

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland)

TITLE III

**SPECIAL PROVISIONS CONCERNING THE
VARIOUS CATEGORIES OF BENEFITS**

CHAPTER

Sickness, maternity and equivalent paternity benefits

Section 1

**Insured persons and members of their families,
except pensioners and members of their families**

Article 17

Residence in a Member State other than the competent Member State

An insured person or members of his family who reside in a Member State other than the competent Member State shall receive in the Member State of residence benefits in kind provided, on behalf of the competent institution, by the institution of the place of residence, in accordance with the provisions of the legislation it applies, as though they were insured under the said legislation.

Article 18

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

1 Unless otherwise provided for by paragraph 2, the insured person and the members of his family referred to in Article 17 shall also be entitled to benefits in kind while staying in the competent Member State. The benefits in kind shall be provided by the competent institution and at its own expense, in accordance with the provisions of the legislation it applies, as though the persons concerned resided in that Member State.

2 The members of the family of a frontier worker shall be entitled to benefits in kind during their stay in the competent Member State, unless this Member State is listed in Annex III. In this event, the members of the family of a frontier worker shall be entitled to benefits in kind in the competent Member State under the conditions laid down in Article 19(1).

Article 19

Stay outside the competent Member State

1 Unless otherwise provided for by paragraph 2, an insured person and the members of his family staying in a Member State other than the competent Member State shall be entitled to the benefits in kind which become necessary on medical grounds during their stay, taking into account the nature of the benefits and the expected length of the stay. These benefits shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though the persons concerned were insured under the said legislation.

2 The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require for practical reasons a prior agreement between the person concerned and the institution providing the care.

Article 20

Travel with the purpose of receiving benefits in kind - Authorisation to receive appropriate treatment outside the Member State of residence

1 Unless otherwise provided for by this Regulation, an insured person travelling to another Member State with the purpose of receiving benefits in kind during the stay shall seek authorisation from the competent institution.

2 An insured person who is authorised by the competent institution to go to another Member State with the purpose of receiving the treatment appropriate to his condition shall receive the benefits in kind provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though he were insured under the said legislation. The authorisation shall be accorded where the treatment in question is among the benefits provided for by the legislation in the Member State where the person concerned resides and where he cannot be given such treatment within a time-limit which is medically justifiable, taking into account his current state of health and the probable course of his illness.

3 Paragraphs 1 and 2 shall apply *mutatis mutandis* to the members of the family of an insured person.

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

Article 21

Cash benefits

1 An insured person and members of his family residing or staying in a Member State other than the competent Member State shall be entitled to cash benefits provided by the competent institution in accordance with the legislation it applies. By agreement between the

competent institution and the institution of the place of residence or stay, such benefits may, however, be provided by the institution of the place of residence or stay at the expense of the competent institution in accordance with the legislation of the competent Member State.

2 The competent institution of a Member State whose legislation stipulates that the calculation of cash benefits shall be based on average income or on an average contribution basis shall determine such average income or average contribution basis exclusively by reference to the incomes confirmed as having been paid, or contribution bases applied, during the periods completed under the said legislation.

3 The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on standard income shall take into account exclusively the standard income or, where appropriate, the average of standard incomes for the periods completed under the said legislation.

4 Paragraphs 2 and 3 shall apply *mutatis mutandis* to cases where the legislation applied by the competent institution lays down a specific reference period which corresponds in the case in question either wholly or partly to the periods which the person concerned has completed under the legislation of one or more other Member States.

Article 22

Pension claimants

1 An insured person who, on making a claim for a pension, or during the investigation thereof, ceases to be entitled to benefits in kind under the legislation of the Member State last competent, shall remain entitled to benefits in kind under the legislation of the Member State in which he resides, provided that the pension claimant satisfies the insurance conditions of the legislation of the Member State referred to in paragraph 2. The right to benefits in kind in the Member State of residence shall also apply to the members of the family of the pension claimant.

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

Section 2

Pensioners and members of their families

Article 23

Right to benefits in kind under the legislation of the Member State of residence

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

Article 24

No right to benefits in kind under the legislation of the Member State of residence

1 A person who receives a pension or pensions under the legislation of one or more Member States and who is not entitled to benefits in kind under the legislation of the Member State of residence shall nevertheless receive such benefits for himself and the members of his family, insofar as he would be entitled thereto under the legislation of the Member State or of at least one of the Member States competent in respect of his pensions, if he resided in that Member State. The benefits in kind shall be provided at the expense of the institution referred to in paragraph 2 by the institution of the place of residence, as though the person concerned were entitled to a pension and benefits in kind under the legislation of that Member State.

2 In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution as determined in accordance with the following rules:

- a where the pensioner is entitled to benefits in kind under the legislation of a single Member State, the cost shall be borne by the competent institution of that Member State;
- b where the pensioner is entitled to benefits in kind under the legislation of two or more Member States, the cost thereof shall be borne by the competent institution of the Member State to whose legislation the person has been subject for the longest period of time; should the application of this rule result in several institutions being responsible for the cost of benefits, the cost shall be borne by the institution applying the legislation to which the pensioner was last subject.

Article 25

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

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

Article 26

Residence of members of the family in a Member State other than the one in which the pensioner resides

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

Article 27

Stay of the pensioner or the members of his family in a Member State other than the Member State in which they reside - Stay in the competent Member State - Authorisation for appropriate treatment outside the Member State of residence

1 Article 19 shall apply *mutatis mutandis* to a person receiving a pension or pensions under the legislation of one or more Member States and entitled to benefits in kind under the legislation of one of the Member States which provide his pension(s) or to the members of his family who are staying in a Member State other than the one in which they reside.

2 Article 18(1) shall apply *mutatis mutandis* to the persons described in paragraph 1 when they stay in the Member State in which is situated the competent institution responsible for the cost of the benefits in kind provided to the pensioner in his Member State of residence and the said Member State has opted for this and is listed in Annex IV.

3 Article 20 shall apply *mutatis mutandis* to a pensioner and/or the members of his family who are staying in a Member State other than the one in which they reside with the purpose of receiving there the treatment appropriate to their condition.

4 Unless otherwise provided for by paragraph 5, the cost of the benefits in kind referred to in paragraphs 1 to 3 shall be borne by the competent institution responsible for the cost of benefits in kind provided to the pensioner in his Member State of residence.

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

Article 28

Special rules for retired frontier workers

1 A frontier worker who retires is entitled in case of sickness to continue to receive benefits in kind in the Member State where he last pursued his activity as an employed or self-employed person, insofar as this is a continuation of treatment which began in that Member State. The term "continuation of treatment" means the continued investigation, diagnosis and treatment of an illness.

2 A pensioner who, in the five years preceding the effective date of an old-age or invalidity pension has been pursuing an activity as an employed or self-employed person for at least two years as a frontier worker shall be entitled to benefits in kind in the Member State in which he pursued such an activity as a frontier worker, if this Member State and the Member State in which the competent institution responsible for the costs of the benefits in kind provided to the pensioner in his Member State of residence is situated have opted for this and are both listed in Annex V.

3 Paragraph 2 shall apply *mutatis mutandis* to the members of the family of a former frontier worker or his survivors if, during the periods referred to in paragraph 2, they were entitled to benefits in kind under Article 18(2), even if the frontier worker died before his pension

commenced, provided he had been pursuing an activity as an employed or self-employed person as a frontier worker for at least two years in the five years preceding his death.

4 Paragraphs 2 and 3 shall be applicable until the person concerned becomes subject to the legislation of a Member State on the basis of an activity as an employed or self-employed person.

5 The cost of the benefits in kind referred to in paragraphs 1 to 3 shall be borne by the competent institution responsible for the cost of benefits in kind provided to the pensioner or to his survivors in their respective Member States of residence.

Article 29

Cash benefits for pensioners

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

2 Paragraph 1 shall also apply to the members of a pensioner's family.

Article 30

Contributions by pensioners

1 The institution of a Member State which is responsible under the legislation it applies for making deductions in respect of contributions for sickness, maternity and equivalent paternity benefits, may request and recover such deductions, calculated in accordance with the legislation it applies, only to the extent that the cost of the benefits under Articles 23 to 26 is to be borne by an institution of the said Member State.

2 Where, in the cases referred to in Article 25, the acquisition of sickness, maternity and equivalent paternity benefits is subject to the payment of contributions or similar payments under the legislation of a Member State in which the pensioner concerned resides, these contributions shall not be payable by virtue of such residence.

Section 3

Common provisions

Article 31

General provision

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

Article 32

Prioritising of the right to benefits in kind - Special rule for the right of members of the family to benefits in the Member State of residence

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

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

Article 33

Substantial benefits in kind

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

2 The Administrative Commission shall draw up the list of benefits covered by paragraph 1.

Article 34

Overlapping of long-term care benefits

1 If a recipient of long-term care benefits in cash, which have to be treated as sickness benefits and are therefore provided by the Member State competent for cash benefits under Articles 21 or 29, is, at the same time and under this Chapter, entitled to claim benefits in kind intended for the same purpose from the institution of the place of residence or stay in another Member State, and an institution in the first Member State is also required to reimburse the cost of these benefits in kind under Article 35, the general provision on prevention of overlapping of benefits laid down in Article 10 shall be applicable, with the following restriction only: if the person concerned claims and receives the benefit in kind, the amount of the benefit in cash shall be reduced by the amount of the benefit in kind which is or could be claimed from the institution of the first Member State required to reimburse the cost.

2 The Administrative Commission shall draw up the list of the cash benefits and benefits in kind covered by paragraph 1.

3 Two or more Member States, or their competent authorities, may agree on other or supplementary measures which shall not be less advantageous for the persons concerned than the principles laid down in paragraph 1.

Article 35

Reimbursements between institutions

1 The benefits in kind provided by the institution of a Member State on behalf of the institution of another Member State under this Chapter shall give rise to full reimbursement.

2 The reimbursements referred to in paragraph 1 shall be determined and effected in accordance with the arrangements set out in the Implementing Regulation, either on production of proof of actual expenditure, or on the basis of fixed amounts for Member States the legal or administrative structures of which are such that the use of reimbursement on the basis of actual expenditure is not appropriate.

3 Two or more Member States, and their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions coming under their jurisdiction.

CHAPTER 2

Benefits in respect of accidents at work and occupational diseases

Article 36

Right to benefits in kind and in cash

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

2 A person who has sustained an accident at work or has contracted an occupational disease and who resides or stays in a Member State other than the competent Member State shall be entitled to the special benefits in kind of the scheme covering accidents at work and occupational diseases provided, on behalf of the competent institution, by the institution of the place of residence or stay in accordance with the legislation which it applies, as though he were insured under the said legislation.

3 Article 21 shall also apply to benefits falling within this Chapter.

Article 37

Costs of transport

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

2 The competent institution of a Member State whose legislation provides for meeting the costs of transporting the body of a person killed in an accident at work to the place of burial shall, in accordance with the legislation it applies, meet such costs to the corresponding place in another Member State where the person was residing at the time of the accident.

Article 38

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

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

Article 39

Aggravation of an occupational disease

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

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

Article 40

Rules for taking into account the special features of certain legislation

1 If there is no insurance against accidents at work or occupational diseases in the Member State in which the person concerned resides or stays, or if such insurance exists but there is no institution responsible for providing benefits in kind, those benefits shall be provided by the institution of the place of residence or stay responsible for providing benefits in kind in the event of sickness.

2 If there is no insurance against accidents at work or occupational diseases in the competent Member State, the provisions of this Chapter concerning benefits in kind shall nevertheless be applied to a person who is entitled to those benefits in the event of sickness, maternity or equivalent paternity under the legislation of that Member State if that person sustains an accident at work or suffers from an occupational disease during a residence or stay in another Member State. Costs shall be borne by the institution which is competent for the benefits in kind under the legislation of the competent Member State.

3 Article 5 shall apply to the competent institution in a Member State as regards the equivalence of accidents at work and occupational diseases which either have occurred or have been confirmed subsequently under the legislation of another Member State when assessing the degree of incapacity, the right to benefits or the amount thereof, on condition that:

- a no compensation is due in respect of an accident at work or an occupational disease which had occurred or had been confirmed previously under the legislation it applies; and
- b no compensation is due in respect of an accident at work or an occupational disease which had occurred or had been confirmed subsequently, under the legislation of the other Member State under which the accident at work or the occupational disease had occurred or been confirmed.

Article 41

Reimbursements between institutions

1 Article 35 shall also apply to benefits falling within this Chapter, and reimbursement shall be made on the basis of actual costs.

2 Two or more Member States, or their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions under their jurisdiction.

CHAPTER 3

Death grants

Article 42

Right to grants where death occurs in, or where the person entitled resides in, a Member State other than the competent Member State

1 When an insured person or a member of his family dies in a Member State other than the competent Member State, the death shall be deemed to have occurred in the competent Member State.

2 The competent institution shall be obliged to provide death grants payable under the legislation it applies, even if the person entitled resides in a Member State other than the competent Member State.

3 Paragraphs 1 and 2 shall also apply when the death is the result of an accident at work or an occupational disease.

Article 43

Provision of benefits in the event of the death of a pensioner

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

CHAPTER 4

Invalidity Benefits

Article 44

Persons subject only to type A legislation

- 1 For the purposes of this Chapter, "type A legislation" means any legislation under which the amount of invalidity benefits is independent of the duration of the periods of insurance or residence and which is expressly included by the competent Member State in Annex VI, and "type B legislation" means any other legislation.
- 2 A person who has been successively or alternately subject to the legislation of two or more Member States and who has completed periods of insurance or residence exclusively under type A legislations shall be entitled to benefits only from the institution of the Member State whose legislation was applicable at the time when the incapacity for work followed by invalidity occurred, taking into account, where appropriate, Article 45, and shall receive such benefits in accordance with that legislation.
- 3 A person who is not entitled to benefits under paragraph 2 shall receive the benefits to which he is still entitled under the legislation of another Member State, taking into account, where appropriate, Article 45.
- 4 If the legislation referred to in paragraph 2 or 3 contains rules for the reduction, suspension or withdrawal of invalidity benefits in the case of overlapping with other income or with benefits of a different kind within the meaning of Article 53(2), Articles 53(3) and 55(3) shall apply *mutatis mutandis*.

Article 45

Special provisions on aggregation of periods

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

Article 46

Persons subject either only to type B legislation or to type A and B legislation

1 A person who has been successively or alternately subject to the legislation of two or more Member States, of which at least one is not a type A legislation, shall be entitled to benefits under Chapter 5, which shall apply *mutatis mutandis* taking into account paragraph 3.

2 However, if the person concerned has been previously subject to a type B legislation and suffers incapacity for work leading to invalidity while subject to a type A legislation, he shall receive benefits in accordance with Article 44, provided that:

- he satisfies the conditions of that legislation exclusively or of others of the same type, taking into account, where appropriate, Article 45, but without having recourse to periods of insurance or residence completed under a type B legislation, and
- he does not assert any claims to old-age benefits, taking into account Article 50(1).

3 A decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State concerned, provided that the concordance between the legislation of these Member States on conditions relating to the degree of invalidity is acknowledged in Annex VII.

Article 47

Aggravation of invalidity

1 In the case of aggravation of an invalidity for which a person is receiving benefits under the legislation of one or more Member States, the following provisions shall apply, taking the aggravation into account:

- a the benefits shall be provided in accordance with Chapter 5, applied *mutatis mutandis*;
- b however, where the person concerned has been subject to two or more type A legislations and since receiving benefit has not been subject to the legislation of another Member State, the benefit shall be provided in accordance with Article 44(2).

2 If the total amount of the benefit or benefits payable under paragraph 1 is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously competent for payment, that institution shall pay him a supplement equal to the difference between the two amounts.

3 If the person concerned is not entitled to benefits at the expense of an institution of another Member State, the competent institution of the Member State previously competent shall provide the benefits in accordance with the legislation it applies, taking into account the aggravation and, where appropriate, Article 45.

Article 48

Conversion of invalidity benefits into old-age benefits

1 Invalidity benefits shall be converted into old-age benefits, where appropriate, under the conditions laid down by the legislation or legislations under which they are provided and in accordance with Chapter 5.

2 Where a person receiving invalidity benefits can establish a claim to old-age benefits under the legislation of one or more other Member States, in accordance with Article 50, any institution which is responsible for providing invalidity benefits under the legislation of a Member State shall continue to provide such a person with the invalidity benefits to which he is entitled under the legislation it applies until paragraph 1 becomes applicable in respect of that institution, or otherwise for as long as the person concerned satisfies the conditions for such benefits.

3 Where invalidity benefits provided under the legislation of a Member State, in accordance with Article 44, are converted into old-age benefits and where the person concerned does not yet satisfy the conditions laid down by the legislation of one or more of the other Member States for receiving those benefits, the person concerned shall receive, from that or those Member States, invalidity benefits from the date of the conversion.

Those invalidity benefits shall be provided in accordance with Chapter 5 as if that Chapter had been applicable at the time when the incapacity for work leading to invalidity occurred, until the person concerned satisfies the qualifying conditions for old-age benefit laid down by the national legislations concerned or, where such conversion is not provided for, for as long as he is entitled to invalidity benefits under the latter legislation or legislations.

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

Article 49

Special provisions for civil servants

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

CHAPTER 5

Old-age and survivors' pensions

Article 50

General provisions

1 All the competent institutions shall determine entitlement to benefit, under all the legislations of the Member States to which the person concerned has been subject, when a request for award has been submitted, unless the person concerned expressly requests deferment of the award of old-age benefits under the legislation of one or more Member States.

2 If at a given moment the person concerned does not satisfy, or no longer satisfies, the conditions laid down by all the legislations of the Member States to which he has been subject, the institutions applying legislation the conditions of which have been satisfied shall not take into account, when performing the calculation in accordance with Article 52(1) (a) or (b), the periods completed under the legislations the conditions of which have not been satisfied, or are no longer satisfied, where this gives rise to a lower amount of benefit.

3 Paragraph 2 shall apply *mutatis mutandis* when the person concerned has expressly requested deferment of the award of old-age benefits.

4 A new calculation shall be performed automatically as and when the conditions to be fulfilled under the other legislations are satisfied or when a person requests the award of an old-age benefit deferred in accordance with paragraph 1, unless the periods completed under the other legislations have already been taken into account by virtue of paragraph 2 or 3.

Article 51

Special provisions on aggregation of periods

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

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

2 The periods of insurance completed under a special scheme of a Member State shall be taken into account for the purposes of providing the benefits of the general scheme or, failing that, of the scheme applicable to manual or clerical workers, as the case may be, of another Member State, provided that the person concerned had been affiliated to one or other of those schemes, even if those periods have already been taken into account in the latter Member State under a special scheme.

3 Where the legislation of a Member State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied in the case of insurance under the legislation of another Member State, in accordance with the procedures provided for in Annex XI for each Member State concerned.

Article 52

Award of benefits

- 1 The competent institution shall calculate the amount of the benefit that would be due:
- a under the legislation it applies, only where the conditions for entitlement to benefits have been satisfied exclusively under national law (independent benefit);
 - b by calculating a theoretical amount and subsequently an actual amount (pro-rata benefit), as follows:
 - (i) the theoretical amount of the benefit is equal to the benefit which the person concerned could claim if all the periods of insurance and/or of residence which have been completed under the legislations of the other Member States

had been completed under the legislation it applies on the date of the award of the benefit. If, under this legislation, the amount does not depend on the duration of the periods completed, that amount shall be regarded as being the theoretical amount;

- (ii) the competent institution shall then establish the actual amount of the pro-rata benefit by applying to the theoretical amount the ratio between the duration of the periods completed before materialisation of the risk under the legislation it applies and the total duration of the periods completed before materialisation of the risk under the legislations of all the Member States concerned.

2 Where appropriate, the competent institution shall apply, to the amount calculated in accordance with subparagraphs l(a) and (b), all the rules relating to reduction, suspension or withdrawal, under the legislation it applies, within the limits provided for by Articles 53 to 55.

3 The person concerned shall be entitled to receive from the competent institution of each Member State the higher of the amounts calculated in accordance with subparagraphs l(a) and (b).

4 Where the calculation pursuant to subparagraph l(a) in one Member State invariably results in the independent benefit being equal to or higher than the pro-rata benefit, calculated in accordance with subparagraph l(b), the competent institution may waive the pro-rata calculation, under the conditions provided for in the Implementing Regulation. Such situations are set out in Annex VIII.

Article 53

Rules to prevent overlapping

1 Any overlapping of invalidity, old-age and survivors' benefits calculated or provided on the basis of periods of insurance and/or residence completed by the same person shall be considered to be overlapping of benefits of the same kind.

2 Overlapping of benefits which cannot be considered to be of the same kind within the meaning of paragraph 1 shall be considered to be overlapping of benefits of a different kind.

3 The following provisions shall be applicable for the purposes of rules to prevent overlapping laid down by the legislation of a Member State in the case of overlapping of a benefit in respect of invalidity, old age or survivors with a benefit of the same kind or a benefit of a different kind or with other income:

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

other Member States or income acquired in other Member States, the benefit due may be reduced solely by the amount of such benefits or such income.

Article 54

Overlapping of benefits of the same kind

1 Where benefits of the same kind due under the legislation of two or more Member States overlap, the rules to prevent overlapping laid down by the legislation of a Member State shall not be applicable to a pro-rata benefit.

2 The rules to prevent overlapping shall apply to an independent benefit only if the benefit concerned is:

- a a benefit the amount of which does not depend on the duration of periods of insurance or residence,
- or
- b a benefit the amount of which is determined on the basis of a credited period deemed to have been completed between the date on which the risk materialised and a later date, overlapping with:
 - (i) a benefit of the same type, except where an agreement has been concluded between two or more Member States to avoid the same credited period being taken into account more than once, or
 - (ii) a benefit referred to in subparagraph (a).

The benefits and agreements referred to in subparagraphs (a) and (b) are listed in Annex IX.

Article 55

Overlapping of benefits of a different kind

1 If the receipt of benefits of a different kind or other income requires the application of the rules to prevent overlapping provided for by the legislation of the Member States concerned regarding:

- a two or more independent benefits, the competent institutions shall divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules;

however, the application of this subparagraph cannot deprive the person concerned of his status as a pensioner for the purposes of the other Chapters of this Title under the conditions and the procedures laid down in the Implementing Regulation;
- b one or more pro-rata benefits, the competent institutions shall take into account the benefit or benefits or other income and all the elements stipulated for applying the rules to prevent overlapping as a function of the ratio between the periods of insurance and/or residence established for the calculation referred to in Article 52(1)(b)(ii);
- c one or more independent benefits and one or more pro-rata benefits, the competent institutions shall apply *mutatis mutandis* subparagraph (a) as regards independent benefits and subparagraph (b) as regards pro-rata benefits.

2 The competent institution shall not apply the division stipulated in respect of independent benefits, if the legislation it applies provides for account to be taken of benefits of a different kind and/or other income and all other elements for calculating part of their amount determined as a function of the ratio between periods of insurance and/or residence referred to in Article 52(1)(b)(ii).

3 Paragraphs 1 and 2 shall apply mutatis mutandis where the legislation of one or more Member States provides that a right to a benefit cannot be acquired in the case where the person concerned is in receipt of a benefit of a different kind, payable under the legislation of another Member State, or of other income.

Article 56

Additional provisions for the calculation of benefits

1 For the calculation of the theoretical and pro-rata amounts referred to in Article 52(1) (b), the following rules shall apply:

- a where the total length of the periods of insurance and/or residence completed before the risk materialised under the legislations of all the Member States concerned is longer than the maximum period required by the legislation of one of these Member States for receipt of full benefit, the competent institution of that Member State shall take into account this maximum period instead of the total length of the periods completed; this method of calculation shall not result in the imposition on that institution of the cost of a benefit greater than the full benefit provided for by the legislation it applies. This provision shall not apply to benefits the amount of which does not depend on the length of insurance;
- b the procedure for taking into account overlapping periods is laid down in the Implementing Regulation;
- c if the legislation of a Member State provides that the benefits are to be calculated on the basis of incomes, contributions, bases of contributions, increases, earnings, other amounts or a combination of more than one of them (average, proportional, fixed or credited), the competent institution shall:
 - (i) determine the basis for calculation of the benefits in accordance only with periods of insurance completed under the legislation it applies;
 - (ii) use, in order to determine the amount to be calculated in accordance with the periods of insurance and/or residence completed under the legislation of the other Member States, the same elements determined or recorded for the periods of insurance completed under the legislation it applies;

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

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

Article 57

Periods of insurance or residence of less than one year

1 Notwithstanding Article 52(1)(b), the institution of a Member State shall not be required to provide benefits in respect of periods completed under the legislation it applies which are taken into account when the risk materialises, if:

- the duration of the said periods is less than one year,
- and
- taking only these periods into account no right to benefit is acquired under that legislation.

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

2 The competent institution of each of the Member States concerned shall take into account the periods referred to in paragraph 1, for the purposes of Article 52(1)(b)(i).

3 If the effect of applying paragraph 1 would be to relieve all the institutions of the Member States concerned of their obligations, benefits shall be provided exclusively under the legislation of the last of those Member States whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with Articles 6 and 51(1) and (2) had been completed under the legislation of that Member State.

Article 58

Award of a supplement

1 A recipient of benefits to whom this Chapter applies may not, in the Member State of residence and under whose legislation a benefit is payable to him, be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with this Chapter.

2 The competent institution of that Member State shall pay him throughout the period of his residence in its territory a supplement equal to the difference between the total of the benefits due under this Chapter and the amount of the minimum benefit.

Article 59

Recalculation and revaluation of benefits

1 If the method for determining benefits or the rules for calculating benefits are altered under the legislation of a Member State, or if the personal situation of the person concerned undergoes a relevant change which, under that legislation, would lead to an adjustment of the amount of the benefit, a recalculation shall be carried out in accordance with Article 52.

2 On the other hand, if, by reason of an increase in the cost of living or changes in the level of income or other grounds for adjustment, the benefits of the Member State concerned are altered by a percentage or fixed amount, such percentage or fixed amount shall be applied

directly to the benefits determined in accordance with Article 52, without the need for a recalculation.

Article 60

Special provisions for civil servants

1 Articles 6, 50, 51(3) and 52 to 59 shall apply *mutatis mutandis* to persons covered by a special scheme for civil servants.

2 However, if the legislation of a competent Member State makes the acquisition, liquidation, retention or recovery of the right to benefits under a special scheme for civil servants subject to the condition that all periods of insurance be completed under one or more special schemes for civil servants in that Member State, or be regarded by the legislation of that Member State as equivalent to such periods, the competent institution of that State shall take into account only the periods which can be recognised under the legislation it applies.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for the receipt of these benefits, these periods shall be taken into account for the award of benefits under the general scheme or, failing that, the scheme applicable to manual or clerical workers, as the case may be.

3 Where, under the legislation of a Member State, benefits under a special scheme for civil servants are calculated on the basis of the last salary or salaries received during a reference period, the competent institution of that State shall take into account, for the purposes of the calculation, only those salaries, duly revalued, which were received during the period or periods for which the person concerned was subject to that legislation.

CHAPTER 6

Unemployment benefits

Article 61

Special rules on aggregation of periods of insurance, employment or self-employment

1 The competent institution of a Member State whose legislation makes the acquisition, retention, recovery or duration of the right to benefits conditional upon the completion of either periods of insurance, employment or self-employment shall, to the extent necessary, take into account periods of insurance, employment or self-employment completed under the legislation of any other Member State as though they were completed under the legislation it applies.

However, when the applicable legislation makes the right to benefits conditional on the completion of periods of insurance, the periods of employment or self-employment completed under the legislation of another Member State shall not be taken into account unless such periods would have been considered to be periods of insurance had they been completed in accordance with the applicable legislation.

2 Except in the cases referred to in Article 65(5)(a), the application of paragraph 1 of this Article shall be conditional on the person concerned having the most recently completed, in accordance with the legislation under which the benefits are claimed:

— periods of insurance, if that legislation requires periods of insurance,

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

Article 62

Calculation of benefits

1 The competent institution of a Member State whose legislation provides for the calculation of benefits on the basis of the amount of the previous salary or professional income shall take into account exclusively the salary or professional income received by the person concerned in respect of his last activity as an employed or self-employed person under the said legislation.

2 Paragraph 1 shall also apply where the legislation administered by the competent institution provides for a specific reference period for the determination of the salary which serves as a basis for the calculation of benefits and where, for all or part of that period, the person concerned was subject to the legislation of another Member State.

3 By way of derogation from paragraphs (1) and (2), as far as the frontier workers covered by Article 65(5)(a) are concerned, the institution of the place of residence shall take into account the salary or professional income received by the person concerned in the Member State to whose legislation he was subject during his last activity as an employed or self-employed person, in accordance with the Implementing Regulation.

Article 63

Special provisions for the waiving of residence rules

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

Article 64

Unemployed persons going to another Member State

1 A wholly unemployed person who satisfies the conditions of the legislation of the competent Member State for entitlement to benefits, and who goes to another Member State in order to seek work there, shall retain his entitlement to unemployment benefits in cash under the following conditions and within the following limits:

- a before his departure, the unemployed person must have been registered as a person seeking work and have remained available to the employment services of the competent Member State for at least four weeks after becoming unemployed. However, the competent services or institutions may authorise his departure before such time has expired;
- b the unemployed person must register as a person seeking work with the employment services of the Member State to which he has gone, be subject to the control procedure organised there and adhere to the conditions laid down under the legislation of that Member State. This condition shall be considered satisfied for the period before registration if the person concerned registers within seven days of the date on which he ceased to be available to the employment services of the Member State which he left. In exceptional cases, the competent services or institutions may extend this period;

- c entitlement to benefits shall be retained for a period of three months from the date when the unemployed person ceased to be available to the employment services of the Member State which he left, provided that the total duration for which the benefits are provided does not exceed the total duration of the period of his entitlement to benefits under the legislation of that Member State; the competent services or institutions may extend the period of three months up to a maximum of six months;
- d the benefits shall be provided by the competent institution in accordance with the legislation it applies and at its own expense.

2 If the person concerned returns to the competent Member State on or before the expiry of the period during which he is entitled to benefits under paragraph 1(c), he shall continue to be entitled to benefits under the legislation of that Member State. He shall lose all entitlement to benefits under the legislation of the competent Member State if he does not return there on or before the expiry of the said period, unless the provisions of that legislation are more favourable. In exceptional cases the competent services or institutions may allow the person concerned to return at a later date without loss of his entitlement.

3 Unless the legislation of the competent Member State is more favourable, between two periods of employment the maximum total period for which entitlement to benefits shall be retained under paragraph 1 shall be three months; the competent services or institutions may extend that period up to a maximum of six months.

4 The arrangements for exchanges of information, cooperation and mutual assistance between the institutions and services of the competent Member State and the Member State to which the person goes in order to seek work shall be laid down in the Implementing Regulation.

Article 65

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

1 A person who is partially or intermittently unemployed and who, during his last activity as an employed or self-employed person, resided in a Member State other than the competent Member State shall make himself available to his employer or to the employment services in the competent Member State. He shall receive benefits in accordance with the legislation of the competent Member State as if he were residing in that Member State. These benefits shall be provided by the institution of the competent Member State.

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

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

3 The unemployed person referred to in the first sentence of paragraph 2 shall register as a person seeking work with the competent employment services of the Member State in which he resides, shall be subject to the control procedure organised there and shall adhere to the conditions laid down under the legislation of that Member State. If he chooses also to register as

a person seeking work in the Member State in which he pursued his last activity as an employed or self-employed person, he shall comply with the obligations applicable in that State.

4 The implementation of the second sentence of paragraph 2 and of the second sentence of paragraph 3, as well as the arrangements for exchanges of information, cooperation and mutual assistance between the institutions and services of the Member State of residence and the Member State in which he pursued his last occupation, shall be laid down in the Implementing Regulation.

5

- a The unemployed person referred to in the first and second sentences of paragraph 2 shall receive benefits in accordance with the legislation of the Member State of residence as if he had been subject to that legislation during his last activity as an employed or self-employed person. Those benefits shall be provided by the institution of the place of residence.
- b However, a worker other than a frontier worker who has been provided benefits at the expense of the competent institution of the Member State to whose legislation he was last subject shall firstly receive, on his return to the Member State of residence, benefits in accordance with Article 64, receipt of the benefits in accordance with (a) being suspended for the period during which he receives benefits under the legislation to which he was last subject.

6 The benefits provided by the institution of the place of residence under paragraph 5 shall continue to be at its own expense. However, subject to paragraph 7, the competent institution of the Member State to whose legislation he was last subject shall reimburse to the institution of the place of residence the full amount of the benefits provided by the latter institution during the first three months. The amount of the reimbursement during this period may not be higher than the amount payable, in the case of unemployment, under the legislation of the competent Member State. In the case referred to in paragraph 5(b), the period during which benefits are provided under Article 64 shall be deducted from the period referred to in the second sentence of this paragraph. The arrangements for reimbursement shall be laid down in the Implementing Regulation.

7 However, the period of reimbursement referred to in paragraph 6 shall be extended to five months when the person concerned has, during the preceding 24 months, completed periods of employment or self-employment of at least 12 months in the Member State to whose legislation he was last subject, where such periods would qualify for the purposes of establishing entitlement to unemployment benefits.

8 For the purposes of paragraphs 6 and 7, two or more Member States, or their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions falling under their jurisdiction.

CHAPTER 7

Pre-retirement benefits

Article 66

Benefits

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

CHAPTER 8

Family benefits

Article 67

Members of the family residing in another Member State

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

Article 68

Priority rules in the event of overlapping

1 Where, during the same period and for the same family members, benefits are provided for under the legislation of more than one Member State the following priority rules shall apply:

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

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

2 In the case of overlapping entitlements, family benefits shall be provided in accordance with the legislation designated as having priority in accordance with paragraph 1. Entitlements to family benefits by virtue of other conflicting legislation or legislations shall be suspended up to the amount provided for by the first legislation and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount. However, such a differential supplement does not need to be provided for children residing in another Member State when entitlement to the benefit in question is based on residence only.

3 If, under Article 67, an application for family benefits is submitted to the competent institution of a Member State whose legislation is applicable, but not by priority right in accordance with paragraphs 1 and 2 of this Article:

- a that institution shall forward the application without delay to the competent institution of the Member State whose legislation is applicable by priority, inform the person concerned and, without prejudice to the provisions of the Implementing Regulation concerning the provisional award of benefits, provide, if necessary, the differential supplement mentioned in paragraph 2;
- b the competent institution of the Member State whose legislation is applicable by priority shall deal with this application as though it were submitted directly to itself, and the date on which such an application was submitted to the first institution shall be considered as the date of its claim to the institution with priority.

Article 69

Additional provisions

1 If, under the legislation designated by virtue of Articles 67 and 68, no right is acquired to the payment of additional or special family benefits for orphans, such benefits shall be paid by default, and in addition to the other family benefits acquired in accordance with the abovementioned legislation, under the legislation of the Member State to which the deceased worker was subject for the longest period of time, insofar as the right was acquired under that legislation. If no right was acquired under that legislation, the conditions for the acquisition of such right under the legislations of the other Member States shall be examined and benefits provided in decreasing order of the length of periods of insurance or residence completed under the legislation of those Member States.

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

CHAPTER 9

Special non-contributory cash benefits

Article 70

General provision

1 This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for

entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance.

2 For the purposes of this Chapter, "special non-contributory cash benefits" means those which:

a are intended to provide either:

(i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;

or

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

and

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

and

c are listed in Annex X.

3 Article 7 and the other Chapters of this Title shall not apply to the benefits referred to in paragraph 2 of this Article.

4 The benefits referred to in paragraph 2 shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation. Such benefits shall be provided by and at the expense of the institution of the place of residence.