shall be considered provisional if the amount might be affected by the result of the claim investigation procedure.

2. Whenever it is evident from the information available that the claimant is entitled to a payment from an institution under Article 52(1)(b) of the basic Regulation, that institution shall make an advance payment, the amount of which shall be as close as possible to the amount which will probably be paid under Article 52(1)(b) of the basic Regulation.

3. Each institution which is obliged to pay the provisional benefits or advance payment under paragraphs 1 or 2 shall inform the claimant without delay, specifically drawing his attention to the provisional nature of the measure and any rights of appeal in accordance with its legislation.

Article 51

New calculation of benefits

1. Where there is a new calculation of benefits in accordance with Articles 48(3) and (4), 50(4) and 59(1) of the basic Regulation, Article 50 of the implementing Regulation shall be applicable *mutatis mutandis*.

2. Where there is a new calculation, withdrawal or suspension of the benefit, the institution which took the decision shall inform the person concerned without delay and shall inform each of the institutions in respect of which the person concerned has an entitlement.

Article 52

Measures intended to accelerate the pension calculation process

1. In order to facilitate and accelerate the investigation of claims and the payment of benefits, the institutions to whose legislation a person has been subject shall:

- (a) exchange with or make available to institutions of other Member States the elements for identifying persons who change from one applicable national legislation to another, and together ensure that those identification elements are retained and correspond, or, failing that, provide those persons with the means to access their identification elements directly;
- (b) sufficiently in advance of the minimum age for commencing pension rights or before an age to be determined by national legislation, exchange with or make available to the person concerned and to institutions of other Member States information (periods completed or other important elements) on the pension entitlements of persons who have changed from one applicable legislation to another or, failing that, inform those persons of, or provide them with, the means of familiarising themselves with their prospective benefit entitlement.

2. For the purposes of applying paragraph 1, the Administrative Commission shall determine the elements of information to be exchanged or made available and shall establish the appropriate procedures and mechanisms, taking account of the characteristics, administrative and technical organisation, and the technological means at the disposal of national pension schemes. The Administrative Commission shall ensure the implementation of those pension schemes by organising a follow-up to the measures taken and their application.

3. For the purposes of applying paragraph 1, the institution in the first Member State where a person is allocated a Personal Identification Number (PIN) for the purposes of social security administration should be provided with the information referred to in this Article.

Article 53

Coordination measures in Member States

1. Without prejudice to Article 51 of the basic Regulation, where national legislation includes rules for determining the institution responsible or the scheme applicable or for designating periods of insurance to a specific scheme, those rules shall be applied, taking into account only periods of insurance completed under the legislation of the Member State concerned.

2. Where national legislation includes rules for the coordination of special schemes for civil servants and the general scheme for employed persons, those rules shall not be affected by the provisions of the basic Regulation and of the implementing Regulation.

CHAPTER V

Unemployment benefits

Article 54

Aggregation of periods and calculation of benefits

1. Article 12(1) of the implementing Regulation shall apply *mutatis mutandis* to Article 61 of the basic Regulation. Without prejudice to the underlying obligations of the institutions involved, the person concerned may submit to the competent institution a document issued by the institution of the Member State to whose legislation he was subject in respect of his last activity as an employed or self-employed person specifying the periods completed under that legislation.

2. For the purposes of applying Article 62(3) of the basic Regulation, the competent institution of the Member State to whose legislation the person concerned was subject in respect of his last activity as an employed or self-employed person shall, without delay, at the request of the institution of the place of residence, provide it with all the information necessary to calculate unemployment benefits which can be obtained in the Member State of residence, in particular the salary or professional income received.

3. For the purposes of applying Article 62 of the basic Regulation and notwithstanding Article 63 thereof, the competent institution of a Member State whose legislation provides that the calculation of benefits varies with the number of members of the family shall also take into account the members of the family of the person concerned residing in another Member State as if they resided in the competent Member State. This provision shall not apply where, in the Member State of residence of members of the family, another person is entitled to unemployment benefits calculated on the basis of the number of members of the family.

Article 55

Conditions and restrictions on the retention of the entitlement to benefits for unemployed persons going to another Member State

1. In order to be covered by Article 64 of the basic Regulation, the unemployed person going to another Member State shall inform the competent institution prior to his departure and request a document certifying that he retains entitlement to benefits under the conditions laid down in Article 64(1)(b) of the basic Regulation.

That institution shall inform the person concerned of his obligations and shall provide the abovementioned document which shall include the following information:

- (a) the date on which the unemployed person ceased to be available to the employment services of the competent State;
- (b) the period granted in accordance with Article 64(1)(b) of the basic Regulation in order to register as a person seeking work in the Member State to which the unemployed person has gone;
- (c) the maximum period during which the entitlement to benefits may be retained in accordance with Article 64(1)(c) of the basic Regulation;
- (d) circumstances likely to affect the entitlement to benefits.

2. The unemployed person shall register as a person seeking work with the employment services of the Member State to which he goes in accordance with Article 64(1)(b) of the basic Regulation and shall provide the document referred to in paragraph 1 to the institution of that Member State. If he has informed the competent institution in accordance with paragraph 1 but fails to provide this document, the institution in the Member State to which the unemployed person has gone shall contact the competent institution in order to obtain the necessary information.

3. The employment services in the Member State to which the unemployed person has gone to seek employment shall inform the unemployed person of his obligations.

4. The institution in the Member State to which the unemployed person has gone shall immediately send a document to the competent institution containing the date on which the unemployed person registered with the employment services and his new address.

If, in the period during which the unemployed person retains entitlement to benefits, any circumstance likely to affect the entitlement to benefits arises, the institution in the Member State to which the unemployed person has gone shall send immediately to the competent institution and to the person concerned a document containing the relevant information.

At the request of the competent institution, the institution in the Member State to which the unemployed person has gone shall provide relevant information on a monthly basis concerning the follow-up of the unemployed person's situation, in particular whether the latter is still registered with the employment services and is complying with organised checking procedures.

5. The institution in the Member State to which the unemployed person has gone shall carry out or arrange for checks to be carried out, as if the person concerned were an unemployed person obtaining benefits under its own legislation. Where necessary, it shall immediately inform the competent institution if any circumstances referred to in paragraph 1(d) arise.

6. The competent authorities or competent institutions of two or more Member States may agree amongst themselves specific procedures and time-limits concerning the follow-up of the unemployed person's situation as well as other measures to facilitate the job-seeking activities of unemployed persons who go to one of those Member States under Article 64 of the basic Regulation.

Article 56

Unemployed persons who resided in a Member State other than the competent Member State

1. Where the unemployed person decides, in accordance with Article 65(2) of the basic Regulation, to make him/herself also available to the employment services in the Member State in which he pursued his last activity as an employed or self-employed person by registering there as a person seeking work, he shall inform the institution and employment services of the Member State of his place of residence.

At the request of the employment services of the Member State in which the person concerned pursued his last activity as an employed or self-employed person, the employment services in the place of residence shall send the relevant information concerning the unemployed person's registration and search for employment.

2. Where the legislation applicable in the Member States concerned requires the fulfilment of certain obligations and/or job-seeking activities by the unemployed person, the obligations and/or job-seeking activities by the unemployed person in the Member State of residence shall have priority.

The non-fulfilment by the unemployed person of all the obligations and/or job-seeking activities in the Member State in which he pursued his last activity shall not affect the benefits awarded in the Member State of residence.

3. For the purposes of applying Article 65(5)(b) of the basic Regulation, the institution of the Member State to whose legislation the worker was last subject shall inform the institution of the place of residence, when requested to do so by the latter, whether the worker is entitled to benefits under Article 64 of the basic Regulation.

Article 57

Provisions for the application of Articles 61, 62, 64 and 65 of the basic Regulation regarding persons covered by a special scheme for civil servants

1. Articles 54 and 55 of the implementing Regulation shall apply *mutatis mutandis* to persons covered by a special unemployment scheme for civil servants.

2. Article 56 of the implementing Regulation shall not apply to persons covered by a special unemployment scheme for civil servants. An unemployed person who is covered by a special unemployment scheme for civil servants, who is partially or wholly unemployed, and who, during his last employment, was residing in the territory of a Member State other than the competent State, shall receive the benefits under the special unemployment scheme for civil servants in accordance with the provisions of the legislation of the competent Member State as if he were residing in the territory of that Member State. Those benefits shall be provided by the competent institution, at its expense.

CHAPTER VI

Family benefits

Article 58

Priority rules in the event of overlapping

For the purposes of applying Article 68(1)(b)(i) and (ii) of the basic Regulation, where the order of priority cannot be established on the basis of the children's place of residence, each Member State concerned shall calculate the amount of benefits including the children not resident within its own territory. In the event of applying Article 68(1)(b)(i), the competent institution of the Member State whose legislation provides for the highest level of benefits shall pay the full amount of such benefits and be reimbursed half this sum by the competent institution of the other Member State up to the limit of the amount provided for in the legislation of the latter Member State.

Article 59

Rules applicable where the applicable legislation and/or the competence to grant family benefits changes

1. Where the applicable legislation and/or the competence to grant family benefits change between Member States during a calendar month, irrespective of the payment dates of family benefits under the legislation of those Member States, the institution which has paid the family benefits by virtue of the legislation under which the benefits have been granted at the beginning of that month shall continue to do so until the end of the month in progress.

2. It shall inform the institution of the other Member State or Member States concerned of the date on which it ceases to pay the family benefits in question. Payment of benefits from the other Member State or Member States concerned shall take effect from that date.

Article 60

Procedure for applying Articles 67 and 68 of the basic Regulation

1. The application for family benefits shall be addressed to the competent institution. For the purposes of applying Articles 67 and 68 of the basic Regulation, the situation of the whole family shall be taken into account as if all the persons involved were subject to the legislation of the Member State concerned and residing

there, in particular as regards a person's entitlement to claim such benefits. Where a person entitled to claim the benefits does not exercise his right, an application for family benefits submitted by the other parent, a person treated as a parent, or a person or institution acting as guardian of the child or children, shall be taken into account by the competent institution of the Member State whose legislation is applicable.

2. The institution to which an application is made in accordance with paragraph 1 shall examine the application on the basis of the detailed information supplied by the applicant, taking into account the overall factual and legal situation of the applicant's family.

If that institution concludes that its legislation is applicable by priority right in accordance with Article 68(1) and (2) of the basic Regulation, it shall provide the family benefits according to the legislation it applies.

If it appears to that institution that there may be an entitlement to a differential supplement by virtue of the legislation of another Member State in accordance with Article 68(2) of the basic Regulation, that institution shall forward the application, without delay, to the competent institution of the other Member State and inform the person concerned; moreover, it shall inform the institution of the other Member State of its decision on the application and the amount of family benefits paid.

3. Where the institution to which the application is made concludes that its legislation is applicable, but not by priority right in accordance with Article 68(1) and (2) of the basic Regulation, it shall take a provisional decision, without delay, on the priority rules to be applied and shall forward the application, in accordance with Article 68(3) of the basic Regulation, to the institution of the other Member State, and shall also inform the applicant thereof. That institution shall take a position on the provisional decision within two months.

If the institution to which the application was forwarded does not take a position within two months of the receipt of the application, the provisional decision referred to above shall apply and the institution shall pay the benefits provided for under its legislation and inform the institution to which the application was made of the amount of benefits paid.

4. Where there is a difference of views between the institutions concerned about which legislation is applicable by priority right, Article 6(2) to (5) of the implementing Regulation shall apply. For this purpose the institution of the place of residence referred to in Article 6(2) of the implementing Regulation shall be the institution of the child's or childrens' place of residence.

5. If the institution which has supplied benefits on a provisional basis has paid more than the amount for which it is ultimately responsible, it may claim reimbursement of the excess from the institution with primary responsibility in accordance with the procedure laid down in Article 73 of the implementing Regulation.

Article 61

Procedure for applying Article 69 of the basic Regulation

For the purposes of applying Article 69 of the basic Regulation, the Administrative Commission shall draw up a list of the additional or special family benefits for orphans covered by that Article. If there is no provision for the institution competent to grant, by priority right, such additional or special family benefits for orphans under the legislation it applies, it shall without delay forward any application for family benefits, together with all relevant documents and information, to the institution of the Member State to whose legislation the person concerned has been subject, for the longest period of time and which provides such additional or special family benefits for orphans. In some cases, this may mean referring back, under the same conditions, to the institution of the Member State under whose legislation the person concerned has completed the shortest of his or her insurance or residence periods.

TITLE IV

FINANCIAL PROVISIONS

CHAPTER I

Reimbursement of the cost of benefits in application of Article 35 and Article 41 of the basic Regulation

Section 1

Reimbursement on the basis of actual expenditure

Article 62

Principles

1. For the purposes of applying Article 35 and Article 41 of the basic Regulation, the actual amount of the expenses for benefits in kind, as shown in the accounts of the institution that provided them, shall be reimbursed to that institution by the

competent institution, except where Article 63 of the implementing Regulation is applicable.

2. If any or part of the actual amount of the expenses for benefits referred to in paragraph 1 is not shown in the accounts of the institution that provided them, the amount to be refunded shall be determined on the basis of a lump-sum payment calculated from all the appropriate references obtained from the data available. The Administrative Commission shall assess the bases to be used for calculation of the lump-sum payment and shall decide the amount thereof.

3. Higher rates than those applicable to the benefits in kind provided to insured persons subject to the legislation applied by the institution providing the benefits referred to in paragraph 1 may not be taken into account in the reimbursement.

Section 2

Reimbursement on the basis of fixed amounts

Article 63

Identification of the Member States concerned

1. The Member States referred to in Article 35(2) of the basic Regulation, whose legal or administrative structures are such that the use of reimbursement on the basis of actual expenditure is not appropriate, are listed in Annex 3 to the implementing Regulation.

2. In the case of the Member States listed in Annex 3 to the implementing Regulation, the amount of benefits in kind supplied to:

- (a) family members who do not reside in the same Member State as the insured person, as provided for in Article 17 of the basic Regulation; and to
- (b) pensioners and members of their family, as provided for in Article 24(1) and Articles 25 and 26 of the basic Regulation;

shall be reimbursed by the competent institutions to the institutions providing those benefits, on the basis of a fixed amount established for each calendar year. This fixed amount shall be as close as possible to actual expenditure.

Article 64

Calculation method of the monthly fixed amounts and the total fixed amount

1. For each creditor Member State, the monthly fixed amount per person (F_i) for a calendar year shall be determined by dividing the annual average cost per person (Y_i), broken down by age group (i), by 12 and by applying a reduction (X) to the result in accordance with the following formula:

$$F_i = Y_i * 1/12 * (1-X)$$

Where:

— the index ($i = 1, 2$ and 3) represents the three age groups used for calculating the fixed amounts:

$i = 1$: persons aged under 20,

$i = 2$: persons aged from 20 to 64,

$i = 3$: persons aged 65 and over,

— Y_i represents the annual average cost per person in age group i , as defined in paragraph 2,

— the coefficient X (0,20 or 0,15) represents the reduction as defined in paragraph 3,

2. The annual average cost per person (Y_i) in age group i shall be obtained by dividing the annual expenditure on all benefits in kind provided by the institutions of the creditor Member State to all persons in the age group concerned subject to its legislation and residing within its territory by the average number of persons concerned in that age group in the calendar year in question. The calculation shall be based on the expenditure under the schemes referred to in Article 23 of the implementing Regulation.

3. The reduction to be applied to the monthly fixed amount shall, in principle, be equal to 20 % ($X = 0,20$). It shall be equal to 15 % ($X = 0,15$) for pensioners and members of their family where the competent Member State is not listed in Annex IV to the basic Regulation.

4. For each debtor Member State, the total fixed amount for a calendar year shall be the sum of the products obtained by multiplying, in each age group i , the determined monthly fixed amounts per person by the number of months completed by the persons concerned in the creditor Member State in that age group.

The number of months completed by the persons concerned in the creditor Member State shall be the sum of the calendar months in a calendar year during which the persons concerned were, because of their residence in the territory of the creditor Member State, eligible to receive benefits in kind in that territory at the expense of the debtor Member State. Those months shall be determined from an inventory kept for that purpose by the institution of the place of residence, based on documentary evidence of the entitlement of the beneficiaries supplied by the competent institution.

5. No later than 1 May 2015, the Administrative Commission shall present a specific report on the application of this Article and in particular on the reductions referred to in paragraph 3. On the basis of that report, the Administrative Commission may present a proposal containing any amendments which may prove necessary in order to ensure that the calculation of fixed amounts comes as close as possible to the actual expenditure incurred and the reductions referred to in paragraph 3 do not result in unbalanced payments or double payments for the Member States.

6. The Administrative Commission shall establish the methods for determining the elements for calculating the fixed amounts referred to in paragraphs 1 to 5.

7. Notwithstanding paragraphs 1 to 4, Member States may continue to apply Articles 94 and 95 of Regulation (EEC) No 574/72 for the calculation of the fixed amount until 1 May 2015, provided that the reduction set out in paragraph 3 is applied.

*Article 65***Notification of annual average costs**

1. The annual average cost per person in each age group for a specific year shall be notified to the Audit Board at the latest by the end of the second year following the year in question. If the notification is not made by this deadline, the annual average cost per person which the Administrative Commission has last determined for a previous year will be taken.
2. The annual average costs determined in accordance with paragraph 1 shall be published each year in the *Official Journal of the European Union*.

*Section 3***Common provisions***Article 66***Procedure for reimbursement between institutions**

1. The reimbursements between the Member States concerned shall be made as promptly as possible. Every institution concerned shall be obliged to reimburse claims before the deadlines mentioned in this Section, as soon as it is in a position to do so. A dispute concerning a particular claim shall not hinder the reimbursement of another claim or other claims.
2. The reimbursements between the institutions of the Member States, provided for in Articles 35 and 41 of the basic Regulation, shall be made via the liaison body. There may be a separate liaison body for reimbursements under Article 35 and Article 41 of the basic Regulation.

*Article 67***Deadlines for the introduction and settlement of claims**

1. Claims based on actual expenditure shall be introduced to the liaison body of the debtor Member State within 12 months of the end of the calendar half-year during which those claims were recorded in the accounts of the creditor institution.
2. Claims of fixed amounts for a calendar year shall be introduced to the liaison body of the debtor Member State within the 12-month period following the month during which the average costs for the year concerned were published in the *Official Journal of the European Union*. The inventories referred to Article 64(4) of the implementing Regulation shall be presented by the end of the year following the reference year.
3. In the case referred to in Article 6(5) second subparagraph of the implementing Regulation, the deadline set out in paragraphs 1 and 2 of this Article shall not start before the competent institution has been identified.
4. Claims introduced after the deadlines specified in paragraphs 1 and 2 shall not be considered.

5. The claims shall be paid to the liaison body of the creditor Member State referred to in Article 66 of the implementing Regulation by the debtor institution within 18 months of the end of the month during which they were introduced to the liaison body of the debtor Member State. This does not apply to the claims which the debtor institution has rejected for a relevant reason within that period.

6. Any disputes concerning a claim shall be settled, at the latest, within 36 months following the month in which the claim was introduced.

7. The Audit Board shall facilitate the final closing of accounts in cases where a settlement cannot be reached within the period set out in paragraph 6, and, upon a reasoned request by one of the parties, shall give its opinion on a dispute within six months following the month in which the matter was referred to it.

*Article 68***Interest on late payments and down payments**

1. From the end of the 18-month period set out in Article 67(5) of the implementing Regulation, interest can be charged by the creditor institution on outstanding claims, unless the debtor institution has made, within six months of the end of the month during which the claim was introduced, a down payment of at least 90 % of the total claim introduced pursuant to Article 67(1) or (2) of the implementing Regulation. For those parts of the claim not covered by the down payment, interest may be charged only from the end of the 36-month period set out in Article 67(6) of the implementing Regulation.

2. The interest shall be calculated on the basis of the reference rate applied by the European Central Bank to its main refinancing operations. The reference rate applicable shall be that in force on the first day of the month on which the payment is due.

3. No liaison body shall be obliged to accept a down payment as provided for in paragraph 1. If however, a liaison body declines such an offer, the creditor institution shall no longer be entitled to charge interest on late payments related to the claims in question other than under the second sentence of paragraph 1.

*Article 69***Statement of annual accounts**

1. The Administrative Commission shall establish the claims situation for each calendar year in accordance with Article 72(g) of the basic Regulation, on the basis of the Audit Board's report. To this end, the liaison bodies shall notify the Audit Board, by the deadlines and according to the procedures laid down by the latter, of the amount of the claims introduced, settled or contested (creditor position) and the amount of claims received, settled or contested (debtor position).

2. The Administrative Commission may perform any appropriate checks on the statistical and accounting data used as the basis for drawing up the annual statement of claims provided for in paragraph 1 in order, in particular, to ensure that they comply with the rules laid down under this Title.

CHAPTER II

Reimbursement of unemployment benefits pursuant to Article 65 of the basic Regulation

Article 70

Reimbursement of unemployment benefits

If there is no agreement in accordance with Article 65(8) of the basic Regulation, the institution of the place of residence shall request reimbursement of unemployment benefits pursuant to Article 65(6) and (7) of the basic Regulation from the institution of the Member State to whose legislation the beneficiary was last subject. The request shall be made within six months of the end of the calendar half-year during which the last payment of unemployment benefit, for which reimbursement is requested, was made. The request shall indicate the amount of benefit paid during the three or five month-period referred to in Article 65(6) and (7) of the basic Regulation, the period for which the benefits were paid and the identification data of the unemployed person. The claims shall be introduced and paid via the liaison bodies of the Member States concerned.

There is no requirement to consider requests introduced after the time-limit referred to in the first paragraph.

Articles 66(1) and 67(5) to (7) of the implementing Regulation shall apply *mutatis mutandis*.

From the end of the 18-month period referred to in Article 67(5) of the implementing Regulation, interest may be charged by the creditor institution on outstanding claims. The interest shall be calculated in accordance with Article 68(2) of the implementing Regulation.

The maximum amount of the reimbursement referred to in the third sentence of Article 65(6) of the basic Regulation is in each individual case the amount of the benefit to which a person concerned would be entitled according to the legislation of the Member State to which he was last subject if registered with the employment services of that Member State. However, in relations between the Member States listed in Annex 5 to the implementing Regulation, the competent institutions of one of those Member States to whose legislation the person concerned was last subject shall determine the maximum amount in each individual case on the basis of the average amount of unemployment benefits provided under the legislation of that Member State in the preceding calendar year.

CHAPTER III

Recovery of benefits provided but not due, recovery of provisional payments and contributions, offsetting and assistance with recovery

Section 1

Principles

Article 71

Common provisions

For the purposes of applying Article 84 of the basic Regulation and within the framework defined therein, the recovery of claims shall, wherever possible, be by way of offsetting either between the institutions of Member States concerned, or vis-à-vis the natural or legal person concerned in accordance with Articles 72 to 74 of the implementing Regulation. If it is not possible to recover all or any of the claim via this offsetting procedure, the remainder of the amount due shall be recovered in accordance with Articles 75 to 85 of the implementing Regulation.

Section 2

Offsetting

Article 72

Benefits received unduly

1. If the institution of a Member State has paid undue benefits to a person, that institution may, within the terms and limits laid down in the legislation it applies, request the institution of any other Member State responsible for paying benefits to the person concerned to deduct the undue amount from arrears or on-going payments owed to the person concerned regardless of the social security branch under which the benefit is paid. The institution of the latter Member State shall deduct the amount concerned subject to the conditions and limits applying to this kind of offsetting procedure in accordance with the legislation it applies in the same way as if it had made the overpayments itself, and shall transfer the amount deducted to the institution that has paid undue benefits.

2. By way of derogation from paragraph 1, if, when awarding or reviewing benefits in respect of invalidity benefits, old-age and survivors' pensions pursuant to Chapter 4 and 5 of Title III of the basic Regulation, the institution of a Member State has paid to a person benefits of undue sum, that institution may request the institution of any other Member State responsible for the payment of corresponding benefits to the person concerned to deduct the amount overpaid from the arrears payable to the person concerned. After the latter institution has informed the institution that has paid an undue sum of these arrears, the institution which has paid the undue sum shall within two months communicate

the amount of the undue sum. If the institution which is due to pay arrears receives that communication within the deadline it shall transfer the amount deducted to the institution which has paid undue sums. If the deadline expires, that institution shall without delay pay out the arrears to the person concerned.

3. If a person has received social welfare assistance in one Member State during a period in which he was entitled to benefits under the legislation of another Member State, the body which provided the assistance may, if it is legally entitled to reclaim the benefits due to the person concerned, request the institution of any other Member State responsible for paying benefits in favour of the person concerned to deduct the amount of assistance paid from the amounts which that Member State pays to the person concerned.

This provision shall apply *mutatis mutandis* to any family member of a person concerned who has received assistance in the territory of a Member State during a period in which the insured person was entitled to benefits under the legislation of another Member State in respect of that family member.

The institution of a Member State which has paid an undue amount of assistance shall send a statement of the amount due to the institution of the other Member State, which shall then deduct the amount, subject to the conditions and limits laid down for this kind of offsetting procedure in accordance with the legislation it applies, and transfer the amount without delay to the institution that has paid the undue amount.

Article 73

Provisionally paid benefits in cash or contributions

1. For the purposes of applying Article 6 of the implementing Regulation, at the latest three months after the applicable legislation has been determined or the institution responsible for paying the benefits has been identified, the institution which provisionally paid the cash benefits shall draw up a statement of the amount provisionally paid and shall send it to the institution identified as being competent.

The institution identified as being competent for paying the benefits shall deduct the amount due in respect of the provisional payment from the arrears of the corresponding benefits it owes to the person concerned and shall without delay transfer the amount deducted to the institution which provisionally paid the cash benefits.

If the amount of provisionally paid benefits exceeds the amount of arrears, or if arrears do not exist, the institution identified as being competent shall deduct this amount from ongoing payments subject to the conditions and limits applying to this kind of offsetting procedure under the legislation it applies, and without delay transfer the amount deducted to the institution which provisionally paid the cash benefits.

2. The institution which has provisionally received contributions from a legal and/or natural person shall not reimburse the amounts in question to the person who paid them until it has ascertained from the institution identified as being competent the sums due to it under Article 6(4) of the implementing Regulation.

Upon request of the institution identified as being competent, which shall be made at the latest three months after the applicable legislation has been determined, the institution that has provisionally received contributions shall transfer them to the institution identified as being competent for that period for the purpose of settling the situation concerning the contributions owed by the legal and/or natural person to it. The contributions transferred shall be retroactively deemed as having been paid to the institution identified as being competent.

If the amount of provisionally paid contributions exceeds the amount the legal and/or natural person owes to the institution identified as being competent, the institution which provisionally received contributions shall reimburse the amount in excess to the legal and/or natural person concerned.

Article 74

Costs related to offsetting

No costs are payable where the debt is recovered via the offsetting procedure provided for in Articles 72 and 73 of the implementing Regulation.

Section 3

Recovery

Article 75

Definitions and common provisions

1. For the purposes of this Section:

- ‘claim’ means all claims relating to contributions or to benefits paid or provided unduly, including interest, fines, administrative penalties and all other charges and costs connected with the claim in accordance with the legislation of the Member State making the claim;
- ‘applicant party’ means, in respect of each Member State, any institution which makes a request for information, notification or recovery concerning a claim as defined above,
- ‘requested party’ means, in respect of each Member State, any institution to which a request for information, notification or recovery can be made,

2. Requests and any related communications between the Member States shall, in general, be addressed via designated institutions.

3. Practical implementation measures, including, among others, those related to Article 4 of the implementing Regulation and to setting a minimum threshold for the amounts for which a request for recovery can be made, shall be taken by the Administrative Commission.

*Article 76***Requests for information**

1. At the request of the applicant party, the requested party shall provide any information which would be useful to the applicant party in the recovery of its claim.

In order to obtain that information, the requested party shall make use of the powers provided for under the laws, regulations or administrative provisions applying to the recovery of similar claims arising in its own Member State.

2. The request for information shall indicate the name, last known address, and any other relevant information relating to the identification of the legal or natural person concerned to whom the information to be provided relates and the nature and amount of the claim in respect of which the request is made.

3. The requested party shall not be obliged to supply information:

- (a) which it would not be able to obtain for the purpose of recovering similar claims arising in its own Member State;
- (b) which would disclose any commercial, industrial or professional secrets; or
- (c) the disclosure of which would be liable to prejudice the security of or be contrary to the public policy of the Member State.

4. The requested party shall inform the applicant party of the grounds for refusing a request for information.

*Article 77***Notification**

1. The requested party shall, at the request of the applicant party, and in accordance with the rules in force for the notification of similar instruments or decisions in its own Member State, notify the addressee of all instruments and decisions, including those of a judicial nature, which come from the Member State of the applicant party and which relate to a claim and/or to its recovery.

2. The request for notification shall indicate the name, address and any other relevant information relating to the identification of the addressee concerned to which the applicant party normally has access, the nature and the subject of the instrument or decision to be notified and, if necessary the name, address and any other relevant information relating to the identification of the debtor and the claim to which the instrument or decision relates, and any other useful information.

3. The requested party shall without delay inform the applicant party of the action taken on its request for notification and, particularly, of the date on which the decision or instrument was forwarded to the addressee.

*Article 78***Request for recovery**

1. The request for recovery of a claim, addressed by the applicant party to the requested party, shall be accompanied by an official or certified copy of the instrument permitting its enforcement, issued in the Member State of the applicant party and, if appropriate, by the original or a certified copy of other documents necessary for recovery.

2. The applicant party may only make a request for recovery if:

- (a) the claim and/or the instrument permitting its enforcement are not contested in its own Member State, except in cases where the second subparagraph of Article 81(2) of the implementing Regulation is applied;
- (b) it has, in its own Member State, applied appropriate recovery procedures available to it on the basis of the instrument referred to in paragraph 1, and the measures taken will not result in the payment in full of the claim;
- (c) the period of limitation according to its own legislation has not expired.

3. The request for recovery shall indicate:

- (a) the name, address and any other relevant information relating to the identification of the natural or legal person concerned and/or to the third party holding his or her assets;
- (b) the name, address and any other relevant information relating to the identification of the applicant party;
- (c) a reference to the instrument permitting its enforcement, issued in the Member State of the applicant party;
- (d) the nature and amount of the claim, including the principal, the interest, fines, administrative penalties and all other charges and costs due indicated in the currencies of the Member States of the applicant and requested parties;
- (e) the date of notification of the instrument to the addressee by the applicant party and/or by the requested party;
- (f) the date from which and the period during which enforcement is possible under the laws in force in the Member State of the applicant party;
- (g) any other relevant information.

4. The request for recovery shall also contain a declaration by the applicant party confirming that the conditions laid down in paragraph 2 have been fulfilled.

5. The applicant party shall forward to the requesting party any relevant information relating to the matter which gave rise to the request for recovery, as soon as this comes to its knowledge.

*Article 79***Instrument permitting enforcement of the recovery**

1. In accordance with Article 84(2) of the basic Regulation, the instrument permitting enforcement of the claim shall be directly recognised and treated automatically as an instrument permitting the enforcement of a claim of the Member State of the requested party.

2. Notwithstanding paragraph 1, the instrument permitting enforcement of the claim may, where appropriate and in accordance with the provisions in force in the Member State of the requested party, be accepted as, recognised as, supplemented with, or replaced by an instrument authorising enforcement in the territory of that Member State.

Within three months of the date of receipt of the request for recovery, Member States shall endeavour to complete the acceptance, recognition, supplementing or replacement, except in cases where the third subparagraph of this paragraph applies. Member States may not refuse to complete these actions where the instrument permitting enforcement is properly drawn up. The requested party shall inform the applicant party of the grounds for exceeding the three-month period.

If any of these actions should give rise to a dispute in connection with the claim and/or the instrument permitting enforcement issued by the applicant party, Article 81 of the implementing Regulation shall apply.

*Article 80***Payment arrangements and deadlines**

1. Claims shall be recovered in the currency of the Member State of the requested party. The entire amount of the claim that is recovered by the requested party shall be remitted by the requested party to the applicant party.

2. The requested party may, where the laws, regulations or administrative provisions in force in its own Member State so permit, and after consulting the applicant party, allow the debtor time to pay or authorise payment by instalment. Any interest charged by the requested party in respect of such extra time to pay shall also be remitted to the applicant party.

From the date on which the instrument permitting enforcement of the recovery of the claim has been directly recognised in accordance with Article 79(1) of the implementing Regulation, or accepted, recognised, supplemented or replaced in accordance with Article 79(2) of the implementing Regulation, interest shall be charged for late payment under the laws, regulations and administrative provisions in force in the Member State of the requested party and shall also be remitted to the applicant party.

*Article 81***Contestation concerning the claim or the instrument permitting enforcement of its recovery and contestation concerning enforcement measures**

1. If, in the course of the recovery procedure, the claim and/or the instrument permitting its enforcement issued in the Member State of the applicant party are contested by an interested party, the action shall be brought by this party before the appropriate authorities of the Member State of the applicant party, in accordance with the laws in force in that Member State. The applicant party shall without delay notify the requested party of this action. The interested party may also inform the requested party of the action.

2. As soon as the requested party has received the notification or information referred to in paragraph 1 either from the applicant party or from the interested party, it shall suspend the enforcement procedure pending the decision of the appropriate authority in the matter, unless the applicant party requests otherwise in accordance with the second subparagraph of this paragraph. Should the requested party deem it necessary, and without prejudice to Article 84 of the implementing Regulation, it may take precautionary measures to guarantee recovery insofar as the laws or regulations in force in its own Member State allow such action for similar claims.

Notwithstanding the first subparagraph, the applicant party may, in accordance with the laws, regulations and administrative practices in force in its own Member State, request the requested party to recover a contested claim, in so far as the relevant laws, regulations and administrative practices in force in the requested party's Member State allow such action. If the result of the contestation is subsequently favourable to the debtor, the applicant party shall be liable for the reimbursement of any sums recovered, together with any compensation due, in accordance with the legislation in force in the requested party's Member State.

3. Where the contestation concerns enforcement measures taken in the Member State of the requested party, the action shall be brought before the appropriate authority of that Member State in accordance with its laws and regulations.

4. Where the appropriate authority before which the action is brought in accordance with paragraph 1 is a judicial or administrative tribunal, the decision of that tribunal, insofar as it is favourable to the applicant party and permits recovery of the claim in the Member State of the applicant party, shall constitute the 'instrument permitting enforcement' within the meaning of Articles 78 and 79 of the implementing Regulation and the recovery of the claim shall proceed on the basis of that decision.

*Article 82***Limits applying to assistance**

1. The requested party shall not be obliged:
 - (a) to grant the assistance provided for in Articles 78 to 81 of the implementing Regulation if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the Member State of the requested party, insofar as the laws, regulations or administrative practices in force in the Member State of the requested party allow such action for similar national claims;
 - (b) to grant the assistance provided for in Articles 76 to 81 of the implementing Regulation, if the initial request under Articles 76 to 78 of the implementing Regulation applies to claims more than five years old, dating from the moment the instrument permitting the recovery was established in accordance with the laws, regulations or administrative practices in force in the Member State of the applicant party at the date of the request. However, if the claim or instrument is contested, the time limit begins from the moment that the Member State of the applicant party establishes that the claim or the enforcement order permitting recovery may no longer be contested.

2. The requested party shall inform the applicant party of the grounds for refusing a request for assistance.

Article 83

Periods of limitation

1. Questions concerning periods of limitation shall be governed as follows:

- (a) by the laws in force in the Member State of the applicant party, insofar as they concern the claim and/or the instrument permitting its enforcement; and
- (b) by the laws in force in the Member State of the requested party, insofar as they concern enforcement measures in the requested Member State.

Periods of limitation according to the laws in force in the Member State of the requested party shall start from the date of direct recognition or from the date of acceptance, recognition, supplementing or replacement in accordance with Article 79 of the implementing Regulation.

2. Steps taken in the recovery of claims by the requested party in pursuance of a request for assistance, which, if they had been carried out by the applicant party, would have had the effect of suspending or interrupting the period of limitation according to the laws in force in the Member State of the applicant party, shall be deemed to have been taken in the latter State, in so far as that effect is concerned.

Article 84

Precautionary measures

Upon reasoned request by the applicant party, the requested party shall take precautionary measures to ensure recovery of a claim in so far as the laws and regulations in force in the Member State of the requested party so permit.

For the purposes of implementing the first paragraph, the provisions and procedures laid down in Articles 78, 79, 81 and 82 of the implementing Regulation shall apply *mutatis mutandis*.

TITLE V

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

Article 87

Medical examination and administrative checks

1. Without prejudice to other provisions, where a recipient or a claimant of benefits, or a member of his family, is staying or residing within the territory of a Member State other than that in which the debtor institution is located, the medical examination shall be carried out, at the request of that institution, by the institution of the beneficiary's place of stay or residence in accordance with the procedures laid down by the legislation applied by that institution.

Article 85

Costs related to recovery

1. The requested party shall recover from the natural or legal person concerned and retain any costs linked to recovery which it incurs, in accordance with the laws and regulations of the Member State of the requested party that apply to similar claims.

2. Mutual assistance afforded under this Section shall, as a rule, be free of charge. However, where recovery poses a specific problem or concerns a very large amount in costs, the applicant and the requested parties may agree on reimbursement arrangements specific to the cases in question.

3. The Member State of the applicant party shall remain liable to the Member State of the requested party for any costs and any losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the validity of the instrument issued by the applicant party is concerned.

Article 86

Review clause

1. No later than the fourth full calendar year after the entry into force of the implementing Regulation, the Administrative Commission shall present a comparative report on the time limits set out in Article 67(2), (5) and (6) of the implementing Regulation.

On the basis of this report, the European Commission may, as appropriate, submit proposals to review these time limits with the aim of reducing them in a significant way.

2. No later than the date referred to in paragraph 1, the Administrative Commission shall also assess the rules for conversion of periods set out in Article 13 with a view to simplifying those rules, if possible.

3. No later than 1 May 2015, the Administrative Commission shall present a report specifically assessing the application of Chapters I and III of Title IV of the implementing Regulation, in particular with regard to the procedures and time limits referred to in Article 67(2), (5) and (6) of the implementing Regulation and to the recovery procedures referred to in Articles 75 to 85 of the implementing Regulation.

In the light of this report, the European Commission may, if necessary, submit appropriate proposals to make these procedures more efficient and balanced.

The debtor institution shall inform the institution of the place of stay or residence of any special requirements, if necessary, to be followed and points to be covered by the medical examination.

2. The institution of the place of stay or residence shall forward a report to the debtor institution that requested the medical examination. This institution shall be bound by the findings of the institution of the place of stay or residence.

The debtor institution shall reserve the right to have the beneficiary examined by a doctor of its choice. However, the beneficiary may be asked to return to the Member State of the debtor institution only if he or she is able to make the journey without prejudice to his health and the cost of travel and accommodation is paid for by the debtor institution.

3. Where a recipient or a claimant of benefits, or a member of his family, is staying or residing in the territory of a Member State other than that in which the debtor institution is located, the administrative check shall, at the request of the debtor institution, be performed by the institution of the beneficiary's place of stay or residence.

Paragraph 2 shall also apply in this case.

4. Paragraphs 2 and 3 shall also apply in determining or checking the state of dependence of a recipient or a claimant of the long-term care benefits mentioned in Article 34 of the basic Regulation.

5. The competent authorities or competent institutions of two or more Member States may agree specific provisions and procedures to improve fully or partly the labour-market readiness of claimants and recipients and their participation in any schemes or programmes available in the Member State of stay or residence for that purpose.

6. As an exception to the principle of free-of-charge mutual administrative cooperation in Article 76(2) of the basic Regulation, the effective amount of the expenses of the checks referred to in paragraphs 1 to 5 shall be refunded to the institution which was requested to carry them out by the debtor institution which requested them.

Article 88

Notifications

1. The Member States shall notify the European Commission of the details of the bodies defined in Article 1(m), (q) and (r) of the basic Regulation and Article 1(2)(a) and (b) of the implementing Regulation, and of the institutions designated in accordance with the implementing Regulation.

2. The bodies specified in paragraph 1 shall be provided with an electronic identity in the form of an identification code and electronic address.

3. The Administrative Commission shall establish the structure, content and detailed arrangements, including the common format and model, for notification of the details specified in paragraph 1.

4. Annex 4 to the implementing Regulation gives details of the public database containing the information specified in paragraph 1. The database shall be established and managed by the European Commission. The Member States shall, however, be responsible for the input of their own national contact information into this database. Moreover, the Member States shall ensure the accuracy of the input of the national contact information required under paragraph 1.

5. The Member States shall be responsible for keeping the information specified in paragraph 1 up to date.

Article 89

Information

1. The Administrative Commission shall prepare the information needed to ensure that the parties concerned are aware of their rights and the administrative formalities required in order to assert them. This information shall, where possible, be disseminated electronically via publication online on sites accessible to the public. The Administrative Commission shall ensure that the information is regularly updated and monitor the quality of services provided to customers.

2. The Advisory Committee referred to in Article 75 of the basic Regulation may issue opinions and recommendations on improving the information and its dissemination.

3. The competent authorities shall ensure that their institutions are aware of and apply all the Community provisions, legislative or otherwise, including the decisions of the Administrative Commission, in the areas covered by and within the terms of the basic Regulation and the implementing Regulation.

Article 90

Currency conversion

For the purposes of applying the basic Regulation and the implementing Regulation, the exchange rate between two currencies shall be the reference rate published by the European Central Bank. The date to be taken into account for determining the exchange rate shall be fixed by the Administrative Commission.

Article 91

Statistics

The competent authorities shall compile statistics on the application of the basic Regulation and the implementing Regulation and forward them to the secretariat of the Administrative Commission. Those data shall be collected and organised according to the plan and method defined by the Administrative Commission. The European Commission shall be responsible for disseminating the information.

*Article 92***Amendment of the Annexes**

Annexes 1, 2, 3, 4 and 5 to the implementing Regulation and Annexes VI, VII, VIII and IX to the basic Regulation may be amended by Commission Regulation at the request of the Administrative Commission.

*Article 93***Transitional provisions**

Article 87 of the basic Regulation shall apply to the situations covered by the implementing Regulation.

*Article 94***Transitional provisions relating to pensions**

1. Where the contingency arises before the date of entry into force of the implementing Regulation in the territory of the Member State concerned and the claim for pension has not been awarded before that date, such claim shall give rise to a double award, in as much as benefits must be granted, pursuant to such contingency, for a period prior to that date:

- (a) for the period prior to the date of entry into force of the implementing Regulation in the territory of the Member State concerned, in accordance with Regulation (EEC) No 1408/71, or with agreements in force between the Member States concerned;
- (b) for the period commencing on the date of entry into force of the implementing Regulation in the territory of the Member State concerned, in accordance with the basic Regulation.

However, if the amount calculated pursuant to the provisions referred to under point (a) is greater than that calculated pursuant to the provisions referred to under point (b), the person concerned shall continue to be entitled to the amount calculated pursuant to the provisions referred to under point (a).

2. A claim for invalidity, old age or survivors' benefits submitted to an institution of a Member State from the date of entry into force of the implementing Regulation in the territory of the Member State concerned shall automatically necessitate the reassessment of the benefits which have been awarded for the same contingency prior to that date by the institution or institutions of one or more Member States, in accordance with the basic Regulation; such reassessment may not give rise to any reduction in the amount of the benefit awarded.

*Article 95***Transitional period for electronic data exchanges**

1. Each Member State may benefit from a transitional period for exchanging data by electronic means as provided for by Article 4(2) of the implementing Regulation.

These transitional periods shall not exceed 24 months from the date of entry into force of the implementing Regulation.

However, if the delivery of the necessary Community infrastructure (Electronic Exchange of Social Security information — EESSI) is significantly delayed with regard to the entry into force of the implementing Regulation, the Administrative Commission may agree on any appropriate extension of these periods.

2. The practical arrangements for any necessary transitional periods referred to in paragraph 1 shall be laid down by the Administrative Commission with a view to ensuring the necessary data exchange for the application of the basic Regulation and the implementing Regulation.

*Article 96***Repeal**

1. Regulation (EEC) No 574/72 is repealed with effect from 1 May 2010.

However, Regulation (EEC) No 574/72 shall remain in force and 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 grounds of their nationality ⁽¹⁾, until such time as that Regulation is repealed or amended;
- (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 ⁽²⁾, until such time as that Regulation is repealed or amended;
- (c) the Agreement on the European Economic Area ⁽³⁾, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons ⁽⁴⁾ and other agreements containing a reference to Regulation (EEC) No 574/72, until such time as those agreements are amended on the basis of the implementing Regulation.

⁽¹⁾ OJ L 124, 20.5.2003, p. 1.

⁽²⁾ OJ L 160, 20.6.1985, p. 7.

⁽³⁾ OJ L 1, 3.1.1994, p. 1.

⁽⁴⁾ OJ L 114, 30.4.2002, p. 6.

2. 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 ⁽¹⁾, and more generally in all other Community acts, the references to Regulation (EEC) No 574/72 shall be understood as referring to the implementing Regulation.

Article 97

Publication and entry into force

This Regulation shall be published in the *Official Journal of the European Union*. It shall enter into force on 1 May 2010.

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

Done at Strasbourg, 16 September 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
C. MALMSTRÖM

⁽¹⁾ OJ L 209, 25.7.1998, p. 46.

ANNEX 1

Implementing provisions for bilateral agreements remaining in force and new bilateral implementing agreements

(referred to in Article 8(1) and Article 9(2) of the implementing Regulation)

BELGIUM — DENMARK

The Exchange of Letters of 8 May 2006 and 21 June 2006 on the Agreement of reimbursement with the actual amount of the benefit provided to members of the family of an employed or self-employed person insured in Belgium, where the family member resides in Denmark and to pensioners and/or members of their family insured in Belgium but residing in Denmark

BELGIUM — GERMANY

The Agreement of 29 January 1969 on the collection and recovery of social security contributions

BELGIUM — IRELAND

The Exchange of Letters of 19 May and 28 July 1981 concerning Articles 36(3) and 70(3) of Regulation (EEC) No 1408/71 (reciprocal waiving of reimbursement of the costs of benefits in kind and of unemployment benefits under Chapters 1 and 6 of Title III of Regulation (EEC) No 1408/71) and Article 105(2) of Regulation (EEC) No 574/72 (reciprocal waiving of reimbursement of the costs of administrative checks and medical examinations).

BELGIUM — SPAIN

The Agreement of 25 May 1999 on the reimbursement of benefits in kind according to the provisions of Regulations (EEC) No 1408/71 and No 574/72

BELGIUM — FRANCE

- (a) The Agreement of 4 July 1984 relating to medical examinations of frontier workers resident in one country and working in another
- (b) The Agreement of 14 May 1976 on the waiving of reimbursement of the costs of administrative checks and medical examinations, adopted pursuant to Article 105(2) of Regulation (EEC) No 574/72
- (c) The Agreement of 3 October 1977 implementing Article 92 of Regulation (EEC) No 1408/71 (recovery of social security contributions)
- (d) The Agreement of 29 June 1979 concerning the reciprocal waiving of reimbursement provided for in Article 70(3) of Regulation (EEC) No 1408/71 (costs of unemployment benefit)
- (e) The Administrative Arrangement of 6 March 1979 on the procedures for the implementation of the Additional Convention of 12 October 1978 on social security between Belgium and France in respect of its provisions relating to self-employed persons
- (f) The Exchange of Letters of 21 November 1994 and 8 February 1995 concerning the procedures for the settlement of reciprocal claims pursuant to Articles 93, 94, 95 and 96 of Regulation (EEC) No 574/72

BELGIUM — ITALY

- (a) The Agreement of 12 January 1974 implementing Article 105(2) of Regulation (EEC) No 574/72
- (b) The Agreement of 31 October 1979 implementing Article 18(9) of Regulation (EEC) No 574/72
- (c) The Exchange of Letters of 10 December 1991 and 10 February 1992 concerning the reimbursement of reciprocal claims under Article 93 of Regulation (EEC) No 574/72
- (d) The Agreement of 21.11.2003 on the terms for settling reciprocal claims under Articles 94 and 95 of Council Regulation (EEC) No 574/72

BELGIUM — LUXEMBOURG

- (a) The Agreement of 28 January 1961 on the recovery of social security contributions
- (b) The Agreement of 16 April 1976 on the waiving of reimbursement of the costs of administrative checks and medical examinations, as provided for in Article 105(2) of Regulation (EEC) No 574/72

BELGIUM — NETHERLANDS

- (a) The Agreement of 21 March 1968 on the collection and recovery of social security contributions, together with the Administrative Arrangement of 25 November 1970 implementing that Agreement
- (b) The Agreement of 13 March 2006 on health care insurance
- (c) The Agreement of 12 August 1982 on sickness, maternity and invalidity insurance

BELGIUM — UNITED KINGDOM

- (a) The Exchange of Letters of 4 May and 14 June 1976 regarding Article 105(2) of Regulation (EEC) No 574/72 (waiving of reimbursement of the costs of administrative checks and medical examinations)
- (b) The Exchange of Letters of 18 January and 14 March 1977 regarding Article 36(3) of Regulation (EEC) No 1408/71 (arrangement for reimbursement or waiving of reimbursement of the costs of benefits in kind provided under the terms of Chapter 1 of Title III of Regulation (EEC) No 1408/71) as amended by the Exchange of Letters of 4 May and 23 July 1982 (agreement for reimbursement of costs incurred under Article 22(1)(a) of Regulation (EEC) No 1408/71)

BULGARIA — CZECH REPUBLIC

Article 29(1) and (3) of the Agreement of 25 November 1998 and Article 5(4) of the Administrative Arrangement of 30 November 1999 on the waiving of reimbursement of the costs of administrative checks and medical examinations

BULGARIA — GERMANY

Articles 8 to 9 of the Administrative Agreement on implementing the Convention on social security of 17 December 1997 in the pension field

CZECH REPUBLIC — SLOVAKIA

Articles 15 and 16 of the Administrative Arrangement of 8 January 1993 concerning the specification of a seat of the employer and the place of residence for the purposes of application of Article 20 of the Convention of 29 October 1992 on social security

DENMARK — IRELAND

The Exchange of Letters of 22 December 1980 and 11 February 1981 on the reciprocal waiving of reimbursement of the costs of benefits in kind granted under insurance for sickness, maternity, accidents at work and occupational diseases, and of unemployment benefits and of the costs of administrative checks and medical examinations (Articles 36(3), 63(3) of Regulation (EEC) No 1408/71 and Article 105(2) of Regulation (EEC) No 574/72)

DENMARK — GREECE

Agreement of 8 May 1986 on the partial reciprocal waiving of reimbursement in respect of benefits in kind for sickness, maternity, accidents at work and occupational diseases and waiving of reimbursement in respect of administrative checks and medical examinations

DENMARK — SPAIN

Agreement of 11 December 2006 of advance payment, time-limits and reimbursement with the actual amount of the benefit provided to members of the family of an employed or self-employed person insured in Spain, where the family member resides in Denmark and to pensioners and/or members of their family insured in Spain but residing in Denmark

DENMARK — FRANCE

The Arrangement of 29 June 1979 and the additional Arrangement of 2 June 1993 concerning the partial waiving of reimbursement pursuant to Article 36(3) and Article 63(3) of Regulation (EEC) No 1408/71 and the reciprocal waiving of reimbursement pursuant to Article 105(2) of Regulation (EEC) No 574/72 (partial waiving of reimbursement of the cost of benefits in kind in respect of sickness, maternity, accidents at work and occupational diseases, and waiving of reimbursement of the cost of administrative checks and medical examinations)

DENMARK — ITALY

The Agreement of 18 November 1998 on the reimbursement of costs of benefits in kind under insurance for sickness, maternity, accidents at work and occupational diseases, costs of administrative checks and medical examinations

DENMARK — LUXEMBOURG

The Agreement of 19 June 1978 concerning the reciprocal waiving of reimbursement provided for in Article 36(3), 63(3) and 70(3) of Regulation (EEC) No 1408/71 and Article 105(2) of Regulation (EEC) No 574/72 costs of benefits in kind for sickness, maternity, accidents at work and occupational diseases, costs of unemployment benefit and costs of administrative checks and medical examinations)

DENMARK — NETHERLANDS

The Exchange of Letters of 30 March and 25 April 1979 as amended by agreement of 12 December 2006 on reimbursement of costs of benefits in kind for sickness, maternity, accidents at work and occupational diseases

DENMARK — PORTUGAL

The Agreement of 17 April 1998 on the partial waiving of reimbursement of costs of benefits in kind under insurance for sickness, maternity, accidents at work and occupational diseases and administrative checks and medical examinations

DENMARK — FINLAND

Article 15 of the Nordic Convention on Social Security of 18 August 2003: Agreement on the reciprocal waiver of refund pursuant to Articles 36, 63 and 70 of Regulation (EEC) No 1408/71 (cost of benefits in kind in respect of sickness and maternity, accidents at work and occupational diseases, and unemployment benefits) and Article 105 of Regulation (EEC) No 574/72 (costs of administrative checks and medical examinations)

DENMARK — SWEDEN

Article 15 of the Nordic Convention on Social Security of 18 August 2003: Agreement on the reciprocal waiver of refund pursuant to Articles 36, 63 and 70 of Regulation (EEC) No 1408/71 (cost of benefits in kind in respect of sickness and maternity, accidents at work and occupational diseases, and unemployment benefits) and Article 105 of Regulation (EEC) No 574/72 (costs of administrative checks and medical examinations)

DENMARK — UNITED KINGDOM

The Exchange of Letters of 30 March and 19 April 1977 as modified by an Exchange of Letters of 8 November 1989 and of 10 January 1990 on agreement of waiving of reimbursement of the costs of benefits in kind and administrative checks and medical examinations

GERMANY — FRANCE

The Agreement of 26 May 1981 implementing Article 92 of Regulation (EEC) No 1408/71 (collection and recovery of social security contributions)

GERMANY — ITALY

The Agreement of 3 April 2000 on the collection and recovery of social security contributions

GERMANY — LUXEMBOURG

- (a) The Agreement of 14 October 1975 on the waiving of reimbursement of the costs of administrative checks and medical examinations, adopted pursuant to Article 105(2) of Regulation (EEC) No 574/72
- (b) The Agreement of 14 October 1975 on the collection and recovery of social security contributions
- (c) The Agreement of 25 January 1990 relating to the application of Articles 20 and 22(1)(b) and (c) of Regulation (EEC) No 1408/71

GERMANY — NETHERLANDS

- (a) Article 9 of Administrative Arrangements of 18 April 2001 on the Convention of 18 April 2001 (payment of pensions)
- (b) The Agreement of 21 January 1969 on the recovery of social insurance contributions

GERMANY — AUSTRIA

Section II, Number 1, and section III of the Agreement of 2 August 1979 on the implementation of the Convention on unemployment insurance of 19 July 1978 shall continue to apply to persons who have exercised an activity as a frontier worker on or before 1 January 2005 who become unemployed before 1 January 2011

GERMANY — POLAND

The Agreement of 11 January 1977 on the implementation of the Convention of 9 October 1975 on old-age pensions and benefits for accidents at work

ESTONIA — UNITED KINGDOM

The Arrangement finalised on 29 March 2006 between the Competent Authorities of the Republic of Estonia and of the United Kingdom under Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 establishing other methods of reimbursement of the costs of benefits in kind provided under this Regulation by both countries with effect from 1 May 2004

IRELAND — FRANCE

The Exchange of Letters of 30 July 1980 and 26 September 1980 concerning Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 (reciprocal waiving of reimbursement of the costs of benefits in kind) and Article 105(2) of Regulation (EEC) No 574/72 (reciprocal waiving of reimbursement of the costs of administrative checks and medical examinations)

IRELAND — LUXEMBOURG

The Exchange of Letters of 26 September 1975 and 5 August 1976 concerning Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 and Article 105(2) of Regulation (EEC) No 574/72 (waiving of reimbursement of the costs of benefits in kind provided pursuant to Chapter 1 or 4 of Title III of Regulation (EEC) No 1408/71, and of the costs of administrative checks and medical examinations referred to in Article 105 of Regulation (EEC) No 574/72)

IRELAND — NETHERLANDS

The Exchange of Letters of 22 April and 27 July 1987 concerning Article 70(3) of Regulation (EEC) No 1408/71 (waiving of costs of reimbursement in respect of benefits awarded in application of Article 69 of Regulation (EEC) No 1408/71) and Article 105(2) of Regulation (EEC) No 574/72 (waiving of the reimbursement of the costs of administrative checks and medical examinations referred to in Article 105 of Regulation (EEC) No 574/72)

IRELAND — SWEDEN

The Agreement of 8 November 2000 on the waiving of reimbursement of the costs of benefits in kind of sickness, maternity, accidents at work and occupational diseases, and the costs of administrative and medical controls

IRELAND — UNITED KINGDOM

The Exchange of Letters of 9 July 1975 regarding Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 (arrangement for reimbursement or waiving of reimbursement of the costs of benefits in kind provided under the terms of Chapter 1 or 4 of Title III of Regulation (EEC) No 1408/71) and Article 105(2) of Regulation (EEC) No 574/72 (waiving of reimbursement of the costs of administrative checks and medical examinations)

GREECE — NETHERLANDS

The Exchange of Letters of 8 September 1992 and 30 June 1993 concerning the methods of reimbursement between institutions

SPAIN — FRANCE

The Agreement of 17 May 2005 establishing the specific arrangements for the management and settlement of reciprocal claims in respect of health care benefits pursuant to Regulations (EEC) No 1408/71 and (EEC) No 574/72

SPAIN — ITALY

The Agreement on a new procedure for the improvement and simplification of reimbursements of costs for health care of 21 November 1997 concerning Article 36(3) of Regulation (EEC) No 1408/71 (reimbursement of sickness and maternity benefits in kind) and Articles 93, 94, 95, 100 and 102(5) of Regulation (EEC) No 574/72 (procedures for the refund and sickness and maternity insurance benefits and late claims)

SPAIN — NETHERLANDS

The Agreement of 21 February 2000 between the Netherlands and Spain facilitating the settlement of reciprocal claims relating to sickness and maternity insurance benefits when implementing the provisions of Regulations (EEC) No 1408/71 and (EEC) No 574/72

SPAIN — PORTUGAL

- (a) Articles 42, 43 and 44 of the Administrative Arrangement of 22 May 1970 (export of unemployment benefits). This entry will remain valid for two years from the date of application of Regulation (EC) No 883/2004
- (b) The Agreement of 2 October 2002 laying down detailed arrangements for the management and settlement of reciprocal claims for health care with a view to facilitating and accelerating the settlement of these claims

SPAIN — SWEDEN

The Agreement of 1 December 2004 on the reimbursement of the costs of benefits in kind provided under Regulations (EEC) No 1408/71 and (EEC) No 574/72

SPAIN — UNITED KINGDOM

The Agreement of 18 June 1999 on the reimbursement of costs for benefits in kind granted pursuant to the provisions of Regulations (EEC) No 1408/71 and (EEC) No 574/72

FRANCE — ITALY

- (a) The Exchange of Letters of 14 May and 2 August 1991 concerning the terms for settling reciprocal claims under Article 93 of Regulation (EEC) No 574/72
- (b) The supplementary Exchange of Letters of 22 March and 15 April 1994 concerning the procedures for the settlement of reciprocal debts under the terms of Articles 93, 94, 95 and 96 of Regulation (EEC) No 574/72
- (c) The Exchange of Letters of 2 April 1997 and 20 October 1998 modifying the Exchange of Letters mentioned under points (a) and (b) concerning the procedures for the settlement of reciprocal debts under the terms of Articles 93, 94, 95 and 96 of Regulation (EEC) No 574/72
- (d) The Agreement of 28 June 2000 waiving reimbursement of the costs referred to in Article 105(1) of Regulation (EEC) No 574/72 for administrative checks and medical examinations requested under Article 51 of the abovementioned Regulation

FRANCE — LUXEMBOURG

- (a) The Agreement of 2 July 1976 on the waiving of reimbursement, provided for in Article 36(3) of Council Regulation (EEC) No 1408/71 of 14 June 1971, of the costs of sickness or maternity insurance benefits in kind provided to members of a worker's family who do not reside in the same country as the worker
- (b) The Agreement of 2 July 1976 on the waiving of reimbursement, provided for in Article 36(3) of Council Regulation (EEC) No 1408/71 of 14 June 1971, of the costs of sickness or maternity insurance benefits in kind provided to former frontier workers, the members of their families or their survivors
- (c) The Agreement of 2 July 1976 on the waiving of reimbursement of the costs of administrative checks and medical examinations provided for in Article 105(2) of Council Regulation (EEC) No 574/72 of 21 March 1972
- (d) The Exchange of Letters of 17 July and 20 September 1995 concerning the terms for settling reciprocal claims under Articles 93, 95 and 96 of Regulation (EEC) No 574/72

FRANCE — NETHERLANDS

- (a) The Agreement of 28 April 1997 on the waiving of reimbursement of the costs of administrative checks and medical examinations pursuant to Article 105 of Regulation (EEC) No 574/72
- (b) The Agreement of 29 September 1998 laying down the special conditions for determining the amounts to be reimbursed for benefits in kind under the terms of Regulations (EEC) No 1408/71 and (EEC) No 574/72
- (c) The Agreement of 3 February 1999 laying down the special conditions for administration and settling of reciprocal debts for sickness benefits under the terms of Regulations (EEC) No 1408/71 and (EEC) No 574/72

FRANCE — PORTUGAL

The Agreement of 28 April 1999 laying down special detailed rules governing the administration and settlement of reciprocal claims for medical treatment pursuant to Regulations (EEC) No 1408/71 and EEC No 574/72

FRANCE — UNITED KINGDOM

- (a) The Exchange of Letters of 25 March and 28 April 1997 regarding Article 105(2) of Regulation (EEC) No 574/72 (waiving of reimbursement of the costs of administrative checks and medical examinations)
- (b) The Agreement of 8 December 1998 on the specific methods of determining the amounts to be reimbursed for benefits in kind pursuant to Regulations (EEC) No 1408/71 and (EEC) No 574/72

ITALY — LUXEMBOURG

Article 4(5) and (6) of the Administrative Arrangement of 19 January 1955 on the implementing provisions of the General Convention on Social Security (sickness insurance for agricultural workers)

ITALY — NETHERLANDS

The Agreement of 24 December 1996/27 February 1997 on Article 36(3) and Article 63(3) of Regulation (EEC) No 1408/71

ITALY — UNITED KINGDOM

The Arrangement signed on 15 December 2005 between the Competent Authorities of the Italian Republic and of the United Kingdom under Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 establishing other methods of reimbursement of the costs of benefits in kind provided under this Regulation by both countries with effect from 1 January 2005

LUXEMBOURG — NETHERLANDS

The Agreement of 1 November 1976 on the waiving of reimbursement of the costs of administrative checks and medical examinations adopted pursuant to Article 105(2) of Regulation (EEC) No 574/72

LUXEMBOURG — SWEDEN

The Arrangement of 27 November 1996 on the reimbursement of expenditure in the field of social security

LUXEMBOURG — UNITED KINGDOM

The Exchange of Letters of 18 December 1975 and 20 January 1976 regarding Article 105(2) of Regulation (EEC) No 574/72 (waiving of reimbursement of the costs entailed in administrative checks and medical examinations referred to in Article 105 of Regulation (EEC) No 574/72)

HUNGARY — UNITED KINGDOM

The Arrangement finalised on 1 November 2005 between the Competent Authorities of the Republic of Hungary and of the United Kingdom under Articles 35(3) and 41(2) of Regulation (EEC) No 883/2004 establishing other methods of reimbursement of the costs of benefits in kind provided under that Regulation by both countries with effect from 1 May 2004

MALTA — UNITED KINGDOM

The Arrangement finalised on 17 January 2007 between the Competent Authorities of Malta and of the United Kingdom under Articles 35(3) and 41(2) of Regulation (EEC) No 883/2004 establishing other methods of reimbursement of the costs of benefits in kind provided under that Regulation by both countries with effect from 1 May 2004

NETHERLANDS — PORTUGAL

The Agreement of 11 December 1987 concerning the reimbursement of benefits in kind in the case of sickness and maternity

NETHERLANDS — UNITED KINGDOM

- (a) The second sentence of Article 3 of the Administrative Arrangement of 12 June 1956 on the implementation of the Convention of 11 August 1954
- (b) The Exchange of Letters of 25 April and 26 May 1986 concerning Article 36(3) of Regulation (EEC) No 1408/71 (reimbursement or waiver of reimbursement of expenditure for benefits in kind), as amended

PORTUGAL — UNITED KINGDOM

The Arrangement of 8 June 2004 establishing other methods of reimbursement of the costs of benefits in kind provided by both countries with effect from 1 January 2003

FINLAND — SWEDEN

Article 15 of the Nordic Convention on Social Security of 18 August 2003: Agreement on the reciprocal waiver of refund pursuant to Articles 36, 63 and 70 of Regulation (EEC) No 1408/71 (cost of benefits in kind in respect of sickness and maternity, accidents at work and occupational diseases, and unemployment benefits) and Article 105 of Regulation (EEC) No 574/72 (costs of administrative checks and medical examinations)

FINLAND — UNITED KINGDOM

The Exchange of Letters 1 and 20 June 1995 concerning Articles 36(3) and 63(3) of Regulation (EEC) No 1408/71 (reimbursement or waiving of reimbursement of the cost of benefits in kind) and Article 105(2) of Regulation (EEC) 574/72 (waiving of reimbursement of the cost of administrative checks and medical examinations)

SWEDEN — UNITED KINGDOM

The Arrangement of 15 April 1997 concerning Article 36(3) and Article 63(3) of Regulation (EEC) No 1408/71 (reimbursement or waiving of reimbursement of the cost of benefits in kind) and Article 105(2) of Regulation (EEC) No 574/72 (waiving of refunds of the costs of administrative checks and medical examinations)

ANNEX 2

Special schemes for civil servants

(referred to in Articles 31 and 41 of the implementing Regulation)

- A. Special schemes for civil servants which are not covered by Title III, Chapter 1 of Regulation (EC) No 883/2004 concerning benefits in kind

Germany

Special sickness scheme for civil servants

- B. Special schemes for civil servants which are not covered by Title III, Chapter 1 of Regulation (EC) No 883/2004, with the exception of Article 19, paragraph 1 of Article 27 and Article 35, concerning benefits in kind

Spain

Special scheme of social security for civil servants

Special scheme of social security for the armed forces

Special scheme of social security for the court officials and administrative staff

- C. Special schemes for civil servants which are not covered by Title III, Chapter 2 of Regulation (EC) No 883/2004 concerning benefits in kind

Germany

Special accident scheme for civil servants

ANNEX 3

Member States claiming the reimbursement of the cost of benefits in kind on the basis of fixed amounts

(referred to in Article 63(1) of the implementing Regulation)

IRELAND

SPAIN

ITALY

MALTA

THE NETHERLANDS

PORTUGAL

FINLAND

SWEDEN

UNITED KINGDOM

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ANNEX 4

Details of the database referred to in Article 88(4) of the implementing Regulation**1. *Content of the database***

An electronic directory (URL) of the bodies concerned shall indicate:

- (a) the names of the bodies in the official language(s) of the Member State as well as in English
- (b) the identification code and the EESSI electronic addressing
- (c) their function in respect of the definitions in Article 1(m), (q) and (r) of the basic Regulation and Article 1(a) and (b) of the implementing Regulation
- (d) their competence as regards the different risks, types of benefits, schemes and geographical coverage
- (e) which part of the basic Regulation the bodies are applying
- (f) the following contact details: postal address, telephone, telefax, e-mail address and the relevant URL address
- (g) any other information necessary for the application of the basic Regulation or the implementing Regulation.

2. *Administration of the database*

- (a) The electronic directory is hosted in EESSI at the level of the European Commission.
- (b) Member States are responsible for collecting and checking the necessary information of bodies and for the timely submission to the European Commission of any entry or change of the entries falling under their responsibility.

3. *Access*

Information used for operational and administrative purposes is not accessible to the public.

4. *Security*

All modifications to the database (insert, update, delete) shall be logged. Prior to accessing the Directory for the purposes of modifying entries, users shall be identified and authenticated. Prior to any attempt of a modification of an entry, the user's authorisation to perform this action will be checked. Any unauthorised action shall be rejected and logged.

5. *Language Regime*

The general language regime of the database is English. The name of bodies and their contact details should also be inserted in the official language(s) of the Member State.

ANNEX 5

Member States determining, on a reciprocal basis, the maximum amount of reimbursement referred to in the third sentence of Article 65(6) of the basic Regulation, on the basis of the average amount of unemployment benefits provided under their legislations in the preceding calendar year

(referred to in Article 70 of the implementing Regulation)

BELGIUM

CZECH REPUBLIC

GERMANY

AUSTRIA

SLOVAKIA

FINLAND

REGULATION (EC) No 988/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 16 September 2009****amending Regulation (EC) No 883/2004 on the coordination of social security systems,
and determining the content of its Annexes****(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,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ⁽³⁾ provides for the content of Annexes II, X and XI to that Regulation to be determined before its date of application.
- (2) Annexes I, III, IV, VI, VII, VIII and IX to Regulation (EC) No 883/2004 should be adapted in order to take into account both the requirements of the Member States which have acceded to the European Union since that Regulation was adopted and recent developments in other Member States.
- (3) Articles 56(1) and 83 of Regulation (EC) No 883/2004 provide for special provisions for the implementation of the legislation of certain Member States to be set out in Annex XI to that Regulation. Annex XI is intended to take account of the particularities of the various social security systems of Member States in order to facilitate the application of the rules on coordination. A number of Member States have asked for entries concerning the application of their social security legislation to be included in this Annex and have provided the Commission with legal and practical explanations of their legislation and systems.
- (4) In accordance with the need for rationalisation and simplification, a common approach is needed in order to ensure that entries in respect of different Member States which are of a similar nature or pursue the same objective are in principle dealt with in a similar manner.

(5) As the aim of Regulation (EC) No 883/2004 is to coordinate social security legislation for which Member States are exclusively responsible, entries which are not compatible with its purpose or objectives, and entries seeking solely to clarify the interpretation of national legislation, should not be included in that Regulation.

(6) Some requests raised issues that were common to several Member States: it is therefore appropriate to deal with those issues at a more general level, either by clarification in the body of Regulation (EC) No 883/2004 or in another of its Annexes, which should therefore be amended accordingly, or through a provision in the implementing Regulation referred to in Article 89 of Regulation (EC) No 883/2004, rather than by inserting similar entries in Annex XI for several Member States.

(7) Article 28 of Regulation (EC) No 883/2004 should be amended in order to clarify and extend its scope and to ensure that the members of the family of former frontier workers may also benefit from the possibility of continuing medical treatment in the former country of employment of the insured person after his/her retirement, unless the Member State where the frontier worker last pursued his/her last activity is listed in Annex III.

(8) It is appropriate to assess the significance, frequency, scale and costs relating to the application of the restriction of rights to benefits in kind for members of the family of frontier workers under Annex III to Regulation (EC) No 883/2004 for those Member States still listed in that Annex 4 years after the date of application of that Regulation.

(9) It is also appropriate to deal with certain specific issues in other Annexes to Regulation (EC) No 883/2004, according to their purpose and content, rather than in Annex XI thereto, in order to ensure consistency in the Annexes to that Regulation.

(10) Some Member States' entries in Annex VI to Regulation (EEC) No 1408/71 of the Council ⁽⁴⁾ are now covered by certain general provisions in Regulation (EC) No 883/2004. Consequently, a number of entries in Annex VI to Regulation (EEC) No 1408/71 have become superfluous.

⁽¹⁾ OJ C 161, 13.7.2007, p. 61.

⁽²⁾ Opinion of the European Parliament of 9 July 2008 (not yet published in the Official Journal), Council Common Position of 17 December 2008 (OJ C 33 E, 10.2.2009, p. 1) and Position of the European Parliament of 22 April 2009. Council Decision of 27 July 2009.

⁽³⁾ OJ L 166, 30.4.2004, p. 1.

⁽⁴⁾ OJ L 149, 5.7.1971, p. 2.

- (11) In order to facilitate the use of Regulation (EC) No 883/2004 by citizens when asking for information or making claims to the institutions of the Member States, references to the legislation of the Member States concerned should also be made in the original language wherever necessary in order to avoid any possible misunderstanding.
- (12) Regulation (EC) No 883/2004 should therefore be amended accordingly.
- (13) Regulation (EC) No 883/2004 provides that it is to apply from the date of entry into force of the implementing Regulation. This Regulation should therefore apply from the same date,
- (ii) for the purposes of Title III, Chapter 2 (accidents at work and occupational diseases), all benefits in kind relating to accidents at work and occupational diseases as defined in point (i) above and provided for under the Member States' accidents at work and occupational diseases schemes.;
4. Article 3(5) shall be replaced by the following:
- ‘5. This Regulation shall not apply to:
- (a) social and medical assistance or
- (b) benefits in relation to which a Member State assumes the liability for damages to persons and provides for compensation, such as those for victims of war and military action or their consequences; victims of crime, assassination or terrorist acts; victims of damage occasioned by agents of the Member State in the course of their duties; or victims who have suffered a disadvantage for political or religious reasons or for reasons of descent.’;

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 883/2004 is hereby amended as follows:

1. the following recital shall be inserted after recital (17):

‘(17a) Once the legislation of a Member State becomes applicable to a person under Title II of this Regulation, the conditions for affiliation and entitlement to benefits should be defined by the legislation of the competent Member State while respecting Community law.’;

2. the following recital shall be inserted after recital (18):

‘(18a) The principle of single applicable legislation is of great importance and should be enhanced. This should not mean, however, that the grant of a benefit alone, in accordance with this Regulation and comprising the payment of insurance contributions or insurance coverage for the beneficiary, renders the legislation of the Member State, whose institution has granted that benefit, the applicable legislation for that person.’;

3. in Article 1, the following point shall be inserted:

‘(va) “Benefits in kind” means:

- (i) for the purposes of Title III, Chapter 1 (sickness, maternity and equivalent paternity benefits), benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care. This includes long-term care benefits in kind.;

5. Article 14(4) shall be replaced by the following:

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

6. in Article 15, the term ‘auxiliary staff’ shall be replaced by ‘contract staff’;

7. Article 18(2) shall be replaced by the following:

‘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.

Where the competent Member State is listed in Annex III however, the members of the family of a frontier worker who reside in the same Member State as the frontier worker shall be entitled to benefits in kind in the competent Member State only under the conditions laid down in Article 19(1).’;

8. Article 28(1) shall be replaced by the following:

‘1. A frontier worker who has retired because of old-age or invalidity is entitled in the event of sickness to continue to receive benefits in kind in the Member State where he/she last pursued his/her activity as an employed or self-employed person, in so far as this is a continuation of treatment which began in that Member State. “Continuation of treatment” means the continued investigation, diagnosis and treatment of an illness for its entire duration.

The first subparagraph shall apply *mutatis mutandis* to the members of the family of the former frontier worker unless the Member State where the frontier worker last pursued his/her activity is listed in Annex III.;

9. Article 36(1) shall be replaced by the following:

‘1. Without prejudice to any more favourable provisions in paragraphs 2 and 2a of this Article, Articles 17, 18(1), 19(1) and 20(1) shall also apply to benefits relating to accidents at work or occupational diseases.’;

10. in Article 36, the following paragraph shall be inserted:

‘2a. The competent institution may not refuse to grant the authorisation provided for in Article 20(1) to an employed or self-employed person who has sustained an accident at work or has contracted an occupational disease and who is entitled to benefits chargeable to that institution, where the treatment appropriate to his/her condition cannot be given in the Member State in which the person resides within a time limit which is medically justifiable, taking into account his/her current state of health and the probable course of his illness.’;

11. Article 51(3) shall be replaced by the following:

‘3. Where the legislation or specific scheme of a Member State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied if that person has been previously insured under the legislation or specific scheme of that Member State and is, at the time of the materialisation of the risk, insured under the legislation of another Member State for the same risk or, failing that, if a benefit is due under the legislation of another Member State for the same risk. The latter condition shall, however, be deemed to be fulfilled in the cases referred to in Article 57.’;

12. Article 52(4) shall be replaced by the following:

‘4. Where the calculation pursuant to paragraph 1(a) in one Member State invariably results in the independent benefit being equal to or higher than the pro rata benefit, calculated in accordance with paragraph 1(b), the competent institution shall waive the pro rata calculation, provided that:

- (i) such a situation is set out in Part 1 of Annex VIII;
- (ii) no legislation containing rules against overlapping, as referred to in Articles 54 and 55, is applicable unless the conditions laid down in Article 55(2) are fulfilled; and
- (iii) Article 57 is not applicable in relation to periods completed under the legislation of another Member State in the specific circumstances of the case.’;

13. the following paragraph shall be added to Article 52:

‘5. Notwithstanding the provisions of paragraphs 1, 2 and 3, the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in part 2 of Annex VIII. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Member State concerned.’;

14. in Article 56(1)(c), the words ‘where necessary’ shall be inserted before ‘in accordance with the procedures laid down in Annex XI’;

15. in Article 56(1), the following point shall be added:

‘(d) In the event that point(c) is not applicable because the legislation of a Member State provides for the benefit to be calculated on the basis of elements other than periods of insurance or residence which are not linked to time, the competent institution shall take into account, in respect of each period of insurance or residence completed under the legislation of any other Member State, the amount of the capital accrued, the capital which is considered as having been accrued or any other element for the calculation under the legislation it administers divided by the corresponding units of periods in the pension scheme concerned.’;

16. in Article 57, the following paragraph shall be added:

‘4. This Article shall not apply to schemes listed in Part 2 of Annex VIII.’;

17. in Article 62(3), the term ‘frontier workers’ shall be replaced by ‘unemployed persons’;

18. the following Article shall be inserted:

‘Article 68a

Provision of benefits

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

19. Article 87 shall be amended as follows:

(a) paragraph 8 shall be replaced by the following:

‘8. If, as a result of this Regulation, a person is subject to the legislation of a Member State other than that determined in accordance with Title II of Regulation (EEC) No 1408/71, that legislation shall continue to apply while the relevant situation remains unchanged and in any case for no longer than 10 years from the date of application of this Regulation unless the person

concerned requests that he/she be subject to the legislation applicable under this Regulation. The request shall be submitted within 3 months after the date of application of this Regulation to the competent institution of the Member State whose legislation is applicable under this Regulation if the person concerned is to be subject to the legislation of that Member State as of the date of application of this Regulation. If the request is made after the time limit indicated, the change of applicable legislation shall take place on the first day of the following month.;

(b) the following paragraphs shall be inserted:

‘10a. The entries in Annex III corresponding to Estonia, Spain, Italy, Lithuania, Hungary and the Netherlands shall cease to have effect 4 years after the date of application of this Regulation.

10b. The list contained in Annex III shall be reviewed no later than 31 October 2014 on the basis of a report by the Administrative Commission. That report shall include an impact assessment of the significance, frequency, scale and costs, both in absolute and in relative

terms, of the application of the provisions of Annex III. That report shall also include the possible effects of repealing those provisions for those Member States which continue to be listed in that Annex after the date referred to in paragraph 10a. In the light of that report, the Commission shall decide whether to submit a proposal concerning a review of the list, with the aim in principle of repealing the list unless the report of the Administrative Commission provides compelling reasons not to do so.’;

20. the Annexes shall be amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from the date of entry into force of the implementing Regulation referred to in Article 89 of Regulation (EC) No 883/2004.

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

Done at Strasbourg, 16 September 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
C. MALMSTRÖM

ANNEX

Amendments to the Annexes to Regulation (EC) No 883/2004

A. Annex I is amended as follows:

1. In Part I (advances of maintenance payments):

(a) the heading 'A. BELGIUM' is replaced by 'BELGIUM';

(b) after the entry 'BELGIUM' the following entry is inserted:

'BULGARIA

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

(c) the headings 'B. DENMARK' and 'C. GERMANY' are replaced respectively by 'DENMARK' and 'GERMANY';

(d) after the entry under the heading 'GERMANY' the following entries are inserted:

'ESTONIA

Maintenance allowances under the Maintenance Allowance Act of 21 February 2007;

SPAIN

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

(e) the heading 'D. FRANCE' is replaced by 'FRANCE';

(f) after the entry under the heading 'FRANCE' the following entries are inserted:

'LITHUANIA

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

LUXEMBOURG

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

(g) the heading 'E. AUSTRIA' is replaced by 'AUSTRIA';

(h) after the entry under the heading 'AUSTRIA' the following entry is inserted:

'POLAND

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

(i) the heading 'F. PORTUGAL' is replaced by 'PORTUGAL';

(j) after the entry under the heading 'PORTUGAL' the following entries are inserted:

'SLOVENIA

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

SLOVAKIA

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

(k) the headings 'G. FINLAND' and 'H. SWEDEN' are replaced respectively by 'FINLAND' and 'SWEDEN';

2. in Part II (special childbirth and adoption allowances):

(a) the heading 'A. BELGIUM' is replaced by 'BELGIUM';

- (b) after the entry under the heading 'BELGIUM' the following entries are inserted:

'BULGARIA

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

CZECH REPUBLIC

Childbirth allowance.

ESTONIA

(a) Childbirth allowance;

(b) Adoption allowance.;

- (c) the headings 'B. SPAIN' and 'C. FRANCE' are replaced respectively by 'SPAIN' and 'FRANCE';

- (d) the entry under the heading 'SPAIN' is replaced by the following:

'SPAIN

Single payment birth and adoption grants';

- (e) in the entry under the heading 'FRANCE' the following words are added:

', except when they are paid to a person who remains subject to French legislation pursuant to Article 12 or Article 16';

- (f) after the entry under the heading 'FRANCE' the following entries are inserted:

'LATVIA

(a) Childbirth grant;

(b) Adoption allowance.

LITHUANIA

Child lump sum grant.;

- (g) the heading 'D. LUXEMBOURG' is replaced by 'LUXEMBOURG';

- (h) after the entry under the heading 'LUXEMBOURG' the following entries are inserted:

'HUNGARY

Maternity grant.

POLAND

Single payment birth grant (Act on Family Benefits).

ROMANIA

(a) Childbirth allowance;

(b) Layette for newborn children.

SLOVENIA

Childbirth grant.

SLOVAKIA

- (a) Childbirth allowance;
- (b) Supplement to childbirth allowance.;
- (i) the heading 'E. FINLAND' is replaced by 'FINLAND'.

B. Annex II is replaced by the following:

'ANNEX II

PROVISIONS OF CONVENTIONS WHICH REMAIN IN FORCE AND WHICH, WHERE APPLICABLE, ARE RESTRICTED TO THE PERSONS COVERED THEREBY (Article 8(1))**General comments**

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

Provisions of social security conventions remaining applicable:

BELGIUM-GERMANY

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

BELGIUM-LUXEMBOURG

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

BULGARIA-GERMANY

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

BULGARIA-AUSTRIA

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

BULGARIA-SLOVENIA

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

CZECH REPUBLIC-GERMANY

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

CZECH REPUBLIC-CYPRUS

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

CZECH REPUBLIC-LUXEMBOURG

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

CZECH REPUBLIC-AUSTRIA

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

CZECH REPUBLIC-SLOVAKIA

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

DENMARK-FINLAND

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

DENMARK-SWEDEN

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

GERMANY-SPAIN

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

GERMANY-FRANCE

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

GERMANY-LUXEMBOURG

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

GERMANY-HUNGARY

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

GERMANY-NETHERLANDS

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

GERMANY-AUSTRIA

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

GERMANY-POLAND

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

GERMANY-ROMANIA

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

GERMANY-SLOVENIA

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

GERMANY-SLOVAKIA

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

GERMANY-UNITED KINGDOM

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

IRELAND-UNITED KINGDOM

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

SPAIN-PORTUGAL

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

ITALY-SLOVENIA

- (a) Agreement on regulation of mutual obligations in social insurance with reference to paragraph 7 of Annex XIV to the Peace Treaty, concluded by exchange of notes on 5 February 1959 (reckoning of periods of insurance completed before 18 December 1954); the application of that provision remains restricted to the persons covered by that Agreement;
- (b) Article 45(3) of the Convention on social security of 7 July 1997 concerning ex-Zone B of the Free Territory of Trieste (reckoning of periods of insurance completed before 5 October 1956); the application of that provision remains restricted to the persons covered by that Convention.

LUXEMBOURG-PORTUGAL

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

LUXEMBOURG-SLOVAKIA

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

HUNGARY-AUSTRIA

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

HUNGARY-SLOVENIA

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

HUNGARY-SLOVAKIA

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

AUSTRIA-POLAND

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

AUSTRIA-ROMANIA

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

AUSTRIA-SLOVENIA

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

AUSTRIA-SLOVAKIA

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

FINLAND-SWEDEN

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

C. Annex III is replaced by the following:

'ANNEX III

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

(referred to in Article 18(2))

DENMARK

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

IRELAND

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

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

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

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

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

FINLAND

SWEDEN

UNITED KINGDOM'.

D. Annex IV is amended as follows:

1. after the entry 'BELGIUM', the following entries are inserted:

'BULGARIA

CZECH REPUBLIC';

2. the entry 'ITALY' is deleted;

3. after the entry 'FRANCE', the entry 'CYPRUS' is inserted;

4. after the entry 'LUXEMBOURG', the following entries are inserted:

'HUNGARY

THE NETHERLANDS';

5. after the entry 'AUSTRIA', the following entries are inserted:

'POLAND

SLOVENIA'.

E. Annex VI is amended as follows:

1. at the beginning of the Annex the following entries are inserted:

'CZECH REPUBLIC

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

ESTONIA

- (a) Invalidity pensions granted before 1 April 2000 under the State Allowances Act and which are retained under the State Pension Insurance Act.

- (b) National pensions granted on the basis of invalidity according to the State Pension Insurance Act.

- (c) Invalidity pensions granted according to the Defence Forces Service Act, Police Service Act, Prosecutor's Office Act, Status of Judges Act, Members of the Riigikogu Salaries, Pensions and Other Social Guarantees Act and President of the Republic Official Benefits Act.;

2. the headings 'A. GREECE' and 'B. IRELAND' are replaced respectively by 'GREECE' and 'IRELAND';

3. the entry under the heading 'IRELAND' is removed and reinserted before the entry under the heading 'GREECE' and is replaced by the following:

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

4. after the entry under the heading 'GREECE' the following entry is inserted:

'LATVIA

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

5. the heading 'C. FINLAND' is replaced by 'FINLAND' and the corresponding entry is replaced by the following:

'FINLAND

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

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

6. The headings 'D. SWEDEN' and 'E. UNITED KINGDOM' are replaced respectively by 'SWEDEN' and 'UNITED KINGDOM'.

F. Annex VII is amended as follows:

1. in the tables headed 'BELGIUM' and 'FRANCE', the rows relating to Luxembourg are deleted;

2. the table headed 'LUXEMBOURG' is deleted.

G. Annex VIII is replaced by the following:

'ANNEX VIII

CASES IN WHICH THE PRO RATA CALCULATION SHALL BE WAIVED OR SHALL NOT APPLY (Article 52(4) and 52(5))

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

DENMARK

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

IRELAND

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

CYPRUS

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

LATVIA

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

LITHUANIA

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

NETHERLANDS

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

AUSTRIA

- (a) All applications for benefits under the Federal Act of 9 September 1955 on General Social Insurance – ASVG, the Federal Act of 11 October 1978 on social insurance for self-employed persons engaged in trade and commerce – GSVG, the Federal Act of 11 October 1978 on social insurance for self-employed farmers – BSVG and the Federal Act of 30 November 1978 on social insurance for the self-employed in the liberal professions (FSVG);
- (b) All applications for invalidity pensions based on a pension account pursuant to the General Pensions Act (APG) of 18 November 2004;
- (c) All applications for survivors' pensions based on a pension account pursuant to the General Pensions Act (APG) of 18 November 2004, if no increase in benefits is to be applied in respect of additional months of insurance pursuant to Article 7(2) of the General Pensions Act (APG);
- (d) All applications for invalidity and survivors' pensions of the Austrian Provincial Chambers of Physicians (Landesärztekammer) based on basic provision (basic and any supplementary benefit, or basic pension);
- (e) All applications for permanent occupational invalidity support and survivors' support from the pension fund of the Austrian Chamber of Veterinary Surgeons;
- (f) All applications for benefits from occupational invalidity, widows and orphans pensions according to the statutes of the welfare institutions of the Austrian bar associations, Part A.

POLAND

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

PORTUGAL

All applications for invalidity, old-age and survivors' pension claims, except for the cases where the totalised periods of insurance completed under the legislation of more than one Member State are equal to or longer than 21 calendar years, the national periods of insurance are equal or inferior to 20 years, and the calculation is made under Article 11 of Decree-Law No 35/2002, 19 February.

SLOVAKIA

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

SWEDEN

All applications for guarantee pension in the form of old-age pension (Act 1998:702) and old-age pension in the form of supplementary pension (Act 1998:674).

UNITED KINGDOM

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

- (i) the party concerned had completed periods of insurance, employment or residence under the legislation of the United Kingdom and another Member State; and one (or more) of the tax years was not considered a qualifying year within the meaning of the legislation of the United Kingdom;
- (ii) the periods of insurance completed under the legislation in force in the United Kingdom for the periods prior to 5 July 1948 would be taken into account for the purposes of Article 52(1)(b) of the Regulation by application of the periods of insurance, employment or residence under the legislation of another Member State.

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

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

BULGARIA

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

ESTONIA

Mandatory funded old-age pension scheme.

FRANCE

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

LATVIA

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

HUNGARY

Pension benefits based on membership of private pension funds.

AUSTRIA

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

POLAND

Old-age pensions under the defined contribution scheme.

SLOVENIA

Pension from compulsory supplementary pension insurance.

SLOVAKIA

Mandatory old-age pension saving.

SWEDEN

Income-based pension and premium pension (Act 1998:674).

UNITED KINGDOM

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

H. Annex IX is amended as follows:

1. in Part I:

- (a) the headings 'A. BELGIUM', 'B. DENMARK', 'C. GREECE', 'D. SPAIN', 'E. FRANCE', 'F. IRELAND', 'G. NETHERLANDS', 'H. FINLAND' and 'I. SWEDEN' are respectively replaced by 'BELGIUM', 'DENMARK', 'GREECE', 'SPAIN', 'FRANCE', 'IRELAND', 'NETHERLANDS', 'FINLAND' and 'SWEDEN';
- (b) the entry under the heading 'IRELAND' is moved after the entry under the heading 'DENMARK' and before the entry under the heading 'GREECE';
- (c) after the entry under the heading 'FRANCE' the following entry is inserted:

'LATVIA

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

- (d) in the entry under the heading 'NETHERLANDS' the following text is added:

'The law of 10 November 2005 on work and income according to labour capacity (WIA).';

- (e) the entry under the heading 'FINLAND' is replaced by the following:

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

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

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

- (f) The entry under the heading 'SWEDEN' is replaced by the following:

'Swedish income-related sickness compensation and activity compensation (Act 1962:381).

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

2. in Part II:

- (a) the headings 'A. GERMANY', 'B. SPAIN', 'C. ITALY', 'D. LUXEMBOURG', 'E. FINLAND' and 'F. SWEDEN' are respectively replaced by 'GERMANY', 'SPAIN', 'ITALY', 'LUXEMBOURG', 'FINLAND' and 'SWEDEN';
- (b) after the entry under the heading 'ITALY' the following entries are inserted:

'LATVIA

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

LITHUANIA

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

- (c) after the entry under the heading 'LUXEMBOURG' the following entry is inserted:

'SLOVAKIA

- (a) Slovak invalidity pension and survivors' pension derived therefrom;
- (b) Invalidity pension for a person who became invalid as a dependent child and who is always deemed to have fulfilled the required period of insurance (Article 70(2), Article 72(3) and Article 73(3) and (4) of Act No 461/2003 on social insurance, as amended).';

3. in Part III:

the entry 'Nordic Convention of 15 June 1992 on social security' is replaced by the following: 'Nordic Convention on social security of 18 August 2003.'

I. Annex X is replaced by the following:

'ANNEX X

SPECIAL NON-CONTRIBUTORY CASH BENEFITS (Article 70(2)(c))

BELGIUM

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

BULGARIA

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

CZECH REPUBLIC

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

DENMARK

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

GERMANY

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

ESTONIA

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

IRELAND

- (a) Jobseekers' allowance (Social Welfare Consolidation Act 2005, Part 3, Chapter 2);
- (b) State pension (non-contributory) (Social Welfare Consolidation Act 2005, Part 3, Chapter 4);
- (c) Widow's (non-contributory) pension and widower's (non-contributory) pension (Social Welfare Consolidation Act 2005, Part 3, Chapter 6);
- (d) Disability allowance (Social Welfare Consolidation Act 2005, Part 3, Chapter 10);
- (e) Mobility allowance (Health Act 1970, Section 61);
- (f) Blind pension (Social Welfare Consolidation Act 2005, Part 3, Chapter 5).

GREECE

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

SPAIN

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

FRANCE

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

ITALY

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

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

CYPRUS

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

LATVIA

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

LITHUANIA

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

LUXEMBOURG

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

HUNGARY

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

MALTA

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

NETHERLANDS

- (a) Disablement Assistance Act for Handicapped Young Persons, of 24 April 1997 (Wajong);
- (b) Supplementary Benefits Act of 6 November 1986 (TW).

AUSTRIA

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

POLAND

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

PORTUGAL

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

SLOVENIA

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

SLOVAKIA

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

FINLAND

- (a) Housing allowance for pensioners (Act concerning the Housing Allowance for pensioners, 571/2007);
- (b) Labour market support (Act on Unemployment Benefits 1290/2002);
- (c) Special assistance for immigrants (Act on Special Assistance for Immigrants, 1192/2002).

SWEDEN

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

UNITED KINGDOM

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

J. Annex XI is replaced by the following:

'ANNEX XI

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

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

BULGARIA

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

CZECH REPUBLIC

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

DENMARK

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

2. (a) Notwithstanding the provisions of Article 6 of this Regulation, persons who have not been gainfully employed in one or more Member States are entitled to a Danish social pension only if they have been, or have previously been, permanent residents of Denmark for at least 3 years, subject to the age limits prescribed by Danish legislation. Subject to Article 4 of this Regulation, Article 7 does not apply to a Danish social pension to which entitlement has been acquired by such persons.
- (b) The abovementioned provisions do not apply to Danish social pension entitlement for the members of the family of persons who are or have been gainfully employed in Denmark, or for students or the members of their families.
3. The temporary benefit for unemployed persons who have been admitted to the ledighedsydelse (flexible job' scheme) (Law No 455 of 10 June 1997) is covered by Title III, Chapter 6 of this Regulation. As regards unemployed persons going to another Member State, Articles 64 and 65 will be applicable when this Member State has similar employment schemes for the same category of persons.
4. Where the beneficiary of a Danish social pension is also entitled to a survivor's pension from another Member State, these pensions for the implementation of Danish legislation shall be regarded as benefits of the same kind within the meaning of Article 53(1) of this Regulation, subject to the condition, however, that the person whose periods of insurance or of residence serve as the basis for the calculation of the survivor's pension had also acquired a right to a Danish social pension.

GERMANY

1. Notwithstanding Article 5(a) of this Regulation and Article 5(4) point 1 of the Sozialgesetzbuch VI (Volume VI of the Social Code), a person who receives a full old-age pension under the legislation of another Member State may request to be compulsorily insured under the German pension insurance scheme.
2. Notwithstanding Article 5(a) of this Regulation and Article 7(1) and (3) of the Sozialgesetzbuch VI (Volume VI of the Social Code), a person who is compulsorily insured in another Member State or receives an old-age pension under the legislation of another Member State may join the voluntary insurance scheme in Germany.
3. For the purpose of granting cash benefits under §47(1) of SGB V, §47(1) of SGB VII and §200(2) of the Reichsversicherungsordnung to insured persons who live in another Member State, German insurance schemes calculate net pay, which is used to assess benefits, as if the insured person lived in Germany, unless the insured person requests an assessment on the basis of the net pay which he actually receives.
4. Nationals of other Member States whose place of residence or usual abode is outside Germany and who fulfil the general conditions of the German pension insurance scheme may pay voluntary contributions only if they had been voluntarily or compulsorily insured in the German pension insurance scheme at some time previously; this also applies to stateless persons and refugees whose place of residence or usual abode is in another Member State.
5. The pauschale Anrechnungszeit (fixed credit period) pursuant to Article 253 of the Sozialgesetzbuch VI (Volume VI of the Social Code) shall be determined exclusively with reference to German periods.
6. In cases where the German pension legislation, in force on 31 December 1991, is applicable for the recalculation of a pension, only the German legislation applies for the purposes of crediting German Ersatzzeiten (substitute periods).
7. The German legislation on accidents at work and occupational diseases to be compensated for under the law governing foreign pensions and on benefits for insurance periods which can be credited under the law governing foreign pensions in the territories named in paragraph 1(2)(3) of the Act on affairs of displaced persons and refugees (Bundesvertriebenengesetz) continues to apply within the scope of application of this Regulation, notwithstanding the provisions of paragraph 2 of the Act on foreign pensions (Fremdrentengesetz).
8. For the calculation of the theoretical amount referred to in Article 52(1)(b)(i) of this Regulation, in pension schemes for liberal professions, the competent institution shall take as a basis, in respect of each of the years of insurance completed under the legislation of any other Member State, the average annual pension entitlement acquired during the period of membership of the competent institution through the payment of contributions.

ESTONIA

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

IRELAND

1. Notwithstanding Articles 21(2) and 62 of this Regulation, for the purposes of calculating the prescribed reckonable weekly earnings of an insured person for the grant of sickness or unemployment benefit under Irish legislation, an amount equal to the average weekly wage of employed persons in the relevant prescribed year shall be credited to that insured person in respect of each week of activity as an employed person under the legislation of another Member State during that prescribed year.
2. Where Article 46 of this Regulation applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, Ireland shall, for the purposes of Section 118(1)(a) of the Social Welfare Consolidation Act 2005, take account of any periods during which, in respect of the invalidity that followed that incapacity for work, he/she would have been regarded as being incapable of work under Irish legislation.

GREECE

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

SPAIN

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

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

FRANCE

1. Nationals of other Member States whose place of residence or usual abode is outside France and who fulfil the general conditions of the French pension insurance scheme may pay voluntary contributions to it only if they had been voluntarily or compulsorily insured in the French pension insurance scheme at some time previously; this also applies to stateless persons and refugees whose place of residence or usual abode is in another Member State.
2. For persons receiving benefits in kind in France pursuant to Articles 17, 24 or 26 of this Regulation who are resident in the French departments of Haut-Rhin, Bas-Rhin or Moselle, benefits in kind provided on behalf of the institution of another Member State which is responsible for bearing their cost include benefits provided by both the general sickness insurance scheme and the obligatory supplementary local sickness insurance scheme of Alsace-Moselle.
3. French legislation applicable to a person engaged, or formerly engaged, in an activity as an employed or self-employed person for the application of Chapter 5 of Title III of this Regulation includes both the basic old-age insurance scheme(s) and the supplementary retirement scheme(s) to which the person concerned was subject.

CYPRUS

For the purpose of applying the provisions of Articles 6, 51 and 61 of this Regulation, for any period commencing on or after 6 October 1980, a week of insurance under the legislation of the Republic of Cyprus is determined by dividing the total insurable earnings for the relevant period by the weekly amount of the basic insurable earnings applicable in the relevant contribution year, provided that the number of weeks so determined shall not exceed the number of calendar weeks in the relevant period.

MALTA

Special provisions for civil servants

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

NETHERLANDS

1. Health care insurance

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

- (d) The provisions of the Zorgverzekeringswet (Health Care Insurance Act) concerning late insurance shall apply *mutatis mutandis* in the event of late registration with the College voor zorgverzekeringen (Health Care Insurance Board) in respect of the persons referred to in point 1(a)(ii).
- (e) Persons entitled to benefits in kind by virtue of the legislation of a Member State other than the Netherlands who reside in the Netherlands or stay temporarily in the Netherlands shall be entitled to benefits in kind in accordance with the policy offered to insured persons in the Netherlands by the institution of the place of residence or the place of stay, taking into account Article 11(1), (2) and (3) and Article 19(1) of the Zorgverzekeringswet (Health Care Insurance Act), as well as to benefits in kind provided for by the Algemene Wet Bijzondere Ziektekosten (General Act on Exceptional Medical Expenses).
- (f) For the purposes of Articles 23 to 30 of this Regulation, the following benefits (in addition to pensions covered by Title III, Chapters 4 and 5 of this Regulation) shall be treated as pensions due under Dutch legislation:
 - pensions awarded under the Law of 6 January 1966 on pensions for civil servants and their survivors (Algemene burgerlijke pensioenwet) (Netherlands Civil Service Pensions Act),
 - pensions awarded under the Law of 6 October 1966 on pensions for military personnel and their survivors (Algemene militaire pensioenwet) (Military Pensions Act),
 - benefits for incapacity for work awarded under the Law of 7 June 1972 on benefits for incapacity for work for military personnel (Wetarbeidsongeschiktheidsvoorziening militairen) (Military Personnel Incapacity for Work Act),
 - pensions awarded under the Law of 15 February 1967 on pensions for employees of the NV Nederlandse Spoorwegen (Dutch Railway Company) and their survivors (Spoorwegpensioenwet) (Railway Pensions Act),
 - pensions awarded under the Reglement Dienstvoorwaarden Nederlandse Spoorwegen (Regulation governing conditions of employment of the Netherlands Railway Company),
 - benefits awarded to retired persons before reaching the pensionable age of 65 years under a pension designed to provide income for former employed persons in their old age, or benefits provided in the event of premature exit from the labour market under a scheme set up by the state or by an industrial agreement for persons aged 55 or over,
 - benefits awarded to military personnel and civil servants under a scheme applicable in the event of redundancy, superannuation and early retirement.
- (g) For the purposes of Chapters 1 and 2 of Title III of this Regulation, the no-claims refund provided for in the Netherlands scheme in the event of limited use of health care facilities shall be deemed to be a sickness benefit in cash.

2. Application of the Algemene Ouderdomswet (AOW) (Dutch legislation on general old-age insurance)

- (a) The reduction referred to in Article 13(1) of the Algemene Ouderdomswet (AOW) (Dutch legislation on general old-age insurance) shall not be applied for calendar years before 1 January 1957 during which a recipient not satisfying the conditions for having such years treated as periods of insurance:
 - resided in the Netherlands between the ages of 15 and 65, or
 - while residing in another Member State, worked in the Netherlands for an employer established in the Netherlands, or
 - worked in another Member State during periods regarded as periods of insurance under the Dutch social security system.

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

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

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

- (c) The reduction referred to in Article 13(2) of the AOW shall not apply to calendar years before 1 January 1957 during which a pensioner's spouse who fails to satisfy the conditions for having such years treated as periods of insurance:
- resided in the Netherlands between the ages of 15 and 65, or
 - while residing in another Member State, worked in the Netherlands for an employer established in the Netherlands, or
 - worked in another Member State during periods regarded as periods of insurance under the Netherlands social security system.
- (d) The reduction referred to in Article 13(2) of the AOW shall not apply to calendar years prior to 2 August 1989 during which, between the ages of 15 and 65, a pensioner's spouse resident in a Member State other than the Netherlands was not insured under the above legislation, if those calendar years coincide with periods of insurance completed by the pensioner under that legislation or with calendar years to be taken into account under point 2(a), provided that the couple's marriage subsisted during that time.
- (e) Points 2(a), 2(b), 2(c) and 2(d) shall not apply to periods which coincide with:
- periods which may be taken into account for calculating pension rights under the old-age insurance legislation of a Member State other than the Netherlands, or
 - periods for which the person concerned has drawn an old-age pension under such legislation.

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

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

This authorisation shall not cease where the spouse's compulsory insurance is terminated as a result of his death and where the survivor receives only a pension under the *Algemene nabestaandenwet* (Dutch legislation on general law for surviving dependants).

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

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

- (h) The authorisation referred to in point 2(g) shall not be granted to anyone insured under another Member State's legislation on pensions or survivors' benefits.
- (i) Anyone wishing to take out voluntary insurance under point 2(g) shall be required to apply for it to the Social Insurance Bank (*Sociale Verzekeringsbank*) not later than 1 year after the date on which the conditions for participation are fulfilled.

3. Application of the Algemene nabestaandenwet (ANW) (Dutch general law on insurance for surviving dependants)

- (a) Where the surviving spouse is entitled to a survivor's pension under the Algemene Nabestaandenwet (ANW) (General Surviving Relatives Act) pursuant to Article 51(3) of this Regulation, that pension shall be calculated in accordance with Article 52(1)(b) of this Regulation.

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

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

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

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

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

4. Application of Dutch legislation relating to incapacity for work

- (a) Where, pursuant to Article 51(3) of this Regulation, the person concerned is entitled to a Netherlands invalidity benefit, the amount referred to in Article 52(1)(b) of this Regulation for calculating that benefit shall be determined:
- (i) where, prior to the occurrence of incapacity for work, the person last exercised an activity as an employed person within the meaning of Article 1(a) of this Regulation:
 - in accordance with the provisions laid down in the Wet op arbeidsongeschiktheidsverzekering (WAO) (Act on Incapacity for Work) if the incapacity for work occurred before 1 January 2004, or
 - in accordance with the provisions laid down in the Wet Werk en inkomen naar arbeidsvermogen (WIA) (Work and Income according to labour capacity Act) if the incapacity for work occurred on or after 1 January 2004;
 - (ii) where, prior to the occurrence of the incapacity for work, the person concerned last exercised an activity as a self-employed person within the meaning of Article 1 (b) of this Regulation, in accordance with the provisions laid down in the Wet arbeidsongeschiktheidsverzekering zelfstandigen (WAZ) (Self-employed Persons Act on Incapacity for Work) if the incapacity for work occurred before 1 August 2004.

- (b) In calculating benefits under either the WAO, WIA or the WAZ, the Netherlands institutions shall take account of:
- periods of paid employment, and periods treated as such, completed in the Netherlands before 1 July 1967,
 - periods of insurance completed under the WAO,
 - periods of insurance completed by the person concerned, after the age of 15, under the Algemene Arbeidsongeschiktheidswet (AAW) (General Act on Incapacity for Work), in so far as these do not coincide with the periods of insurance completed under the WAO,
 - periods of insurance completed under the WAZ,
 - periods of insurance completed under the WIA.

AUSTRIA

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

FINLAND

1. For the purposes of determining entitlement and of calculating the amount of the Finnish national pension under Articles 52 to 54 of this Regulation, pensions acquired under the legislation of another Member State are treated in the same way as pensions acquired under Finnish legislation.
2. When applying Article 52(1)(b)(i) of this Regulation for the purpose of calculating earnings for the credited period under Finnish legislation on earnings-related pensions, where an individual has pension insurance periods based on activity as an employed or self-employed person in another Member State for part of the reference period under Finnish legislation, the earnings for the credited period shall be equivalent to the sum of earnings obtained during the part of the reference period in Finland, divided by the number of months for which there were insurance periods in Finland during the reference period.

SWEDEN

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

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

3. The provisions of this Regulation on the aggregation of insurance periods and periods of residence shall not apply to the transitional provisions in the Swedish legislation on entitlement to guarantee pension for persons born in or before 1937 who have been resident in Sweden for a specified period before applying for a pension (Act 2000:798).
4. For the purpose of calculating income for notional income-related sickness compensation and income-related activity compensation in accordance with Chapter 8 of the Lag (1962:381) om allmän försäkring (the National Insurance Act), the following shall apply:
 - (a) where the insured person, during the reference period, has also been subject to the legislation of one or more other Member States on account of activity as an employed or self-employed person, income in the Member State(s) concerned shall be deemed to be equivalent to the insured person's average gross income in Sweden during the part of the reference period in Sweden, calculated by dividing the earnings in Sweden by the number of years over which those earnings accrued;
 - (b) where the benefits are calculated pursuant to Article 46 of this Regulation and persons are not insured in Sweden, the reference period shall be determined in accordance with Chapter 8, paragraphs 2 and 8 of the above-mentioned Act as if the person concerned were insured in Sweden. If the person concerned has no pension-generating income during this period under the Act on income-based old-age pension (1998:674), the reference period shall be permitted to run from the earlier point in time when the insured person had income from gainful activity in Sweden.
5. (a) For the purpose of calculating notional pension assets for income-based survivor's pension (Act 2000:461), if the requirement in Swedish legislation for pension entitlement in respect of at least three out of the 5 calendar years immediately preceding the insured person's death (reference period) is not met, account shall also be taken of insurance periods completed in other Member States as if they had been completed in Sweden. Insurance periods in other Member States shall be regarded as based on the average Swedish pension base. If the person concerned has only 1 year in Sweden with a pension base, each insurance period in another Member State shall be regarded as constituting the same amount.
- (b) For the purpose of calculating notional pension credits for widows' pensions relating to deaths on or after 1 January 2003, if the requirement in Swedish legislation for pension credits in respect of at least two out of the 4 years immediately preceding the insured person's death (reference period) is not met and insurance periods were completed in another Member State during the reference period, those years shall be regarded as being based on the same pension credits as the Swedish year.

UNITED KINGDOM

1. Where, in accordance with United Kingdom legislation, a person may be entitled to a retirement pension if:
 - (a) the contributions of a former spouse are taken into account as if they were that person's own contributions; or
 - (b) the relevant contribution conditions are satisfied by that person's spouse or former spouse, then provided, in each case, that the spouse or former spouse is or had been exercising an activity as an employed or self-employed person, and had been subject to the legislation of two or more Member States, the provisions of Chapter 5 of Title III of this Regulation shall apply in order to determine entitlement under United Kingdom legislation. In this case, references in the said Chapter 5 to "periods of insurance" shall be construed as references to periods of insurance completed by:
 - (i) a spouse or former spouse where a claim is made by:
 - a married woman, or
 - a person whose marriage has terminated otherwise than by the death of the spouse; or
 - (ii) a former spouse, where a claim is made by:
 - a widower who immediately before pensionable age is not entitled to widowed parent's allowance, or
 - a widow who immediately before pensionable age is not entitled to widowed mother's allowance, widowed parent's allowance or widow's pension, or who is only entitled to an age-related widow's pension calculated pursuant to Article 52(1)(b) of this Regulation, and for this purpose "age-related widow's pension" means a widow's pension payable at a reduced rate in accordance with section 39(4) of the Social Security Contributions and Benefits Act 1992.

2. For the purposes of applying Article 6 of this Regulation to the provisions governing entitlement to attendance allowance, carer's allowance and disability living allowance, a period of employment, self-employment or residence completed in the territory of a Member State other than the United Kingdom shall be taken into account in so far as is necessary to satisfy conditions as to required periods of presence in the United Kingdom, prior to the day on which entitlement to the benefit in question first arises.
3. For the purposes of Article 7 of this Regulation, in the case of invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants, any beneficiary under United Kingdom legislation who is staying in the territory of another Member State shall, during that stay, be considered as if he resided in the territory of that other Member State.
4. Where Article 46 of this Regulation applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, the United Kingdom shall, for the purposes of Section 30A (5) of the Social Security Contributions and Benefits Act 1992, take account of any periods during which the person concerned has received, in respect of that incapacity for work:
 - (i) cash sickness benefits or wages or salary in lieu thereof; or
 - (ii) benefits within the meaning of Chapters 4 and 5 of Title III of this Regulation granted in respect of the invalidity which followed that incapacity for work, under the legislation of the other Member State, as though they were periods of short-term incapacity benefit paid in accordance with Sections 30A (1)-(4) of the Social Security Contributions and Benefits Act 1992.

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

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