

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 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.