

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)

TITLE III

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

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.