

REGULATION (EEC) No 1408/71 OF THE COUNCIL

of 14 June 1971

on the application of social security schemes to employed persons and their families
moving within the Community

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 2, 7 and 51 thereof;

Having regard to the proposals from the Commission drawn up after consultation with the Administrative Commission on Social Security for Migrant Workers¹;

Having regard to the Opinions of the European Parliament²;

Having regard to the Opinions of the Economic and Social Committee³;

Whereas the need for a general revision of Council Regulation No 3⁴ on social security for migrant workers has become progressively more apparent, both in the light of the practical experience of its implementation since 1959 and as a result of amendments made to national legislations;

Whereas the existing provisions for co-ordination can, as a whole, be developed, improved and to some extent simplified at the same time, taking into account the considerable differences existing between national social security legislations;

Whereas it is appropriate at this time to bring together in a single legislative instrument all the basic provisions for implementing Article 51 of the Treaty for the benefit of workers, including frontier workers, seasonal workers and seamen;

Whereas the considerable differences existing between national legislations as regards the persons to whom they apply make it preferable to establish the principle that the Regulation applies to all nationals of Member States insured under social security schemes for employed persons;

Whereas the provisions for co-ordination of national social security legislations fall within the framework of freedom of movement for workers who are nationals of Member States and should, to this end, contribute towards the improvement of their standard of living and conditions of employment, by guaranteeing within the Community firstly equality of treatment for all nationals of Member States under the various national legislations and secondly social security benefits for workers and their dependents regardless of their place of employment or of residence;

Whereas these objectives must be attained in particular by aggregation of all the periods taken into account under the various national legislations for the purpose of acquiring and retaining the right to benefits and of calculating the amount of benefits, and by the provision of benefits for the various categories of persons covered by the Regulation regardless of their place of residence within the Community;

Whereas the provisions for co-ordination adopted for the implementation of Article 51 of the Treaty must guarantee to workers who move within the Community their accrued rights and advantages whilst not giving rise to unjustified overlapping of benefits;

Whereas to this end, persons entitled to benefits for invalidity, old age and death (pensions) must be able to enjoy all the benefits which have accrued to them in the various Member States; whereas, however, in order to avoid unjustified overlapping of benefits, which could result, in particular from the duplication of insurance periods and other periods treated as such, it is necessary to limit the benefits to the

¹ OJ No 194, 28.10.1966, p. 3333/66 and OJ No C 95, 21.9.1968, p. 18.

² OJ No C 10, 14.2.1968, p. 30 and OJ No C. 135, 14.12.1968, p. 4.

³ OJ No 64, 5.4.1967, p. 1009/67 and OJ No C 21, 20.2.1969, p. 18.

⁴ OJ No 30, 16.12.1958, p. 561/58.

greatest amount which would have been due to a worker from one of these States if he had spent all his working life there;

Whereas, in order to secure mobility of labour under improved conditions, it is necessary henceforth to ensure closer co-ordination between the unemployment insurance schemes and the unemployment assistance schemes of all the Member States; whereas it is therefore particularly appropriate, in order to facilitate search for employment in the various Member States, to grant to an unemployed worker, for a limited period, the unemployment benefits provided for by the legislation of the Member State to which he was last subject;

Whereas it seems desirable to improve the system under Regulation No 3 governing family benefits in cases of separated families, both as regards the categories of persons to be entitled to such benefits and as regards the machinery for awarding them;

Whereas, taking into account the problems relating to unemployment, it is appropriate to extend entitlement to family benefits to members of the families of unemployed workers residing in a Member State other than the one which is responsible for payment of the unemployment benefit;

Whereas, moreover, the current restrictions on the granting of family benefits should be abolished, and whereas in order to ensure payment of benefits for the maintenance of the members of separated families, leaving aside those benefits aimed largely at encouraging an increase in population, it would be preferable to lay down rules common to all the Member States and efforts should continue to this end; but in the face of great variations between national legislations a solution should be adopted to take this situation into account: payment of family benefits of the country of employment in respect of five countries, and payment of family allowances of the country of residence of members of the family where the country of employment is France;

Whereas by analogy with the solutions contained in Council Regulation (EEC) 1612/68¹ of 15 October 1968 on freedom of movement for workers within the Community, it is desirable to bring together in an Advisory Committee representatives of workers and employers to examine the problems dealt with by the Administrative Commission;

Whereas the present Regulation may replace the arrangements provided for in Article 69 (4) of the Treaty establishing the European Coal and Steel Community;

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purpose of this Regulation:

(a) 'worker' means:

- (i) subject to the restrictions set out in Annex V, any person who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed persons;
- (ii) any person who is compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this Regulation, under a social security scheme for all residents or for the whole working population if such person:

— can be identified as an employed person by virtue of the manner in which such scheme is administered or financed, or

— failing such criteria, is insured for some other contingency specified in Annex V under a scheme for employed persons, either compulsorily or on an optional continued basis;

(iii) any person who is voluntarily insured for one or more of the contingencies covered by the branches dealt with in this Regulation, under a social security scheme of a Member State for employed persons or for all residents or for certain categories of residents if such person has previously been compulsorily insured for the same contingency under a scheme for employed persons of the same Member State;

(b) 'frontier worker' means any worker employed in the territory of a Member State and residing in the territory of another Member State to which he returns as a rule daily or at least once a week;

¹ OJ No 259, 19.10.1968, p. 2.

however, a frontier worker who is posted elsewhere in the territory of the same or another Member State by the undertaking to which he is normally attached and is prevented on account of such posting from returning daily or at least once a week to the place where he resides shall nevertheless retain the status of frontier worker for a period not exceeding four months;

- (c) 'seasonal worker' means any worker who goes to the territory of a Member State other than the one in which he is resident to do work there of a seasonal nature for an undertaking or an employer of that State for a period which may on no account exceed eight months, and who stays in the territory of the said State for the duration of his work; work of a seasonal nature shall be taken to mean work which, being dependent on the succession of the seasons, automatically recurs each year;
- (d) 'refugee' shall have the meaning assigned to it in Article 1 of the Convention on the Status of Refugees, signed at Geneva on 28 July 1951;
- (e) 'stateless person' shall have the meaning assigned to it in Article 1 of the Convention on the Status of Stateless Persons, signed in New York on 28 September 1954;
- (f) 'member of the family' means any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided or, in the cases referred to in Article 22 (1) (a) and Article 39, by the legislation of the Member State in whose territory such person resides; where, however, the said legislations regard as a member of the family or a member of the household only a person living under the same roof as the worker, this condition shall be considered satisfied if the person in question is mainly dependent on that worker;
- (g) 'survivor' means any person defined or recognised as such by the legislation under which the benefits are granted; where, however, the said legislation regards as a survivor only a person who was living under the same roof as the deceased worker, this condition shall be considered satisfied if such person was mainly dependent on the deceased worker;
- (h) 'residence' means habitual residence;
- (i) 'stay' means temporary residence;
- (j) 'legislation' means all the laws, regulations, and other provisions and all other present or future implementing measures of each Member State relating to the branches and schemes of social security covered by Article 4 (1) and (2);

This term excludes provisions of existing or future industrial agreements, whether or not they

have been the subject of a decision by the authorities rendering them compulsory or extending their scope. However, where such industrial agreements serve to implement an insurance requirement under the laws or regulations referred to in the preceding subparagraph, this restriction may at any time be lifted by a declaration by the Member State concerned, specifying the schemes of such a kind to which this Regulation applies. Notification shall be given of such declaration, which shall be published in accordance with the provisions of Article 96. The provisions of the preceding subparagraph shall not have the effect of exempting from application of this Regulation the schemes to which Regulation No 3 has been applied;

- (k) 'social security convention' means any bilateral or multilateral instrument which binds or will bind two or more Member States exclusively, and any other multilateral instrument which binds or will bind at least two Member States and one or more other States in the field of social security, for all or part of the branches and schemes set out in Article 4 (1) and (2), together with agreements, of whatever kind, concluded pursuant to the said instruments;
- (l) 'competent authority' means, in respect of each Member State, the Minister, Ministers or other equivalent authority responsible for social security schemes throughout or in any part of the territory of the State in question;
- (m) 'Administrative Commission' means the Commission referred to in Article 80;
- (n) 'institution' means, in respect of each Member State, the body or authority responsible for administering all or part of the legislation;
- (o) 'competent institution' means:
 - (i) the institution with which the person concerned is insured at the time of the application for benefit, or
 - (ii) the institution from which the person concerned is entitled or would be entitled to benefits if he or a member or members of his family were resident in the territory of the Member State in which the institution is situated, or
 - (iii) the institution designated by the competent authority of the Member State concerned, or
 - (iv) in the case of a scheme relating to an employer's liability in respect of the benefits set out in Article 4 (1), either the employer or the insurer involved or, in default thereof, a body or authority designated by the competent authority of the Member State concerned;

- (p) 'institution of the place of residence' and 'institution of the place of stay' mean respectively the institution which is competent to provide benefits in the place where the person concerned resides and the institution which is competent to provide benefits in the place where the person concerned is staying, under the legislation administered by that institution or, where no such institution exists, the institution designated by the competent authority of the Member State in question;
- (q) 'competent State' means the Member State in whose territory the competent institution is situated;
- (r) 'insurance periods' means contribution periods or periods of employment as defined or recognised as insurance periods by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to insurance periods;
- (s) 'periods of employment' means periods defined or recognised as such by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment;
- (t) 'benefits' and 'pensions' mean all benefits and pensions, including all elements thereof payable out of public funds, revalorisation increases and supplementary allowances, subject to the provisions of Title III, as also lump-sum benefits which may be paid in lieu of pensions, and payments made by way of reimbursement of contributions;
- (u) (i) 'family benefits' means all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4 (1) (h), excluding the special childbirth allowances mentioned in Annex I;
- (ii) 'family allowances' means periodical cash benefits granted exclusively by reference to the number and, where appropriate, the age of members of the family;
- (v) 'death grants' means any once-for-all payment in, the event of death, exclusive of the lump-sum benefits referred to in subparagraph (t).

Article 2

Persons covered

1. This Regulation shall apply to workers who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the

Member States, as also to the members of their families and their survivors.

2. In addition, this Regulation shall apply to the survivors of workers who have been subject to the legislation of one or more Member States, irrespective of the nationality of such workers, where their survivors are nationals of one of the Member States, or stateless persons or refugees residing within the territory of one of the Member States.

3. This Regulation shall apply to civil servants and to persons who, in accordance with the legislation applicable, are treated as such, where they are or have been subject to the legislation of a Member State to which this Regulation applies.

Article 3

Equality of treatment

1. Subject to the special provisions of this Regulation, persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.

2. The provisions of paragraph 1 shall apply to the right to elect members of the organs of social security institutions or to participate in their nomination, but shall not affect the legislative provisions of any Member State relating to eligibility or methods of nomination.

3. Save as provided in Annex II, social security conventions which remain in force pursuant to Article 7 (2) (c) and conventions concluded pursuant to Article 8 (1), shall apply to all persons to whom this Regulation applies.

Article 4

Matters covered

1. This Regulation shall apply to all legislation concerning the following branches of social security:

- (a) sickness and maternity benefits;
- (b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;
- (c) old-age benefits;
- (d) survivors' benefits;
- (e) benefits in respect of accidents at work and occupational diseases;
- (f) death grants;
- (g) unemployment benefits;
- (h) family benefits.

2. This Regulation shall apply to all general and special social security schemes, whether contributory or non-contributory, and to schemes concerning the liability of an employer or ship owner in respect of the benefits referred to in paragraph 1.

3. The provisions of Title III of this Regulation shall not, however, affect the legislative provisions of any Member State concerning a ship owner's liability.

4. This Regulation shall not apply to social and medical assistance, to benefit schemes for victims of war or its consequences, or to special schemes for civil servants and persons treated as such.

Article 5

Declarations of Member States on the scope of this Regulation

The Member States shall specify the legislation and schemes referred to in Article 4 (1) and (2), the minimum benefits referred to in Article 50 and the benefits referred to in Articles 77 and 78 in declarations to be notified and published in accordance with Article 96.

Article 6

Social security conventions replaced by this Regulation

Subject to the provisions of Articles 7, 8 and 46 (4) this Regulation shall, as regards persons and matters which it covers, replace the provisions of any social security convention binding either;

- (a) two or more Member States exclusively, or
- (b) at least two Member States and one or more other States, where settlement of the cases concerned does not involve any institution of one of the latter States.

Article 7

International provisions not affected by this Regulation

1. This Regulation shall not affect obligations arising from:

- (a) any convention adopted by the International Labour Conference which, after ratification by one or more Member States, has entered into force;
- (b) the European Interim Agreements on Social Security of 11 December 1953 concluded between the Member States of the Council of Europe.

2. The provisions of Article 6 notwithstanding, the following shall continue to apply:

- (a) the Agreement of 27 July 1950 concerning social security for Rhine boatmen, revised on 13 February 1961;
- (b) the European Convention of 9 July 1956 concerning social security for workers in international transport;
- (c) the social security conventions listed in Annex II.

Article 8

Conclusion of conventions between Member States

1. Two or more Member States may, as need arises, conclude conventions with each other based on the principles and in the spirit of this Regulation.

2. Each Member State shall notify, in accordance with Article 96 (1), any convention concluded with another Member State pursuant to paragraph 1.

Article 9

Admission to voluntary or optional continued insurance

1. The legislative provisions of any Member State which make admission to voluntary or optional continued insurance conditional upon residence in the territory of that State shall not apply to workers to whom this Regulation applies and who are resident in the territory of another Member State, provided that at some time in their past working life they were subject to the legislation of the first State.

2. Where, under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon, completion of insurance periods, any such periods completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State.

Article 10

Waiving of residence clauses — Effect of compulsory insurance on reimbursement of contributions

1. Save as otherwise provided in this Regulation, invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.

The preceding subparagraph shall also apply to lump-sum benefits granted in cases of remarriage of a surviving spouse who was entitled to a survivor's pension.

2. Where under the legislation of a Member State reimbursement of contributions is conditional upon the person concerned having ceased to be subject to compulsory insurance, this condition shall not be considered satisfied as long as the person concerned is subject to compulsory insurance as a worker under the legislation of another Member State.

Article 11

Revalorisation of benefits

Rules for revalorisation provided by the legislation of a Member State shall apply to benefits due under that legislation by virtue of the provisions of this Regulation.

Article 12

Prevention of overlapping of benefits

1. This Regulation can neither confer nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance. However, this provision shall not apply to benefits in respect of invalidity, old age, death (pensions) or occupational disease which are awarded by the

institutions of two or more Member States, in accordance with Article 41, Article 43 (2) and (3), Articles 46, 50 and 51 or Article 60 (1) (b).

2. The legislative provisions of a Member State for reduction, suspension or withdrawal of benefit in cases of overlapping with other social security benefits or other income may be invoked even though the right to such benefits was acquired under the legislation of another Member State or such income arises in the territory of another Member State. However, this provision shall not apply when the person concerned receives benefits of the same kind in respect of invalidity, old age, death (pensions) or occupational disease which are awarded by the institutions of two or more Member States in accordance with Articles 46, 50, 51 or Article 60 (1) (b).

3. The legislative provisions of a Member State for reduction, suspension or withdrawal of benefit in the case of a person in receipt of invalidity benefits or anticipatory old-age benefits pursuing a professional or trade activity may be invoked against such person even though he is pursuing his activity in the territory of another Member State.

4. An invalidity pension payable under Netherlands legislation shall, in a case where the Netherlands institution is bound under Article 57 (3) (c) or Article 60 (2) (a) to contribute also to the cost of benefits for occupational disease granted under the legislation of another Member State, be reduced by the amount payable to the institution of the other Member State which is responsible for granting the benefits for occupational disease.

TITLE II

DETERMINATION OF THE LEGISLATION APPLICABLE

Article 13

General rules

1. A worker to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.

2. Subject to the provisions of Articles 14 to 17:

(a) a worker employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of

another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State;

(b) a worker employed on board a vessel flying the flag of a Member State shall be subject to the legislation of that State;

(c) civil servants and persons treated as such shall be subject to the legislation of the Member State to which the administration employing them is subject;

- (d) a worker called up or recalled for service in the armed forces of a Member State shall retain the status of worker, and shall be subject to the legislation of that State; if entitlement under that legislation is subject to the completion of insurance periods before entry into or release from such service, insurance periods completed under the legislation of any other Member State shall be taken into account, to the extent necessary, as if they were insurance periods completed under the legislation of the first State.

Article 14

Special rules

1. Article 13 (2) (a) shall apply subject to the following exceptions or circumstances:

- (a) (i) A worker employed in the territory of a Member State by an undertaking to which he is normally attached who is posted by that undertaking to the territory of another Member State to perform work there for that undertaking shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed twelve months and that he is not sent to replace another worker who has completed his term of posting;
- (ii) if the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds twelve months, the legislation of the first State shall continue to apply until the completion of such work, provided that the competent authority of the State in whose territory the worker is posted or the body designated by that authority gives its consent; such consent must be requested before the end of the initial twelve month period. Such consent cannot, however, be given for a period exceeding twelve months;
- (b) a worker employed in international transport in the territory of two or more Member States as a member of travelling or flying personnel and who is working for an undertaking which, for hire or reward or on own account, operates transport services for passengers or goods by rail, road, air or inland waterway and has its registered office or place of business in the territory of a Member State, shall be subject to the legislation of the latter State, with the following restrictions:
- (i) where the said undertaking has a branch or permanent representation in the territory of a

Member State other than that in which it has its registered office or place of business, a worker employed by such branch or agency shall be subject to the legislation of the Member State in whose territory such branch or permanent representation is situated;

- (ii) where a worker is employed principally in the territory of the Member State in which he resides, he shall be subject to the legislation of that State, even if the undertaking which employs him has no registered office or place of business or branch or permanent representation in that territory;

- (c) a worker, other than one employed in international transport, who normally pursues his activity in the territory of two or more Member States shall be subject:

- (i) to the legislation of the Member State in whose territory he resides, if he pursues his activity partly in that territory or if he is attached to several undertakings or several employers who have their registered offices or places of business in the territory of different Member States;
- (ii) to the legislation of the Member State in whose territory is situated the registered office or place of business of the undertaking or individual employing him, if he does not reside in the territory of any of the Member States where he is pursuing his activity;

- (d) a worker who is employed in the territory of one Member State by an undertaking which has its registered office or place of business in the territory of another Member State and which straddles the common frontier of these States shall be subject to the legislation of the Member State in whose territory the undertaking has its registered office or place of business.

2. Article 13 (2) (b) shall apply subject to the following exceptions and circumstances:

- (a) a worker employed by an undertaking to which he is normally attached, either in the territory of a Member State or on board a vessel flying the flag of a Member State, who is posted by that undertaking on board a vessel flying the flag of another Member State to perform work there for that undertaking shall, subject to the conditions provided in paragraph 1 (a), continue to be

subject to the legislation of the first Member State;

- (b) a worker who, while not being habitually employed at sea, is employed in the territorial waters or in a port of a Member State on a vessel flying the flag of another Member State, but is not a member of the crew, shall be subject to the legislation of the first State;
- (c) a worker employed on board a vessel flying the flag of a Member State and remunerated for such employment by an undertaking or a person whose registered office or place of business is in the territory of another Member State shall be subject to the legislation of the latter State if he is resident in the territory of that State; the undertaking or person paying the remuneration shall be considered as the employer for the purposes of the said legislation.

3. The legislative provisions of a Member State under which a pensioner who is pursuing a professional or trade activity is not subject to compulsory insurance in respect of such activity shall also apply to a pensioner whose pension was acquired under the legislation of another Member State.

Article 15

Rules concerning voluntary insurance or optional continued insurance

1. The provisions of Articles 13 and 14 shall not apply to voluntary insurance or optional continued insurance.
2. Where application of the legislations of two or more Member States entails overlapping of insurance:
 - under a compulsory insurance scheme and one or more voluntary or optional continued insurance schemes, the person concerned shall be subject exclusively to the compulsory insurance schemes;
 - under two or more voluntary or optional continued insurance schemes, the person concerned may join only the voluntary or optional continued insurance scheme for which he has opted.
3. However, in respect of invalidity, old age and death (pensions), the person concerned may join the

voluntary or optional continued insurance scheme of a Member State, even if he is compulsorily subject to the legislation of another Member State, to the extent that such overlapping is explicitly or implicitly admitted in the first Member State.

The person concerned who applies to join a voluntary or optional continued insurance scheme in a Member State whose legislation provides, in addition to such insurance, for complementary optional insurance may only join the latter.

Article 16

Special rules regarding persons employed by diplomatic missions and consular posts, and auxiliary staff of the European Communities

1. Article 13 (2) (a) shall apply to persons employed by diplomatic missions and consular posts and to the private domestic staff of agents of such missions or posts.

2. However, workers covered by paragraph 1 who are nationals of the Member State which is the accrediting or sending State may opt to be subject to the legislation of that State. Such right of option may be renewed at the end of each calendar year and shall not have retrospective effect.

3. Auxiliary staff of the European Communities may opt to be subject to the legislation of the Member State in whose territory they are employed, to the legislation of the Member State to which they were last subject or to the legislation of the Member State whose nationals they are, in respect of provisions other than those relating to family allowances, the granting of which is governed by the conditions of employment applicable to such staff. This right of option, which may be exercised once only, shall take effect from the date of entry into employment.

Article 17

Exceptions to the provisions of Articles 13 to 16

Two or more Member States or the competent authorities of those States may, by common agreement, provide for exceptions to the provisions of Articles 13 to 16 in the interest of certain workers or categories of workers.

TITLE III

SPECIAL PROVISIONS RELATING TO THE VARIOUS CATEGORIES OF BENEFITIS

CHAPTER 1

SICKNESS AND MATERNITY

Section 1

Common provisions

Article 18

Aggregation of insurance periods

1. 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 insurance periods shall, to the extent necessary, take account of insurance periods completed under the legislation of any other Member State as if they were periods completed under its own legislation.

2. The provisions of paragraph 1 shall apply to seasonal workers, even in respect of periods prior to any break in insurance exceeding the period allowed by the legislation of the competent State, provided however that the worker concerned has not ceased to be insured for a period exceeding four months.

Section 2

Workers and members of their families

Article 19

Residence in a Member State other than the competent State — General rules

1. A worker residing in the territory of a Member State other than the competent State, who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, shall receive in the State in which he is resident:

- (a) benefits in kind provided on behalf of the competent institution by the institution of the place of residence in accordance with the legislation administered by that institution as though he were insured with it;
- (b) cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement

between the competent institution and the institution of the place of residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.

2. The provisions of paragraph 1 (a) shall apply by analogy to members of the family who are residing in the territory of a Member State other than the competent State, where they are not entitled to such benefits under the legislation of the State in whose territory they reside.

Article 20

Frontier workers and members of their families — Special rules

A frontier worker may also obtain benefits in the territory of the competent State. Such benefits shall be provided by the competent institution in accordance with the legislation of that State, as though the worker were resident there. Members of his family may receive benefits in kind under the same conditions; however, receipt of such benefits shall, except in urgent cases, be conditional upon an agreement between the States concerned or between the competent authorities of those States or, in its absence, on prior authorisation by the competent institution.

Article 21

Stay in or transfer of residence to the competent State

1. A worker and members of his family referred to in Article 19 who are staying in the territory of the competent State shall receive benefits in accordance with the legislation of that State as though they were resident there even if they have already received benefits for the same case of sickness or maternity before their stay. This provision shall not, however, apply to frontier workers and members of their families.

2. A worker and members of his family referred to in Article 19 who transfer their residence to the territory of the competent State, shall receive benefits in accordance with the legislation of that State, even if they have already received benefits for the same case of sickness or maternity before transferring their residence.

Article 22

Stay outside the competent State — Return to or transfer of residence to another Member State during sickness or maternity — Need to go to another Member State in order to receive appropriate treatment

1. A worker who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, and:

- (a) whose condition necessitates immediate benefits during a stay in the territory of another Member State, or
- (b) who, having become entitled to benefits chargeable to the competent institution, is authorised by that institution to return to the territory of the Member State where he resides, or to transfer his residence to the territory of another Member State, or
- (c) who is authorised by the competent institution to go to the territory of another Member State to receive there the treatment appropriate to his condition, shall be entitled:
 - (i) to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence in accordance with the legislation which it administers, as though he were insured with it; the length of the period during which benefits are provided shall be governed however by the legislation of the competent State;
 - (ii) to cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of stay or residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.

2. The authorisation required under paragraph 1 (b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or the receipt of medical treatment.

The authorisation required under paragraph 1 (c) may not be refused where the treatment in question cannot be provided for the person concerned within the territory of the Member State in which he resides.

3. The provisions of paragraphs 1 and 2 shall apply to members of a worker's family in respect of benefits in kind.

4. The fact that the provisions of paragraph 1 apply to a worker shall not affect the right to benefit of members of his family.

*Article 23***Calculation of cash benefits**

1. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on an average wage or salary, shall determine that average wage or salary exclusively by reference to wages or salaries confirmed as having been paid during the periods completed under the said legislation.

2. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on a standard wage or salary, shall take account exclusively of the standard wage or salary or, where appropriate, of the average of the standard wages or salaries for the periods completed under the said legislation.

3. The competent institution of a Member State under whose legislation the amount of cash benefits varies with the number of members of the family, shall also take into account the members of the family of the person concerned who are resident in the territory of another Member State as if they were resident in the territory of the competent State.

*Article 24***Substantial benefits in kind**

1. Where the right of a worker or a member of his family to a prosthesis, a major appliance or other substantial benefits in kind has been recognised by the institution of a Member State before he becomes insured with the institution of another Member State, the said worker shall receive such benefits at the expense of the first institution, even if they are granted after he becomes insured with the second institution.

2. The Administrative Commission shall draw up the list of benefits to which the provisions of paragraph 1 apply.

Section 3**Unemployed persons and members of their families***Article 25*

1. An unemployed person, to whom Article 69 (1) and the second sentence of Article 71 (1) (b) (ii)

apply, and who satisfies the conditions of the legislation of the competent State for entitlement to benefits in kind and in cash, taking account where appropriate of the provisions of Article 18, shall receive for the period provided under Article 69 (1) (c):

(a) benefits in kind provided on behalf of the competent institution by the institution of the Member State in which he seeks employment in accordance with the legislation of the latter institution, as though he were insured with it;

(b) cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the Member State in which the unemployed person seeks employment, benefits may be provided by the latter institution on behalf of the former institution in accordance with the legislation of the competent State. Unemployment benefits under Article 69 (1) shall not be granted for the period during which cash benefits are received.

2. A totally unemployed person to whom the provisions of Article 71 (1) (a) (ii) or the first sentence of Article 71 (1) (b) (ii) apply shall receive benefits in kind and in cash in accordance with the legislation of the Member State in whose territory he resides, as though he had been subject to that legislation during his last employment, taking account where appropriate of the provisions of Article 18; the cost of such benefits shall be met by the institution of the country of residence.

3. Where an unemployed person satisfies the conditions of the legislation of the Member State which is responsible for the cost of unemployment benefits for entitlement to benefits in kind, taking account where appropriate of the provisions of Article 18, the members of his family shall receive such benefits, irrespective of the Member State in whose territory they reside or are staying. Such benefits shall be provided by the institution of the place of residence or of stay, in accordance with the legislation which it administers on behalf of the competent institution of the Member State which is responsible for the cost of unemployment benefits.

4. Without prejudice to any legislative provisions of a Member State which permit an extension of the period during which sickness benefits may be granted, the period provided for in paragraph 1 may, in cases of *force majeure*, be extended by the competent institution within the limit fixed by the legislation administered by the institution.

Section 4

Pension claimants and members of their families

Article 26

Right to benefits in kind in cases of cessation of the right to benefits from the institution which was last competent

1. A worker, members of his family or his survivors who, during the investigation of a claim, cease to be entitled to benefits in kind under the legislation of the Member State last competent, shall nevertheless receive such benefits under the following conditions: benefits in kind shall be provided in accordance with the legislation of the Member State in whose territory the person or persons concerned reside, provided that they are entitled to such benefits under that legislation or would be entitled to them under the legislation of another Member State if they were residing in the territory of that State, taking account where appropriate of the provisions of Article 18.

2. A pension claimant who is entitled to benefits in kind under the legislation of a Member State which obliges the person concerned to pay sickness insurance contributions himself during the investigation of his pension claim shall cease to be entitled to benefits in kind at the end of the second month for which he has not paid the contributions due.

3. Benefits in kind provided pursuant to paragraph 1 shall be chargeable to the institution which has collected contributions pursuant to paragraph 2; where no contributions are payable under paragraph 2, the institution responsible for the cost of the benefits in kind shall, after awarding the pension pursuant to Article 28, refund the amount of the benefits provided to the institution of the place of residence.

Section 5

Pensioners and members of their families

Article 27

Pensions payable under the legislation of several States where a right to benefits in kind is enjoyed in the country of residence

A pensioner who is entitled to draw pensions under the legislation of two or more Member States and who is entitled to benefits in kind under the legislation of the Member State in whose territory he resides, taking account where appropriate of the provisions of Article 18 and Annex V, shall, with the members of his family, receive such benefits from the

institution of the place of residence and at the expense of that institution as though he were a pensioner whose pension was payable solely under the legislation of the latter State.

Article 28

Pensions payable under the legislation of one or more States where no right to benefits in kind is enjoyed in the country of residence

1. A pensioner who is entitled to draw 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 in whose territory he resides, shall nevertheless receive such benefits for himself and members of his family if, taking account where appropriate of the provisions of Article 18 and Annex V, 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 pensions if he were resident in the territory of such State. The benefits shall be provided on behalf of the institution referred to in paragraph 2 by the institution of the place of residence as though the person concerned were a pensioner under the legislation of the State in whose territory he resides and were entitled to benefits in kind.

2. In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution determined according to the following rules:

- (a) where the pensioner is entitled to the said benefits under the legislation of a single Member State, the cost shall be borne by the competent institution of that State;
- (b) where the pensioner is entitled to the said benefits under the legislations of two or more Member States, the cost thereof shall be borne by the competent institution of the Member State under whose legislation the pensioner has completed the longest period of insurance; should the application of this rule result in several institutions being responsible for the cost of benefits, cost shall be borne by the institution with which the pensioner was last insured.

Article 29

Residence of members of the family in a State other than the one in which the pensioner resides — Transfer of residence to the State where the pensioner resides

1. Members of the family of a pensioner entitled to draw a pension or pensions under the legislation of one or more Member States who reside in the territory of a Member State other than the one in which the pensioner resides shall where he is entitled under the legislation of a Member State to benefits in

kind, receive such benefits as though the pensioner were resident in the same territory as them. Such benefits shall be provided by the institution of the place of residence of the members of the family, in accordance with the legislation which that institution administers and shall be chargeable to the institution of the pensioner's place of residence.

2. Members of the family referred to in paragraph 1 who transfer their residence to the territory of the Member State where the pensioner resides, shall receive benefits under the legislation of that State, even if they have already received benefits for the same case of sickness or maternity before transferring their residence.

Article 30

Substantial benefits in kind

The provisions of Article 24 shall apply by analogy to pensioners.

Article 31

A pensioner and/or member of his family staying in a State other than the State in which they reside

A pensioner entitled to draw a pension or pensions under the legislation of one or more Member States who is also entitled to benefits in kind under the legislation of one of those States shall, with members of his family, receive such benefits while staying in the territory of a Member State other than the one in which they reside. Such benefits shall be provided by the institution of the place of stay in accordance with the legislation which it administers and shall be chargeable to the institution of the pensioner's place of residence.

Article 32

Special provisions concerning responsibility for the cost of benefits provided for former frontier workers, members of their families or their survivors

The cost of benefits with which a pensioner who is a former frontier worker or the survivor of a frontier worker is provided under Article 27, and the cost of benefits with which members of his family are provided under Article 27 or 31 shall, where the frontier worker was working as such for the three months immediately preceding the date on which the pension became payable on the date of his death, be divided equally between the institution of the pensioner's place of residence and that with which he was last insured.

*Article 33***Contributions payable by pensioners**

The institution responsible for payment of a pension, and belonging to a Member State whose legislation provides for deductions from pensions in respect of contributions payable by a pensioner to cover benefits in kind, shall be authorised to make such deductions from the pension payable by such institution, calculated in accordance with the legislation concerned, to the extent that the cost of the benefits in kind under Articles 27, 28, 31 and 32 are to be borne by an institution of the said Member State.

*Article 34***General provision**

The provisions of Articles 27 to 33 shall not apply to a pensioner or to members of his family who are entitled to benefits in kind under the legislation of a Member State as a result of pursuing a professional or trade activity. In such a case the person concerned shall for the purposes of this Chapter, be considered as a worker or as a member of a worker's family.

Section 6**Miscellaneous provisions***Article 35*

Scheme applicable where there are a number of schemes in the country of residence or stay — Previous illness — Maximum period during which benefits are granted

1. Where the legislation of the country of stay or residence contains several sickness or maternity insurance schemes, the provisions applicable under Articles 19, 21 (1), 22, 25, 26, 28 (1), 29 (1) or 31 shall be those of the scheme covering manual workers in the steel industry. Where, however, the said legislation includes a special scheme for workers in mines and similar undertakings, the provisions of such scheme shall apply to that category of workers and members of their families provided the institution of the place of stay or residence to which application is made is competent to administer such scheme.

2. Where, under the legislation of a Member State, the granting of benefits is conditional upon the origin of the illness, that condition shall apply neither to workers nor to the members of their families to whom this Regulation applies, regardless of the Member State in whose territory they reside.

3. Where the legislation of a Member State fixes a maximum period for the granting of benefits, the institution which administers that legislation may, where appropriate, take account of the period during which the benefits have already been provided by the institution of another Member State for the same case of sickness or maternity.

Section 7**Reimbursement between institutions***Article 36*

1. Without prejudice to the provisions of Article 32, benefits in kind provided pursuant to this Chapter by the institution of one Member State on behalf of the institution of another Member State shall be fully refunded.

2. The refunds referred to in paragraph 1 shall be determined and made in accordance with the procedure provided for by the implementing regulation referred to in Article 97, either on production of proof of actual expenditure or on the basis of lump-sum payments.

In the latter case, the lump-sum payments shall be such as to ensure that the refund is as close as possible to actual expenditure.

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

CHAPTER 2**INVALIDITY****Section 1**

Workers subject only to legislations under which the amount of invalidity benefits is independent of the duration of insurance periods

*Article 37***General provisions**

1. A worker who has been successively or alternately subject to the legislations of two or more Member States and who has completed insurance periods exclusively under legislations according to which the amount of invalidity benefits is independent of the duration of insurance periods, shall receive benefits in accordance with Article 39. This Article shall not affect pension increases or

supplements in respect of children, granted in accordance with the provisions of Chapter 8.

2. Annex III lists legislations of the kind mentioned in paragraph 1 which are in force in the territory of each of the Member States concerned.

Article 38

Aggregation of insurance periods

1. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefit conditional upon the completion of insurance periods shall take account to the extent necessary of insurance periods completed under the legislation of any other Member States, as though they had been completed under its own legislation.

2. Where the legislation of a Member State makes the granting of certain benefits conditional upon the insurance periods having been completed in a completion of insurance periods shall take account to where appropriate, in a specific employment, insurance periods completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing this, in the same occupation or, where appropriate, in the same employment. If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate.

Article 39

Award of benefits

1. The institution of the Member State whose legislation was applicable at the time when incapacity for work followed by invalidity occurred, shall determine, in accordance with that legislation, whether the person concerned satisfies the conditions for entitlement to benefits, taking account where appropriate of the provisions of Article 38.

2. A person who satisfies the conditions referred to in paragraph 1 shall obtain the benefits exclusively from the said institution, in accordance with the legislation which it administers.

3. A person who does not satisfy the conditions referred to in paragraph 1 shall receive the benefits to which he is still entitled under the legislation of another Member State, taking account where appropriate of the provisions of Article 38.

4. If the legislation applicable under paragraph 2 or 3 provides that the amount of the benefits shall be determined taking into account the existence of members of the family other than the children, the competent institution shall also take into consideration the members of the family of the person concerned who are residing in the territory of another Member State, as if they were residing in the territory of the competent State.

Section 2

Workers subject either only to legislations under which the amount of invalidity benefit depends on the duration of insurance periods or to legislations of this type and of the type referred to in Section I

Article 40

General Provisions

1. A worker who has been successively or alternately subject to the legislations of two or more Member States, of which at least one is not of the type referred to in Article 37 (1), shall receive benefits under the provisions of Chapter 3, which shall apply by analogy, taking into account the provisions of paragraph 3.

2. However, a worker who suffers incapacity for work followed by invalidity while subject to a legislation listed in Annex III, shall receive benefits in accordance with Article 37 (1) on two conditions:

- that he satisfies the conditions of that legislation or other legislations of the same type, taking account where appropriate of the provisions of Article 38, but without having recourse to insurance periods completed under legislations not listed in Annex III, and
- that he does not satisfy the conditions for entitlement to benefits under a legislation not listed in Annex III.

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 that concordance between the legislations of these States on conditions relating to the degree of invalidity is acknowledged in Annex IV.

Section 3

Aggravation of invalidity

Article 41

1. In the case of aggravation of an invalidity for which a worker is receiving benefits under the

legislation of a single Member State, the following provisions shall apply:

- (a) if the person concerned has not been subject to the legislation of another Member State since receiving benefits, the competent institution of the first State shall be bound to grant the benefits, taking the aggravation into account, in accordance with the legislation which it administers;
- (b) if the person concerned has been subject to the legislation of one or more other Member States since receiving benefits, the benefits shall be granted to him, taking the aggravation into account, in accordance with Article 37 (1) or Article 40 (1) or (2) as appropriate;
- (c) if the total amount of the benefit or benefits payable under subparagraph (b) is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously liable for payment, such institution shall be bound to pay him a supplement equal to the difference between the two amounts;
- (d) if, in the case referred to in subparagraph (b), the institution responsible for the initial incapacity is a Netherlands institution, and if:
 - (i) the illness which caused the aggravation is the same as the one which gave rise to the granting of benefits under Netherlands legislation;
 - (ii) this illness is an occupational disease within the meaning of the legislation of the Member State to which the person concerned was last subject and entitles him to payment of the supplement referred to in Article 60 (1) (b); and
 - (iii) the legislation or legislations to which the person concerned has been subject since receiving benefits is a legislation, or are legislations, listed in Annex III.

the Netherlands institution shall continue to provide the initial benefit after the aggravation occurs, and the benefit due under the legislation of the last Member State to which the person concerned was subject shall be reduced by the amount of the Netherlands benefit;

- (e) if, in the case referred to in subparagraph (b), the person concerned is not entitled to benefits at the expense of an institution of another Member State, the competent institution of the first State shall be bound to grant the benefits, according to the legislation of that State, taking into account the aggravation and, where appropriate, the provisions of Article 38.

2. In cases of aggravation of an invalidity for which a worker is receiving benefits under the legislations of two or more Member States, the benefits shall be granted to him, taking the aggravation into account, in accordance with the provisions of Article 40 (1).

Section 4

Resumption of provision of benefits after suspension or withdrawal — Conversion of invalidity benefits into old age benefits

Article 42

Determination of the institution responsible for the provision of benefits where provision of invalidity benefits is resumed

1. If provision of benefits is to be resumed after their suspension such provision shall, without prejudice to Article 43, be the responsibility of the institution or institutions which were responsible for provision of the benefits at the time of their suspension.

2. If, after withdrawal of benefits, the condition of the person concerned warrants the granting of further benefits, they shall be granted in accordance with the provisions of Article 37 (1) or Article 40 (1) or (2), as appropriate.

Article 43

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 were granted, and in accordance with the provisions of Chapter 3.

2. Any institution of a Member State which is responsible for providing invalidity benefits shall, where a person receiving invalidity benefits can, by virtue of Article 49, establish a claim to old age benefits under the legislation of other Member States, continue to provide such person with the invalidity benefits to which he is entitled under the legislation which it administers until the provisions of paragraph 1 become applicable as regards that institution.

3. However, if in the case referred to in paragraph 2 the invalidity benefits have been granted pursuant to Article 39, the institution remaining responsible for providing those benefits may apply Article 49 (1) (a) as if the recipient of the said benefits satisfied the conditions of the legislation of the Member State

concerned for entitlement to old age benefits, by substituting for the theoretical amount referred to in Article 46 (2) (a) the amount of the invalidity benefits due from the said institution.

CHAPTER 3

OLD AGE AND DEATH (PENSIONS)

Article 44

General provisions for the award of benefits when a worker has been subject to the legislation of two or more Member States

1. The rights to benefits of a worker who has been subject to the legislation of two or more Member States, or of his survivors, shall be determined in accordance with the provisions of this Chapter.

2. Subject to the provisions of Article 49, when a claim for the award of a benefit is lodged, such award must be made having regard to all the legislations to which the worker has been subject. Exception shall be made to this rule if the person concerned expressly asks for postponement of the award of old age benefits to which he would be entitled under the legislation of one or more Member States, provided that the periods completed under that legislation or those legislations are not taken into account for the purpose of acquiring the right to benefit in another Member State.

3. This Chapter shall not apply to increases in or supplements to pensions in respect of children, or to orphans' pensions granted pursuant to Chapter 8.

Article 45

Consideration of insurance periods completed under the legislations to which a worker has been subject for the acquisition, retention or recovery of the right to benefits

1. An institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of insurance period shall take into account, to the extent necessary, insurance periods completed under the legislation of any Member State as though they had been completed under the legislation which it administers.

2. Where the legislation of a Member State makes the granting of certain benefits conditional upon the insurance periods having been completed in an occupation subject to a special scheme or, where appropriate, in a specific employment, periods completed under the legislations of other Member

States shall be taken into account for the granting of such benefits only if completed under such a scheme or, failing this, in the same occupation or, where appropriate, in the same employment. If, taking into account periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, those periods shall be taken into account for the granting of benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate.

3. Where the legislation of a Member State which makes the granting of benefits conditional upon a worker being subject to its legislation at the time when the risk materialises has no requirements as to the length of insurance periods either for entitlement to or calculation of benefits, any worker who is no longer subject to that legislation shall for the purposes of this Chapter, be deemed to be still so subject at the time when the risk materialises, if at that time he is subject to the legislation of another Member State or, failing this, can establish a claim to benefits under the legislation of another Member State. However, this latter condition shall be deemed to be satisfied in the case referred to in Article 48 (1).

Article 46

Award of benefits

1. Where a worker has been subject to the legislation of a Member State and where he satisfies its conditions for entitlement to benefits, without application of the provisions of Article 45 being necessary, the competent institution of that Member State shall, in accordance with the legislation which it administers, determine the amount of benefit corresponding to the total length of the insurance periods to be taken into account in pursuance of such legislation.

This institution shall also calculate the amount of benefit which would be obtained by applying the rules laid down in paragraph (2) (a) and (b). Only the higher of these two amounts shall be taken into consideration.

2. Where a worker has been subject to the legislation of a Member State and does not satisfy the conditions for entitlement to benefits unless account is taken of the provisions of Article 45, the competent institution of that Member State shall apply the following rules:

(a) the institution shall calculate the theoretical amount of benefit that the person concerned could claim if all the insurance periods completed under the legislations of the Member States to which he has been subject had been completed in the State in question and under the legislation administered by it on the date the benefit is

awarded. If, under that legislation, the amount of the benefit does not depend on the length of the insurance periods, then that amount shall be taken as the theoretical amount referred to in this subparagraph;

- (b) the institution shall then establish the actual amount of the benefit on the basis of the theoretical amount referred to in the preceding subparagraph and in the ratio which the length of the insurance periods completed before the materialisation of the risk under the legislation administered by that institution, bears to the total length of the insurance periods completed before materialisation of the risk under the legislations of all the Member States concerned;
- (c) if the total length of the insurance periods completed under the legislations of all the Member States concerned before the materialisation of the risk is longer than the maximum period required by the legislation of one of these States for receipt of full benefit, the competent institution of that State shall, when applying the provisions of this paragraph, take into consideration this maximum period instead of the total length of the periods completed; this method of calculation must not result in the imposition on that institution of the costs of a benefit greater than the full benefit provided for by the legislation which it administers;
- (d) the procedure for taking into account duplicate periods when applying the rules of calculation laid down in this paragraph, shall be laid down in the implementing Regulation referred to in Article 97.

3. The person concerned shall be entitled to the total sum of the benefits calculated in accordance with the provisions of paragraphs 1 and 2, within the limit of the highest theoretical amount of benefits calculated according to paragraph 2 (a).

Where the amount referred to in the preceding subparagraph is exceeded, any institution applying paragraph 1 shall adjust its benefit by an amount corresponding to the proportion which the amount of the benefit concerned bears to the total of the benefits determined in accordance with paragraph 1.

4. When in a case of invalidity, old age or survivors' pensions, the total of the benefits due from two or more Member States, under the provisions of a multilateral social security convention referred to in Article 6 (b), is lower than the total which would be due from such Member States under paragraphs 1 and 3, the person concerned shall benefit from the provisions of this Chapter.

Article 47

Additional provisions for the calculation of benefits

1. For the calculation of the theoretical amount referred to in Article 46 (2) (a), the following rules shall apply:

- (a) where, under the legislation of a Member State, benefits are calculated on the basis of an average wage or salary, an average contribution, an average increase or on the ratio which existed, during the insurance periods, between the claimant's gross wage or salary and the average gross wage or salary of all insured persons other than apprentices, such average figures or ratios shall be determined by the competent institution of that State solely on the basis of the insurance periods completed under the legislation of the said State, or the gross wage or salary received by the person concerned during those periods only;
- (b) where, under the legislation of a Member State, benefits are calculated on the basis of the amount of wages or salaries, contributions or increases, the competent institution shall determine the wages or salaries, contributions and increases to be taken into account in respect of insurance periods completed under the legislations of other Member States on the basis of the average wages or salaries, contributions or increases recorded in respect of the insurance periods completed under the legislation which it administers;
- (c) where, under the legislation of a Member State, benefits are calculated on the basis of a standard wage or salary or a fixed amount, the competent institution shall consider the wage or salary or fixed amount to be taken into account by it in respect of insurance periods completed under the legislations of other Member States as being equal to the standard wage or salary or fixed amount or, where appropriate, to the average of the standard wages or salaries or fixed amounts corresponding to the insurance periods completed under the legislation which it administers;
- (d) where, under the legislation of a Member State, benefits are calculated for some periods on the basis of the amount of wages or salaries and, for other periods, on the basis of a standard wage or salary or a fixed amount, the competent institution shall, in respect of insurance periods completed under the legislations of other Member States, take into account the wages or salaries or fixed amounts determined in accordance with the provisions of (b) or (c) or, as appropriate, the average of these wages or salaries or amounts; where benefits are calculated on the basis of a standard wage or salary or a fixed amount for all the periods completed under the legislation which it administers, the

competent institution shall consider the wage or salary to be taken into account in respect of the insurance periods completed under the legislations of other Member States as being equal to the notional wage or salary corresponding to that standard wage or salary or fixed amount.

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

3. If, under the legislation of a Member State, the amount of benefits is determined taking into account the existence of members of the family other than children, the competent institution of that State shall also take into consideration the members of the family of the person concerned who are residing in the territory of the competent State.

Article 48

Insurance periods of less than one year

1. Notwithstanding the provisions of Article 46 (2), if the total length of the insurance periods completed under the legislation of a Member State does not amount to one year, and if under that legislation no right to benefits is acquired by virtue only of those periods the institution of that State shall not be bound to award benefits in respect of such periods.

2. The competent institution of each of the other Member States concerned shall take into account the periods referred to in paragraph 1, for the purposes of applying the provisions of Article 46 (2) excepting those of subparagraph (b).

3. If the effect of applying the provisions of paragraph 1 would be to relieve them of their obligations all the institutions of the States concerned, benefits shall be awarded exclusively under the legislation of the last of those States whose conditions are satisfied, as if all the insurance periods completed and taken into account in accordance with Article 45 (1) and (2) had been completed under the legislation of that State.

Article 49

Calculation of benefits when the person concerned does not simultaneously satisfy the conditions laid down by all the legislations under which insurance periods have been completed

1. If, at a given time, the person concerned does not satisfy the conditions laid down for the provision

of benefits by all the legislations of the Member States to which he has been subject, taking into account where appropriate the provisions of Article 45, but satisfies the conditions of one or more of them only, the following provisions shall apply:

(a) each of the competent institutions administering a legislation whose conditions are satisfied shall calculate the amount of the benefit due, in accordance with the provisions of Article 46;

(b) however:

(i) if the person concerned satisfies the conditions of at least two legislations without having recourse to insurance periods completed under the legislations whose conditions are not satisfied, these periods shall not be taken into account for the purposes of Article 46 (2);

(ii) if the person concerned satisfies the conditions of one legislation only without having recourse to insurance periods completed under the legislations whose conditions are not satisfied, the amount of the benefit due shall be calculated only in accordance with the provisions of the legislation whose conditions are satisfied, taking account of the periods completed under that legislation only.

2. The benefit or benefits awarded under one or more of the legislations in question, in the case referred to in paragraph 1, shall be recalculated automatically in accordance with Article 46, as and when the conditions required by one or more of the other legislations to which the person concerned had been subject are satisfied, taking into account as appropriate the provisions of Article 45.

3. A recalculation shall automatically be made in accordance with paragraph 1, and without prejudice to Article 40 (2), when the conditions required by one or more of the legislations concerned are no longer satisfied.

Article 50

Award of a supplement when the total of benefits due under the legislations of the various Member States does not amount to the minimum laid down by the legislation of the State in whose territory the recipient resides

A recipient of benefits to whom this Chapter applies may not, in the State in whose territory he resides and under whose legislation a benefit is due to him, be awarded a benefit which is less than the minimum benefit fixed by that legislation for an insurance period equal to all the insurance periods taken into account for the payment in accordance with the

preceding Articles. The competent institution of that State shall, if necessary, 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 51

Revalorisation and recalculation of benefits

1. If, by reason of an increase in the cost of living or changes in the level of wages or salaries or other reasons for adjustment, the benefits of the States concerned are altered by a fixed percentage or amount, such percentage or amount must be applied directly to the benefits determined under Article 46, without the need for a recalculation in accordance with the provisions of that Article.
2. On the other hand, if the method of determining, or the rules for calculating benefits should be altered, a recalculation shall be carried out in accordance with Article 46.

CHAPTER 4

ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES

Section 1

Right to benefits

Article 52

Residence in a Member State other than the competent State — General Rules

A worker who sustains an accident at work or contracts an occupational disease, and who is residing in the territory of a Member State other than the competent State, shall receive in the State in which he is residing:

- (a) benefits in kind, provided on behalf of the competent institution by the institution of his place of residence in accordance with the legislation which it administers as if he were insured with it;
- (b) cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of residence, these benefits may be provided by the latter institution on behalf of the former in accordance with the legislation of the competent State.

Article 53

Frontier workers — Special rule

A frontier worker may also obtain benefits in the territory of the competent State. Such benefits shall be provided by the competent institution in accordance with the legislation of that State, as if the worker were residing there.

Article 54

Stay in or transfer of residence to the competent State

1. A worker covered by Article 52 who is staying in the territory of the competent State shall receive benefits in accordance with the legislation of that State, even if he has already received benefits before his stay. This provision shall not, however, apply to frontier workers.
2. A worker covered by Article 52 who transfers his place of residence to the territory of the competent State shall receive benefits in accordance with the legislation of that State, even if he has already received benefits before transferring his residence.

Article 55

Stay outside the competent State — Return to or transfer of residence to another Member State after sustaining an accident or contracting an occupational disease — Need to go to another Member State in order to receive appropriate treatment

1. A worker who sustains an accident at work or contracts an occupational disease and:
 - (a) who is staying in the territory of a Member State other than the competent State, or
 - (b) who, after having become entitled to benefits at the expense of the competent institution, is authorised by that institution to return to the territory of the Member State where he is resident, or to transfer his place of residence to the territory of another Member State, or
 - (c) who is authorised by the competent institution to go to the territory of another Member State in order to receive there the treatment appropriate to his condition,

shall be entitled:

- (i) to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence in accordance with the legislation administered by that institution as though he were insured with it, the period during which benefits are

provided shall, however, be governed by the legislation of the competent State;

- (ii) to cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of stay or residence, those benefits may be provided by the latter institution on behalf of the former institution, in accordance with the legislation of the competent State.

2. The authorisation required under paragraph 1.(b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or to the medical treatment being given.

The authorisation required under paragraph 1 (c) may not be refused where the treatment in question cannot be given to the person concerned in the territory of the Member State in which he resides.

Article 56

Accidents while travelling

An accident while travelling which occurs in the territory of a Member State other than the competent State shall be deemed to have occurred in the territory of the competent State.

Article 57

Benefits for an occupational disease where the person concerned has been exposed to the same risk in several Member States

1. When a person who has contracted an occupational disease has, under the legislation of two or more Member States, pursued an activity likely to cause that disease, the benefits that he or his survivors may claim shall be awarded exclusively under the legislation of the last of these States whose conditions are satisfied, taking into account, where appropriate, the provisions of paragraphs 2 and 3.

2. If, under the legislation of a Member State, the granting of benefits in respect of an occupational disease is subject to the conditions that the disease in question was first diagnosed within its territory, such condition shall be deemed to be fulfilled if the disease was first diagnosed in the territory of another Member State.

3. In cases of sclerogenic pneumoconiosis, the following provisions shall apply:

- (a) if under the legislation of a Member State the granting of benefits in respect of an occupational

disease is subject to the condition that the disease in question was diagnosed within a specific time limit following cessation of the last activity which was likely to cause such a disease, the competent institution of that State, in examining the time at which such activity was pursued shall take into account, to the extent necessary, similar activities pursued under the legislation of any other Member State, as if they had been pursued under the legislation of the first State;

- (b) if under the legislation of a Member State the granting of benefits in respect of an occupational disease is subject to the condition that the activity likely to cause the disease in question was pursued for a certain length of time, the competent institution of that State shall take into account, to the extent necessary, periods during which such activity was pursued under the legislation of any other Member State, as if it had been pursued under the legislation of the first State;

- (c) the cost of cash benefits including pensions shall be divided between the competent institutions of the Member States in whose territories the person concerned pursued an activity likely to cause the disease. This division shall be carried out in the ratio which the length of old age insurance periods completed under the legislation of each of the States bears to the total length of the old age insurance periods completed under the legislations of all those States at the date on which the benefits commenced.

4. The Council shall determine unanimously, on a proposal from the Commission, the occupational diseases to which the provisions of paragraph 3 shall be extended.

Article 58

Calculation of cash benefits

1. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on an average wage or salary shall determine such average wage or salary exclusively by reference to wages or salaries recorded during the periods completed under the said legislation.

2. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on a standard wage or salary shall determine such average wage or salary exclusively by reference where appropriate, the average of the standard wages or salaries corresponding to the periods completed under the said legislation.

3. The competent institution of a Member State whose legislation provides that the amount of cash benefits shall vary with the number of members in the family shall take into account also the members of the family of the person concerned who are residing in the territory of another Member State, as if they were residing in the territory of the competent State.

Article 59

Costs of transporting a person who has sustained an accident at work or is suffering from an occupational disease

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 the territory of 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 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 which it administers, meet such costs to the corresponding place in the territory of another Member State where the person was residing at the time of the accident.

Section 2

Aggravation of an occupational disease for which the benefit has been awarded

Article 60

1. In the event of aggravation of an occupational disease for which a worker has received or is receiving benefit under the legislation of a Member State, the following rules shall apply:

(a) if the worker has not, while in receipt of benefits, been in employment under the legislation of another Member State likely to cause or aggravate the disease in question, the competent institution of the first Member State shall be bound to meet the cost of the benefits under the legislation which it administers taking into account the aggravation;

(b) if the worker, while in receipt of benefits, has been in such employment under the legislation of another Member State, the competent institution of the first State shall be bound to meet the cost of the benefits under the legislation which it administers without taking into account the aggravation. The competent institution of the second Member State shall grant a supplement to the worker, the amount of which shall be determined according to the legislation which it administers and 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 which it administers if the disease in question had occurred under the legislation of that State;

(c) if in cases covered by subparagraph (b) a worker suffering from sclerogenic pneumoconiosis or from a disease determined under Article 57 (4) is not entitled to benefits under the legislation of the second State, the competent institution of the first State shall be bound to provide benefits under the legislation which it administers, taking into account the aggravation. The institution of the second State shall, however, meet the cost of the difference between the amount of cash benefits, including pensions, due from the competent institution of the first State, taking into account the aggravation and the amount of the corresponding benefits which were due prior to the aggravation.

2. In the event of aggravation of an occupational disease giving rise to the application of Article 57 (3) (c), the following provisions shall apply:

(a) the competent institution which granted the benefits pursuant to Article 57 (1) shall be bound to provide benefits under the legislation which it administers, taking into account the aggravation;

(b) the cost of cash benefits, including pensions, shall continue to be divided between the institutions which shared the costs of former benefits in accordance with Article 57 (3) (c). Where, however, the person has again pursued an activity likely to cause or to aggravate the occupational disease in question, either under the legislation of one of the Member States in which he had already pursued an activity of the same nature or under the legislation of another Member State, the competent institution of such State shall meet the cost of the difference between the amount of benefits due, taking account of the aggravation, and the amount of benefits due prior to the aggravation.

Section 3

Miscellaneous provisions

Article 61

Rules for taking into account the special features of certain legislations

1. If there is no insurance against accidents at work or occupational diseases in the territory of the Member State in which a worker happens to be, 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 stay or residence responsible for providing benefit in kind in the event of illness.
2. Where the legislation of the competent State makes wholly cost-free benefits in kind conditional upon use of the medical service organised by the employer, benefits in kind provided in the cases referred to in Articles 52 and 55 (1) shall be deemed to have been provided by such a medical service.
3. Where the legislation of the competent State includes a scheme relating to the obligations of the employer, benefits in kind provided in the cases referred to in Articles 52 and 55 (1) shall be deemed to have been provided at the request of the competent institution.
4. Where the nature of the scheme of the competent State relating to compensation for accidents at work is not that of compulsory insurance, the provision of benefits in kind shall be made directly by the employer or by the insurer involved.
5. Where the legislation of a Member State expressly or by implication provides that accidents at work or occupational diseases which have occurred or have been confirmed previously shall be taken into consideration in order to assess the degree of incapacity, the competent institution of that State shall also take into consideration accidents at work or occupational diseases which have occurred or have been confirmed previously under the legislation of another Member State, as if they had occurred or had been confirmed under the legislation which it administers.

Article 62

Scheme applicable where there are several schemes in the country of stay or residence — Maximum duration of benefits

1. If the legislation of the country of stay or residence has several insurance schemes, the

provisions applicable to workers covered by Article 52 or 55 (1) shall be those of the scheme for manual workers in the steel industry. However, if the said legislation includes a special scheme for workers in mines and similar undertakings, the provisions of that scheme shall apply to that category of workers where the institution of the place of stay or residence to which they submit their claim is competent to administer that scheme.

2. If the legislation of a Member State fixes a maximum period during which benefits may be granted, the institution which administers that legislation may take into account any period during which the benefits have already been provided by the institution of another Member State.

Section 4

Reimbursements between institutions

Article 63

1. The competent institutions shall be obliged to reimburse the amount of benefits in kind provided on their behalf pursuant to Articles 52 and 55 (1).
2. The reimbursements referred to in paragraph 1 shall be determined and made in accordance with the procedures laid down by the implementing Regulation referred to in Article 97, on proof of actual expenditure.
3. Two or more Member States, or the competent authorities of such States, may provide for other methods of reimbursement or waive reimbursement between the institutions coming under their jurisdiction.

CHAPTER 5

DEATH GRANTS

Article 64

Aggregation of insurance periods

The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to death grants subject to the completion of insurance periods shall take account, to the extent necessary, of insurance periods completed under the legislation of any other Member State as though they had been completed under the legislation which it administers.

Article 65

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

1. When a worker, a pensioner or a pension claimant, or a member of his family, dies in the territory of a Member State other than the competent State, the death shall be deemed to have occurred in the territory of the competent State.
2. The competent institution shall be obliged to award death grants payable under the legislation which it administers, even if the person entitled resides in the territory of a Member State other than the competent State.
3. The provisions of paragraphs 1 and 2 shall also apply when the death is the result of an accident at work or an occupational disease.

Article 66

Provision of benefits in the event of the death of a pensioner who had resided in a Member State other than the one whose institution was responsible for providing benefits in kind

In the event of the death of a pensioner who was entitled to draw a pension or pensions under the legislation of one or more Member States, when such pensioner was residing in the territory of a Member State other than the one whose institution was responsible for providing him with benefits in kind under Article 28, the death grants payable under the legislation administered by that institution shall be provided by the institution at its own expense as though the pensioner had been residing in the territory of the Member State of that institution at the time of his death.

The provisions of the preceding paragraph shall apply by analogy to the members of a pensioner's family.

CHAPTER 6

UNEMPLOYMENT

Section 1

Common provisions

Article 67

Aggregation of periods of insurance or employment

1. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the

completion of insurance periods shall take into account, to the extent necessary, periods of insurance or employment completed under the legislation of any other Member State, as though they were periods completed under the legislation which it administers, provided, however, that the periods of employment would have been counted as insurance periods had they been completed under that legislation.

2. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of employment shall take into account, to the extent necessary, periods of insurance or employment completed under the legislation of any other Member State, as though they were periods of employment completed under the legislation which it administers.

3. Except in the cases referred to in Article 71 (1) (a) (ii) and (b) (ii), application of the provisions of paragraphs 1 and 2 shall be subject to the condition that the person concerned should have completed lastly:
 - in the case of paragraph 1, periods of insurance,
 - in the case of paragraph 2, periods of employment,

in accordance with the provisions of the legislation under which the benefits are claimed.

4. Where the length of the period during which benefits may be granted depends on the length of periods of insurance or employment, the provisions of paragraph 1 or 2 shall apply, as appropriate.

Article 68

Calculation of benefits

1. The competent institution of a Member State whose legislation provides that the calculation of benefits should be based on the amount of the previous wage or salary shall take into account exclusively the wage or salary received by the person concerned in respect of his last employment in the territory of that State. However, if the person concerned had been in his last employment in that territory for less than four weeks, the benefits shall be calculated on the basis of the normal wage or salary corresponding, in the place where the unemployed person is residing or staying, to an equivalent or similar employment to his last employment in the territory of another Member State.

2. The competent institution of a Member State whose legislation provides that the amount of benefits varies with the number of members of the family,

shall take into account also members of the family of the person concerned who are residing in the territory of another Member State, as though they were residing in the territory of the competent State. This provision shall not apply if, in the country of residence of the members of the family, another person is entitled to unemployment benefits for the calculation of which the members of the family are taken into consideration.

Section 2

Unemployed persons going to a Member State other than the competent State

Article 69

Conditions and limits for the retention of the right to benefits

1. A worker who is wholly unemployed and who satisfies the conditions of the legislation of a Member State for entitlement to benefits and who goes to one or more other Member States in order to seek employment there shall retain his entitlement to such benefits under the conditions and within the limits hereinafter indicated:

- (a) before his departure, he must have been registered with the employment services of the competent State as a person seeking work and must have remained available for at least four weeks after becoming unemployed. However, the competent services or institutions may authorise his departure before such time has expired;
- (b) he must register as a person seeking work with the employment services of each of the Member States to which he goes and be subject to the control procedure organised therein. This condition shall be considered satisfied for the period before registration if the person concerned registered within seven days of the date when he ceased to be available to the employment services of the State he left. In exceptional cases, this period may be extended by the competent services or institutions;
- (c) entitlement to benefits shall continue for a maximum period of three months from the date when the person concerned ceased to be available to the employment services of the State which he left, provided that the total duration of the benefits does not exceed the duration of the period of benefits he was entitled to under the legislation of that State. In the case of a seasonal worker such duration shall, moreover, be limited to the period remaining until the end of the season for which he was engaged.

2. If the person concerned returns to the competent State 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 State; he shall lose all entitlement to benefits under the legislation of the competent State if he does not return there before the expiry of that period. In exceptional cases, this time limit may be extended by the competent services or institutions.

3. The provisions of paragraph 1 may be invoked only once between two periods of employment.

4. Where the competent State is Belgium, an unemployed Person who returns there after the expiry of the three month period laid down in paragraph 1 (c), shall not requalify for benefits in that country until he has been employed there for at least three months.

Article 70

Provision of benefits and reimbursements

1. In the cases referred to in Article 69 (1), benefits shall be provided by the institution of each of the States to which an unemployed person goes to seek employment.

The competent institution of the Member State to whose legislation a worker was subject at the time of his last employment shall be obliged to reimburse the amount of such benefits.

2. The reimbursements referred to in paragraph 1 shall be determined and made in accordance with the procedure laid down by the implementing Regulation referred to in Article 97, on proof of actual expenditure, or by lump sum payments.

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

Section 3

Unemployed persons who during their last employment, were residing in a Member State other than the competent State

Article 71

1. An unemployed person who, during his last employment, was residing in the territory of a Member State other than the competent State shall

receive benefits in accordance with the following provisions:

(a) (i) a frontier worker who is partially or intermittently unemployed in the undertaking which employs him, shall receive benefits in accordance with the legislation of the competent State as if he were residing in the territory of that State; these benefits shall be provided by the competent institution;

(ii) a frontier worker who is wholly unemployed shall receive benefits in accordance with the legislation of the Member State in whose territory he resides as though he had been subject to that legislation while last employed the institution of the place of residence shall provide such benefits at its own expense;

(b) (i) a worker, other than a frontier worker who is partially, intermittently or wholly unemployed and who remains available to his employer or to the employment services in the territory of the competent State shall receive benefits in accordance with the legislation of that State as though he were residing in its territory; these benefits shall be provided by the competent institution;

(ii) a worker, other than a frontier worker, who is wholly unemployed and who makes himself available for work to the employment services in the territory of the Member State in which he resides, or who returns to that territory, shall receive benefits in accordance with the legislation of that State as if he had last been employed there; the institution of the place of residence shall provide such benefits at its own expense. However, if such worker has become entitled to benefits at the expense of the competent institution of the Member State to whose legislation he was last subject, he shall receive benefits under the provisions of Article 69. Receipt of benefits under the legislation of the State in which he resides shall be suspended for any period during which the unemployed person may, under Article 69, make a claim for benefits under the legislation to which he was last subject.

2. An unemployed person may not claim benefits under the legislation of the Member State in whose territory he resides while he is entitled to benefits under paragraph 1 (a) (i) or (b) (i).

CHAPTER 7

FAMILY BENEFITS AND FAMILY ALLOWANCES FOR EMPLOYED AND UNEMPLOYED PERSONS

Section 1

Common Provision

Article 72

Aggregation of periods of employment

Where the legislation of one Member State makes acquisition of the right to benefits conditional upon the completion of periods of employment, the competent institution of that State shall take into account, to the extent necessary, periods of employment completed in the territory of any other Member State, as if they had been completed under its own legislation.

Section 2

Workers and unemployed workers whose families reside in a Member State other than the competent State

Article 73

Workers

1. A worker subject to the legislation of a Member State other than France shall be entitled to the family benefits provided for by the legislation of the first Member State for members of his family residing in the territory of another Member State, as though they were residing in the territory of the first State.

2. A worker subject to French legislation shall be entitled, in respect of members of his family residing in the territory of a Member State other than France, to the family allowances provided for by the legislation of such Member State; the worker must satisfy the conditions regarding employment on which French legislation bases entitlement to such benefits.

3. However, a worker who is subject to French legislation by virtue of the provisions of Article 14 (1) (a) shall be entitled to the family benefits provided for by French legislation and set out in Annex V in respect of members of his family who accompany him to the territory of the Member State where he is posted.

*Article 74***Unemployed persons**

1. An unemployed person drawing unemployment benefits under the legislation of a Member State other than France shall be entitled to the family benefits provided for by the legislation of the first Member State for members of his family residing in the territory of another Member State as though they were residing in the territory of the first State.

2. An unemployed person drawing unemployment benefits under French legislation shall be entitled, in respect of members of his family residing in the territory of a Member State other than France, to the family allowances provided for by the legislation of the State in whose territory those members of the family are residing.

*Article 75***Provision of benefits and reimbursements**

1. (a) Family benefits shall be provided, in the cases referred to in Article 73 (1) and (3), by the competent institution of the State to whose legislation the worker is subject and, in the case referred to in Article 74 (1), by the competent institution of the State under whose legislation the unemployed worker is receiving unemployment benefits. They shall be provided in accordance with the provisions administered by such institutions, whether the natural or legal person to whom such benefits are payable is staying, residing or situated in the territory of the competent State or in that of another Member State;

(b) however, if the family benefits are not applied by the person to whom they should be provided for the maintenance of the members of the family, the competent institution shall discharge its legal obligations by providing the said benefits to the natural or legal person actually maintaining the members of the family, on application by and through the agency of the institution of their place of residence or of the institution or body appointed to that end by the competent authority of their country of residence;

(c) two or more Member States may agree, in accordance with Article 8, that the competent institution shall provide the family benefits due under the legislation of one or more of those States to the natural or legal person actually maintaining the members of the family, either directly, or through the agency of the institution of their place of residence.

2. (a) family allowances shall be provided, in the cases referred to in Articles 73 (2) and 74 (2), by the institution of the place of residence of the members of the family, in accordance with the legislation administered by that institution;

(b) however, if, under that legislation, the allowances must be provided to the worker, the institution referred to in the preceding subparagraph shall pay such allowances to the natural or legal person actually maintaining the members of the family in their place of residence or, where appropriate, directly to the members of the family;

(c) the competent institution shall reimburse the full amount of the allowances provided in accordance with the preceding subparagraphs. The reimbursements shall be determined and made in accordance with the procedures laid down by the implementing Regulation referred to in Article 97.

Article 76

Rules of priority in cases of overlapping entitlement to family benefits or family allowances in pursuance of Articles 73 and 74 by reason of the pursuit of a professional or trade activity in the country of residence of the members of the family

Entitlement to family benefits or family allowances under Articles 73 and 74 shall be suspended if, by reason of the pursuit of a professional or trade activity, family benefits or family allowances are also payable under the legislation of the Member State in whose territory the members of the family are residing.

CHAPTER 8

BENEFITS FOR DEPENDENT CHILDREN OF PENSIONERS AND FOR ORPHANS

*Article 77***Dependent children of pensioners**

1. The term 'benefits', for the purposes of this Article, shall mean family allowances for persons receiving pensions for old age, invalidity or an accident at work or occupational disease, and increases or supplements to such pensions in respect of the children of such pensioners, with the exception of supplements granted under insurance schemes for accidents at work and occupational diseases.

2. Benefits shall be granted in accordance with the following rules, irrespective of the Member State in

whose territory the pensioner or the children are residing:

- (a) to a pensioner who draws a pension under the legislation of one Member State only, in accordance with the legislation of the Member State responsible for the pension;
- (b) to a pensioner who draws pensions under the legislation of more than one Member State:
 - (i) in accordance with the legislation of whichever of these States he resides in provided that, taking into account where appropriate Article 79 (1) (a), a right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State, or
 - (ii) in other cases, in accordance with that legislation under which he has completed the longest insurance period, provided that, taking into account where appropriate Article 79 (1) (a), a right to one of the benefits referred to in paragraph (i) is acquired under such legislation; if no right to benefit is acquired under such legislation, the conditions for the acquisition of such right under the legislations of the other States concerned shall be examined in decreasing order of the length of insurance periods completed under the legislation of those States.

Article 78

Orphans

1. The term 'benefits', for the purposes of this Article, means family allowances and, where appropriate, supplementary or special allowances for orphans and orphans' pensions except those granted under insurance schemes for accidents at work and occupational diseases.

2. Orphans' benefits shall be granted in accordance with the following rules, irrespective of the Member State in whose territory the orphan or the natural or legal person actually maintaining him is resident or situated;

- (a) for the orphan of a deceased worker who was subject to the legislation of one Member State only in accordance with the legislation of that State;
- (b) for the orphan of a deceased worker who was subject to the legislation of several Member States:

- (i) in accordance with the legislation of the Member State in whose territory the orphan resides provided that, taking into account where appropriate Article 79 (1) (a), a right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State, or
- (ii) in other cases, in accordance with the legislation of the Member State under which the deceased worker had completed the longest insurance period provided that, taking into account where appropriate Article 79 (1) (a), the right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State; if no right is acquired under that legislation, the conditions for the acquisition of such right under the legislations of the other States in question shall be examined in decreasing order of the length of insurance periods completed under the legislation of these States.

However, the legislation of the Member State applicable in respect of provision of the benefits referred to in Article 77 for a pensioner's children shall remain applicable after the death of the said pensioner in respect of the provision of the benefits to his orphans.

Article 79

Provisions common to benefits for dependent children of pensioners and for orphans

1. Benefits, within the meaning of Articles 77 and 78, shall be provided in accordance with the legislation determined by applying the provisions of those Articles by the institution responsible for administering such legislation and at its expense as if the pensioner or the deceased worker had been subject only to the legislation of the competent State.

However:

- (a) if that legislation provides that the acquisition, retention or recovery of the right to benefits shall be dependent on the length of periods of insurance or employment, such lengths shall be determined taking account where necessary of Articles 45 or 72 as appropriate;
- (b) if that legislation provides that the amount of benefits shall be calculated on the basis of the amount of the pension, or shall depend on the length of insurance periods, the amount of these benefits shall be calculated on the basis of the theoretical amount determined in accordance with Article 46 (2).

2. In a case where the effect of applying the rule laid down in Articles 77 (2) (b) (ii) and 78 (2) (b) (ii) would be to make several Member States responsible, the length of the insurance periods being equal, benefits within the meaning of Article 77 or Article 78, as the case may be, shall be granted in accordance with the legislation of the Member State to which the worker was last subject.

3. The right to benefits due under paragraph 2 and under Articles 77 and 78 shall be suspended if the children become entitled to family benefits or family allowances under the legislation of a Member State by virtue of the pursuit of a professional or trade activity. In such a case, the persons concerned shall be considered as members of the family of a worker.

TITLE IV

ADMINISTRATIVE COMMISSION ON SOCIAL SECURITY FOR MIGRANT WORKERS

Article 80

Composition and working methods

1. There shall be attached to the Commission of the European Communities, an Administrative Commission on Social Security for Migrant Workers (hereinafter called 'Administrative Commission') made up of a government representative of each of the Member States, assisted, where necessary, by expert advisers. A representative of the Commission of the European Communities shall attend the meetings of the Administrative Commission in an advisory capacity.

2. The Administrative Commission shall be assisted in technical matters by the International Labour Office under the terms of the agreements concluded to that end between the European Economic Community and the International Labour Organisation.

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

Decisions on questions of interpretation referred to in Article 81 (a) shall be unanimous. They shall be given the necessary publicity.

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

Article 81

Tasks of the Administrative Commission

The Administrative Commission shall have the following duties:

(a) to deal with all administrative questions and questions of interpretation arising from this

Regulation and subsequent regulations, or from any agreement or arrangement concluded thereunder, without prejudice to the right of the authorities, institutions and persons concerned to have recourse to the procedures and tribunals provided for by the legislations of Member States, by this Regulation or by the Treaty;

(b) to carry out all translations of documents relating to the implementation of this Regulation at the request of the competent authorities, institutions and courts of the Member States, and in particular translations of claims submitted by persons who may be entitled to benefit under this Regulation;

(c) to foster and develop co-operation between Member States in social security matters, particularly in respect of health and social measures of common interest;

(d) to foster and develop co-operation between Member States with a view to expediting, taking into account developments in administrative management techniques, the award of benefits, in particular those due under this Regulation for invalidity, old age and death (pensions);

(e) to assemble the factors to be taken into consideration for drawing up accounts relating to the costs to be borne by the institutions of the Member States under this Regulation and to adopt the annual accounts between the said institutions;

(f) to undertake any other function coming within its competence under the provisions of this and of subsequent Regulations or any agreement or arrangement made thereunder;

(g) to submit proposals to the Commission of the European Economic Communities for working out subsequent Regulations and for the revision of this and subsequent Regulations.

TITLE V

ADVISORY COMMITTEE ON SOCIAL SECURITY FOR MIGRANT WORKERS

Article 82

Establishment, composition and working methods

1. An Advisory Committee on Social Security for Migrant Workers (hereinafter called the 'Advisory Committee') is hereby established, with thirty-six members comprising, from each Member State:

- (a) two representatives of the government, of whom one at least must be a member of the Administrative Commission;
- (b) two representatives of trade unions;
- (c) two representatives of employers' organisations.

For each of the categories referred to above, an alternate member shall be appointed for each Member State.

2. Members of the Advisory Committee and their alternates shall be appointed by the Council which shall endeavour, when selecting representatives of trade unions and employers' organisations, to achieve adequate representation on the Committee of the various sectors concerned.

The list of members and their alternates shall be published by the Council in the *Official Journal of the European Communities*.

3. The term of office for members and alternates shall be two years. Their appointments may be renewed. On expiry of their term of office, members and alternates shall remain in office until they are replaced or until their appointments are renewed.

4. The Advisory Committee shall be chaired by a member of the Commission or his representative. The chairman shall not vote.

5. The Advisory Committee shall meet at least once each year. It shall be convened by its Chairman, either on his own initiative or on written application to him by at least one third of the members. Such

application must include concrete proposals concerning the agenda.

6. Acting on a proposal from its Chairman, the Advisory Committee may decide, in exceptional circumstances, to take advice from any persons or representatives of organisations with extensive experience in social security matters. Furthermore, the Committee shall receive technical assistance from the International Labour Office under the same conditions as the Administrative Commission, under the terms of the agreement concluded between the European Economic Community and the International Labour Organisation.

7. The opinions and proposals of the Advisory Committee must state the reasons on which they are based. They shall be delivered by an absolute majority of the votes validly cast.

The Committee shall, by a majority of its members; draw up its rules of procedure which shall be approved by the Council, after receiving the Opinion of the Commission.

8. Secretarial services shall be provided for the Advisory Committee by the Commission of the European Communities.

Article 83

Tasks of the Advisory Committee

The Advisory Committee shall be empowered, at the request of the Commission of the European Communities or of the Administrative Commission on its own initiative:

- (a) to examine general questions or questions of principle and problems arising from the implementation of the Regulations adopted within the framework of the provisions of Article 51 of the Treaty;
- (b) to formulate opinions on the subject for the Administrative Commission and proposals for any revision of the Regulations.

TITLE VI

MISCELLANEOUS PROVISIONS

Article 84

Co-operation between competent authorities

1. The competent authorities of Member States shall communicate to each other all information regarding:

- (a) measures taken to implement this Regulation;
- (b) changes in their legislation which are likely to affect the implementation of this Regulation.

2. For the purposes of implementing this Regulation, the authorities and institutions of Member States shall lend their good offices and act as though implementing their own legislation. The administrative assistance furnished by the said authorities and institutions shall, as a rule, be free of charge. However, the competent authorities of the Member States may agree to certain expenses being reimbursed.

3. The authorities and institutions of Member States may, for the purpose of implementing this Regulation, communicate directly with one another and with the persons concerned or their representatives.

4. The authorities, institutions and tribunals of one Member State may not reject claims or other documents submitted to them on the grounds that they are written in an official language of another Member State. They shall have recourse where appropriate to the provisions of Article 81 (b).

Article 85

Exemptions from or reductions of taxes — Exemption from authentication

1. Any exemption from or reduction of taxes, stamp duty, notarial or registration fees provided for in the legislation of one Member State in respect of certificates or documents required to be produced for the purposes of the legislation of that State shall be extended to similar documents required to be produced for the purposes of the legislation of another Member State or of this Regulation.

2. All statements, documents and certificates of any kind whatsoever required to be produced for the purposes of this Regulation shall be exempt from authentication by diplomatic or consular authorities.

Article 86

Claims, declarations or appeals submitted to an authority, institution or court of a Member State other than the competent State

Any claim, declaration or appeal which should have been submitted, in order to comply with the legislation of one Member State, within a specified period to an authority, institution or court of that State shall be admissible if it is submitted within the same period to a corresponding authority, institution, or court of another Member State. In such a case the authority, institution, or court receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or court of the former State either directly or through the competent authorities of the Member State concerned. The date on which such claims, declarations or appeals were submitted to the authority, institution or court of the second State shall be considered as the date of their submission to the competent authority, institution, or court.

Article 87

Medical examinations

1. Medical examinations provided for by the legislation of one Member State may be carried out at the request of the competent institution, in the territory of another Member State, by the institution of the place of stay or residence of the person entitled to benefits, under conditions laid down in the implementing Regulation referred to in Article 97 or, failing these, under conditions agreed upon between the competent authorities of the Member States concerned.

2. Medical examinations carried out under the conditions laid down in paragraph 1 shall be considered as having been carried out in the territory of the competent State.

Article 88

Transfers from one Member State to another of sums of money payable pursuant to this Regulation

Subject to the provisions of Article 106 of the Treaty, money transfers effected pursuant to this Regulation shall be made in accordance with the relevant agreements in force between the Member States

concerned at the time of transfer. Where no such agreements are in force between two Member States, the competent authorities of the said States or the authorities responsible for international payments shall, by mutual agreement, determine the measures necessary for effecting such transfers.

Article 89

Special procedures for implementing certain legislations

Special procedures for implementing the legislations of certain Member States are set out in Annex V.

Article 90

Housing allowances and family benefits introduced after the entry into force of this Regulation

Housing allowances and, in the case of Luxembourg, family benefits introduced after the entry into force of this Regulation for demographic reasons shall not be granted to persons resident in the territory of a Member State other than the competent State.

Article 91

Contributions chargeable to employers or undertakings not established in the competent State

An employer shall not be bound to pay increased contributions by reason of the fact that his place of business or the registered office or place of business of his undertaking is in the territory of a Member State other than the competent State.

Article 92

Collection of contributions

1. Contributions payable to an institution of one Member State may be collected in the territory of another Member State in accordance with the administrative procedure and with the guarantees and

privileges applicable to the collection of contributions payable to the corresponding institution of the latter State.

2. The procedure for the implementation of paragraph 1 shall be governed, in so far as is necessary, by the implementing Regulation referred to in Article 97 or by means of agreements between Member States. Such implementing procedure may also cover procedure for enforcing payment.

Article 93

Rights of institutions responsible for benefits against liable third parties

1. If a person receives benefits under the legislation of one Member State in respect of an injury resulting from an occurrence in the territory of another State, any rights of the institution responsible for benefits against a third party bound to compensate for the injury shall be governed by the following rules:

- (a) where the institution responsible for benefits is, by virtue of the legislation which it administers, subrogated to the rights which the recipient has against the third party, such subrogation shall be recognised by each Member State;
- (b) where the said institution has direct rights against the third party, such rights shall be recognised by each Member State.

2. If a person receives benefits under the legislation of one Member State in respect of an injury resulting from an occurrence in the territory of another Member State, the provisions of the said legislation which determine in which cases the civil liability of employers or of their employees is to be excluded shall apply with regard to the said person or to the institution responsible for benefits.

The provisions of paragraph 1 shall also apply to any rights of the institution responsible for benefit against an employer or his employees in cases where their liability is not excluded.

TITLE VII

TRANSITIONAL AND FINAL PROVISIONS

Article 94

Miscellaneous provisions

1. No right shall be acquired under this Regulation for a period prior to the date of its entry into force.

2. All insurance periods and, where appropriate, all periods of employment or residence completed under the legislation of a Member State before the date of entry into force of this Regulation shall be taken into consideration for the determination of rights to benefits under this Regulation.

3. Subject to the provisions of paragraph 1, a right shall be acquired under this Regulation though relating to a contingency which materialised prior to the date of entry into force of this Regulation.

4. Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from the entry into force of this Regulation provided that the rights previously determined have not given rise to a lump sum payment.

5. The rights of a person to whom a pension was awarded prior to the entry into force of this Regulation may, on the application of the person concerned, be reviewed, taking into account the provisions of this Regulation. This provision shall also apply to the other benefits referred to in Article 78.

6. If an application referred to in paragraph 4 or 5 is submitted within two years from the date of entry into force of this Regulation, the rights acquired under this Regulation shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.

7. If an application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period following the entry into force of this Regulation, rights which have not been forfeited or are not barred by limitation shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.

8. In cases of sclerogenic pneumoconiosis, Article 57 (3) (c) shall apply to cash benefits for an occupational disease the expense of which, in the absence of an agreement between the institutions concerned, could not be divided between those institutions before the date of entry into force of this Regulation.

9. The implementation of Article 73 (2) shall not have the effect of reducing any rights existing at the date of entry into force of this Regulation. As regards persons who at that date are receiving more favourable benefits by virtue of bilateral agreements concluded with France, those agreements shall continue to apply to such persons for as long as they are subject to French legislation. Account shall not be taken of interruptions lasting less than one month, nor of periods in which unemployment or sickness

benefit is drawn. The procedure for implementing those provisions shall be laid down by the implementing Regulation referred to in Article 97.

Article 95

Annexes to this Regulation

The Annexes to this Regulation may be amended by a Regulation adopted by the Council on a proposal from the Commission, at the request of one or more Member States concerned, and after receiving the Opinion of the Administrative Commission.

Article 96

Notifications pursuant to certain provisions

1. The notifications referred to in Articles 1 (j), 5 and 8 (2) shall be addressed to the President of the Council of the European Communities. They shall indicate the date of entry into force of the laws and schemes in question or, in the case of the notifications referred to in Article 1 (j), the date from which this Regulation shall apply to the schemes mentioned in the declarations of the Member States.

2. Notifications received in accordance with paragraph 1 shall be published in the *Official Journal of the European Communities*.

Article 97

Implementing regulation

A further regulation shall lay down the procedure for implementing this Regulation.

Article 98

Re-examination of the problem of payment of family benefits

Before 1 January 1973 the Council shall, on a proposal from the Commission, re-examine the whole problem of payment of family benefits to members of families who are not residing in the territory of the competent State, in order to reach a uniform solution for all Member States.

Article 99

Entry into force

This Regulation shall enter into force on the first day of the seventh month following the publication in the *Official Journal of the European Communities* of the implementing Regulation referred to in Article 97.

These two Regulations shall repeal the following Regulations:

- Council Regulation No 3 concerning social security for migrant workers,
- Council Regulation No 4 laying down implementing procedures and supplementary provisions in respect of Regulation No 3,¹ and

- Council Regulation No 36/63/EEC of 2 April 1963 concerning social security for frontier workers².

However, the provisions of Articles 82 and 83 concerning the setting up of the Advisory Committee, shall enter into force on the day of publication of the implementing regulation referred to in Article 97.

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

Done at Luxembourg, 14 June 1971.

For the Council

The President

M. COINTAT

¹ OJ No 30, 16.12.1958, p. 597/58.

² OJ No 62, 20.4.1963, p. 1314/63.

ANNEX I

(Article 1 (u) of the Regulation)

Special childbirth allowances excluded from the scope of the Regulation in pursuance of Article 1 (u)

A. BELGIUM

Childbirth allowances

B. GERMANY

None

C. FRANCE

(a) Prenatal allowances

(b) Maternity allowances under the social security code (code de la sécurité sociale)

D. ITALY

None

E. LUXEMBOURG

Childbirth allowances

F. NETHERLANDS

None

ANNEX II

(Articles 7 (2) (c) and 3 (3) of the Regulation)

Provisions of social security conventions remaining applicable notwithstanding Article 6 of the Regulation — Provisions of social security conventions which do not apply to persons to whom the Regulation applies

GENERAL COMMENTS

1. In so far as the provisions contained in this Annex provide for references to the provisions of other conventions, references shall be replaced by references to the corresponding provisions of this Regulation, unless the provisions of the conventions in question are themselves contained in this Annex.

2. The termination clause provided for in a social security convention, some of whose provisions are contained in this Annex shall continue to apply as regards those provisions.

A

Provisions of social security conventions remaining applicable notwithstanding Article 6 of the Regulation

(Article 7 (2) (c) of the Regulation)

1. BELGIUM — GERMANY

(a) Articles 3 and 4 of the Final Protocol of 7 December 1957 to the General Convention of the same date, in the version appearing in the Supplementary Protocol of 10 November 1960;

(b) Supplementary Agreement No 3 of 7 December 1957 to the General Convention of the same date, in the version appearing in the Supplementary Protocol of 10 November 1960 (payment of pensions payable in respect of the period preceding the entry into force of the General Convention).

2. BELGIUM — FRANCE

(a) Articles 13, 16 and 23 of the Supplementary Agreement of 17 January 1948 to the General Convention of the same date (workers in mines and similar undertakings).

(b) Exchange of Letters of 27 February 1953 (application of Article 4 (2) of the General Convention of 17 January 1948).

(c) Exchange of Letters of 29 July 1953 on allowances to elderly employed persons.

3. BELGIUM — ITALY

Article 29 of the Convention of 30 April 1948.

4. BELGIUM — LUXEMBOURG

Articles 3, 4, 5, 6 and 7 of the Convention of 16 November 1959, in the version appearing in the Convention of 12 February 1964 (frontier workers).

5. BELGIUM — NETHERLANDS

None

6. GERMANY — FRANCE

(a) Article 11 (1), the second paragraph of Article 16, and Article 19 of the General Convention of 10 July 1950;

(b) Article 9 of Supplementary Agreement No 1 of 10 July 1950 to the General Convention of the same date (workers in mines and similar undertakings);

(c) Supplementary Agreement No 4 of 10 July 1950 to the General Convention of the same date, in the version appearing in the added section No 2 of 18 June 1955;

(d) Titles I and III of added section No 2 of 18 June 1955.

(e) Points 6, 7 and 8 of the General Protocol of 10 July 1950 to the General Convention of the same date;

(f) Titles II, III and IV of the Agreement of 20 December 1963 (social security in the Saar).

7. GERMANY — ITALY

(a) Articles 3 (2), 23 (2), 26 and 36 (3) of the Convention of 5 May 1953 (social insurance);

(b) Supplementary Agreement of 12 May 1953 to the Convention of 5 May 1953 (payment of pensions payable in respect of the period preceding the entry into force of the Convention).

8. GERMANY — LUXEMBOURG

Articles 4, 5, 6 and 7 of the Treaty of 11 July 1959 (settlement of the dispute between Germany and Luxembourg) and Article 11 (2) (b) of the convention of 14 July 1960 (sickness and maternity benefits for persons who have opted for the application of the legislation of the country whence they come).

9. GERMANY — NETHERLANDS

- (a) Article 3 (2) of the Convention of 29 March 1951;
- (b) Articles 2 and 3 of Supplementary Agreement No 4 of 21 December 1956 to the Convention of 29 March 1951 (settlement of rights acquired under the German social security insurance scheme by Netherlands workers between 13 May 1940 and 1 September 1945).

10. FRANCE — ITALY

- (a) Articles 20 and 24 of the General Convention of 31 March 1948;
- (b) Exchange of Letters of 3 March 1956 (sickness benefits for seasonal workers employed in agriculture).

11. FRANCE — LUXEMBOURG

Articles 11 and 14 of the Supplementary Agreement of 12 November 1949 to the General Convention of the same date (workers in mines and similar undertakings).

12. FRANCE — NETHERLANDS

Article 11 of the Supplementary Agreement of 1 June 1954 to the General Convention of 7 January 1950 (workers in mines and similar undertakings).

13. ITALY — LUXEMBOURG

Article 18 (2) and Article 24 of the General Convention of 29 May 1951.

14. ITALY — NETHERLANDS

Article 21 (2) of the General Convention of 28 October 1952.

15. LUXEMBOURG — NETHERLANDS

None.

B

Provisions of conventions which do not apply to all persons to whom the Regulation applies

(Article 3 (3) of the Regulation)

1. BELGIUM — GERMANY

- (a) Articles 3 and 4 of the Final Protocol of 7 December 1957 to the General Convention of the same date, in the version appearing in the Supplementary Protocol of 10 November 1960;
- (b) Supplementary Agreement No 3 of 7 December 1957 to the General Convention of the same date, in the version appearing in the Supplementary Protocol of 10 November 1960 (payment of pensions payable in respect of the period preceding the entry into force of the General Convention).

2. BELGIUM — FRANCE

- (a) Exchange of Letters of 29 July 1953 on allowances to elderly employed persons;
- (b) Article 23 of the Supplementary Agreement of 17 January 1948 to the General Convention of the same date (workers in mines and similar undertakings);
- (c) Exchange of Letters of 27 February 1953 (application of Article 4 (2) of the General Convention of 17 January 1948).

3. BELGIUM — ITALY
None.
4. BELGIUM — LUXEMBOURG
None.
5. BELGIUM — NETHERLANDS
None.
6. GERMANY — FRANCE
 - (a) Articles 16 (2) and 19 of the General Convention of 10 July 1950;
 - (b) Supplementary Agreement No 4 of 10 July to the General Convention of the same date, in the version appearing in the added Section No 2 of 18 June 1955;
 - (c) Titles I and III of added Section No 2 of 18 June 1955;
 - (d) Points 6, 7 and 8 of the General Protocol of 10 July 1950 to the General Convention of the same date;
 - (e) Titles II, III and IV of the Agreement of 20 December 1963 (social security in the Saar).
7. GERMANY — ITALY
 - (a) Articles 3 (2) and 26 of the Convention of 5 May 1953 (social insurance);
 - (b) The Supplementary Agreement of 12 May 1953 to the Convention of 5 May 1953 (payment of pensions payable in respect of the period preceding the entry into force of the Convention).
8. GERMANY — LUXEMBOURG
Articles 4, 5, 6 and 7 of the Treaty of 11 June 1959 (settlement of the dispute between Germany and Luxembourg).
9. GERMANY — NETHERLANDS
 - (a) Article 3 (2) of the Convention of 29 March 1951;
 - (b) Articles 2 and 3 of Supplementary Agreement No 4 of 21 December 1956 to the Convention of 29 March 1951 (settlement of rights acquired under the German social security insurance scheme by Netherlands workers between 13 May 1940 and 1 September 1945).
10. FRANCE — ITALY
 - (a) Articles 20 and 24 of the General Convention of 31 March 1948;
 - (b) Exchange of Letters of 3 March 1956 (sickness benefits for seasonal workers employed in agriculture).
11. FRANCE — LUXEMBOURG
None.
12. FRANCE — NETHERLANDS
None.
13. ITALY — LUXEMBOURG
None.
14. ITALY — NETHERLANDS
None.
15. LUXEMBOURG — NETHERLANDS
None.

ANNEX III

(Article 37 (2) of the Regulation)

Legislations referred to in Article 37 (1) of the Regulation under which the amount of invalidity benefits is independent of the length of insurance periods**A. BELGIUM**

The legislations relating to the general invalidity scheme, to the special invalidity scheme for miners and to the special scheme for mariners in the merchant navy.

B. GERMANY

None.

C. FRANCE

All legislations on invalidity insurance, except for the legislation concerning the invalidity insurance of the social security scheme for miners.

D. ITALY

None.

E. LUXEMBOURG

None.

F. NETHERLANDS

The law of 18 February 1966 on insurance against incapacity for work.

ANNEX IV

(Article 40 (3) of the Regulation)

Concordance between the legislations of Member States on conditions relating to the degree of invalidity

BELGIUM

Member States	Schemes administered by Member States' institutions who have taken a decision recognising the degree of invalidity	Schemes administered by Belgian institutions on which the decision is binding in cases of concordance			
		General scheme	Miners' scheme		Mariners' scheme
			General invalidity	Occupational invalidity	
FRANCE	1. General scheme: — Group III (constant attendance) — Group II — Group I	Concordance	Concordance	Concordance	Concordance
	2. Agricultural scheme: — total, general invalidity — two-thirds general invalidity — constant attendance	Concordance	Concordance	Concordance	Concordance
	3. Miners' scheme: — partial, general invalidity — constant attendance — occupational invalidity	Concordance	Concordance	Concordance	Concordance
	— occupational invalidity	No concordance	No concordance	No concordance	No concordance
ITALY	1. General scheme: — invalidity — manual workers — invalidity — clerical staff	Concordance	Concordance	Concordance	Concordance
	2. Mariners scheme: Unfitness for seafaring	No concordance	No concordance	No concordance	No concordance
LUXEMBOURG	Workers' Invalidity — manual workers Invalidity — clerical staff	Concordance	Concordance	Concordance	Concordance

FRANCE

Member States	Schemes administered by Member States' institutions having taken a decision recognising the degree of invalidity	Schemes administered by French institutions on which the decision is binding in cases of concordance											
		General scheme			Agricultural scheme			Miners' scheme			Mariners' scheme		
		Group I	Group II	Group III Constant attendance	$\frac{2}{3}$ invalidity	Total invalidity	Constant attendance	$\frac{2}{3}$ General invalidity	Constant attendance	Occupational invalidity	$\frac{2}{3}$ general invalidity	Total occupational invalidity	Constant attendance
BELGIUM	1. General scheme	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance
	2. Miners' scheme: — partial general invalidity — occupational invalidity	Concordance No concordance	No concordance No concordance	No concordance No concordance	Concordance No concordance	No concordance No concordance	No concordance No concordance	Concordance No concordance	No concordance No concordance	No concordance No concordance	No concordance No concordance	No concordance No concordance	No concordance No concordance
	3. Mariners' scheme	Concordance ¹	No concordance	No concordance	Concordance ¹	No concordance	No concordance	Concordance ¹	No concordance	No concordance	No concordance	No concordance	No concordance
ITALY	1. General scheme: — invalidity — manual workers — invalidity — clerical staff	Concordance No concordance No concordance	No concordance No concordance No concordance	No concordance No concordance No concordance	Concordance No concordance No concordance	No concordance No concordance No concordance	No concordance No concordance No concordance	Concordance No concordance No concordance	No concordance No concordance No concordance	No concordance No concordance No concordance	No concordance No concordance No concordance	No concordance No concordance No concordance	No concordance No concordance No concordance
	2. Mariners' scheme:	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance
LUXEMBOURG	Invalidity — manual workers	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	Invalidity — clerical staff	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance

¹ Insofar as the invalidity recognised by the Belgian institution is general invalidity.

² Only if the Belgian institution has recognised that the worker is unfit for work underground or at ground level.

ITALY

Member States	Schemes administered by Member States' institutions who have taken a decision recognising the degree of invalidity	Schemes administered by Italian institutions on which the decision is binding in cases of concordance		
		General scheme		Mariners Unfitness for navigation
		Manual workers	Clerical staff	
BELGIUM	1. General scheme	Concordance	Concordance	No concordance
	2. Miners' scheme:			
	— partial general invalidity	Concordance	Concordance	No concordance
	— occupational invalidity	No concordance	No concordance	No concordance
3. Mariners' scheme:				
— unfit for seafaring	No concordance	No concordance	No concordance	No concordance
FRANCE	1. General scheme:			
	— Group III (constant attendance)	} Concordance	} Concordance	} No concordance
	— Group II			
	— Group I			
	2. Agricultural scheme:			
	— total general invalidity	} Concordance	} Concordance	} No concordance
	— partial general invalidity			
	— constant attendance			
	3. Miners' scheme:			
	— partial general invalidity	} Concordance	} Concordance	} No concordance
	— constant attendance			
	— occupational invalidity	No concordance	No concordance	No concordance
	4. Mariners' scheme:			
	— partial general invalidity	} No concordance	} No concordance	} No concordance
	— constant attendance			
	— occupational invalidity			
LUXEMBOURG	Invalidity — manual workers	Concordance	Concordance	} No concordance
	Invalidity — clerical staff	No concordance	No concordance	

LUXEMBOURG

Member States	Schemes administered by institutions of Member States which have taken a decision recognising the degree of invalidity	Schemes administered by Luxembourg institutions on which the decision is binding in cases of concordance	
		Workers' Invalidity — manual workers	Invalidity — clerical workers
BELGIUM	1. General scheme 2. Miners' scheme: — partial general invalidity — occupational invalidity 3. Mariners' scheme	Concordance Concordance No concordance Concordance ¹	Concordance Concordance No concordance Concordance ¹
FRANCE	1. General scheme: — Group III (constant attendance) — Group II — Group I 2. Agricultural scheme: — total general invalidity — $\frac{2}{3}$ general invalidity — constant attendance 3. Miners' scheme: — $\frac{2}{3}$ general invalidity — constant attendance — occupational invalidity 4. Mariners' scheme: — partial general invalidity — constant attendance — occupational invalidity	} Concordance } Concordance } Concordance No concordance } Concordance No concordance	} Concordance } Concordance } Concordance No concordance } Concordance No concordance
ITALY	1. General scheme: — invalidity — manual workers — invalidity — clerical staff 2. Mariners' scheme: — unfitness for seafaring	Concordance No concordance	} Concordance

¹ In so far as the invalidity recognised by the Belgian institution is general invalidity.

ANNEX V

(Article 89 of the Regulation)

Special procedures for applying the legislations of certain Member States

A. BELGIUM

1. The provisions of Article 1 (a) (i) of the Regulation shall not apply to self-employed persons or to other persons receiving medical treatment under the law of 9 August 1963 on the establishment and organisation of a compulsory sickness and invalidity insurance scheme, unless they receive the same protection as employed persons in respect of such treatment.
2. For the application of the provisions of Chapters 7 and 8 of Title III of the Regulation by the competent Belgian institution, a child shall be considered to have been brought up in the Member State in whose territory he resides.
3. For the purposes of Article 46 (2) of the Regulation, old-age insurance periods completed under Belgian legislation before 1 January 1945 shall also be considered as insurance periods completed under the Belgian legislation on the general invalidity scheme and the mariners' scheme.

B. GERMANY

1. (a) Where no provision is already made under German legislation for accident insurance, German institutions shall also provide compensation, in accordance with that legislation, for accidents at work (and occupational diseases) which occurred in Alsace-Lorraine before 1 January 1919, the responsibility for the cost of which has not been assumed by French institutions in pursuance of the Decision of the Council of the League of Nations of 21 June 1921 (*Reichsgesetzblatt*, p. 1289) where the person concerned or his survivors are residing in a Member State;
- (b) Article 10 of the Regulation shall not affect the provisions under which accidents (and occupational diseases) occurring outside the territory of the Federal Republic of Germany, and periods completed outside that territory, do not give rise to payment of benefits, or only give rise to payment of benefits under certain conditions, when those entitled to them reside outside the territory of the Federal Republic of Germany.
2. (a) In order to determine whether periods considered by German legislation as interrupted periods (*Ausfallzeiten*) or supplementary periods (*Zurechnungszeiten*) should be taken into account as such, compulsory contributions paid under the legislation of another Member State and insurance under the pensions' insurance scheme of another Member State shall be treated as compulsory contributions paid under German legislation and as insurance under the German pension insurance scheme.

When calculating the number of calendar months which have elapsed between the date of entry into the insurance scheme and the materialisation of the risk, periods taken into consideration under the legislation of another Member State which fall between those two dates shall not be taken into account, neither shall periods during which the person concerned has been in receipt of a pension.
- (b) Subparagraph (a) shall not apply to the standard interrupted period (*pauschale Ausfallzeit*). This shall be determined exclusively on the basis of insurance periods completed in Germany.

- (c) The taking into account of an additional period (*Zurechnungszeit*) in pursuance of German legislation on pension insurance for miners shall, moreover, be subject, to the condition that the last contribution paid under German legislation was paid into the pension insurance for miners.
 - (d) For the purpose of taking into account German substitute periods (*Ersatzzeiten*), only German national legislation shall apply.
 - (e) By way of derogation from the provision laid down in subparagraph (d), the following provision shall apply to persons insured under the German pension insurance scheme who were residing in German territories under Netherlands administration during the period from 1 January 1948 to 31 July 1963; for the purpose of taking into account German substitute periods (*Ersatzzeiten*) within the meaning of Article 1251 (2) of the German social security law (*RVO*) or corresponding provisions, payment of contributions to Netherlands insurance schemes during that period shall be treated as equivalent to having been employed or having pursued an activity coming under compulsory insurance within the meaning of German legislation.
3. Where payments to be made into German sickness insurance funds are concerned, compulsory payment of the contributions referred to in Article 26 (2) of the Regulation shall be suspended until a decision is made concerning pensions claims.
 4. In order to determine whether a child is receiving an orphan's pension, receipt of one of the benefits referred to in Article 78 or of another family benefit granted under French legislation for a minor residing in France shall be treated as the receipt of an orphan's pension under German legislation.
 5. If application of this Regulation or of subsequent social security Regulations involves exceptional expenses for certain sickness insurance institutions, such expenses may be partially or totally reimbursed. The Federal Association of Regional Sickness Funds, in its function of liaison agency (sickness insurance) shall decide on such reimbursement by common agreement with the other Central Associations of Sickness Funds. The resources needed for effecting such reimbursements shall be provided by taxes imposed on all sickness insurance institutions in proportion to the average number of members during the preceding year, including retired persons.
 6. If the competent institution for granting family benefits in accordance with Title III Chapter 7 of the Regulation is a German institution, a person compulsorily insured against the risk of unemployment or a person who, as a result of such insurance, obtains cash benefits under sickness insurance or comparable benefits shall be considered as a worker (Article 1 (a) of the Regulation).

C. FRANCE

1. (a) The allowance for elderly employed persons shall be granted under the conditions laid down for French workers by French legislation, to all workers who are nationals of other Member States and who, at the time of making their claim, were residing in French territory.
 - (b) the same shall apply to refugees and stateless persons;
 - (c) the provisions of the Regulation shall not affect the provisions of French legislation under which only periods of work as employed persons or periods treated as such which are completed in the territories of the European depart-

ments and the overseas departments (Guadeloupe, Guiana, Martinique and Réunion) of the French Republic shall be taken into consideration for acquisition of the right to the allowance for elderly employed persons.

2. The special allowance and cumulative indemnity provided for by the special legislation for social security in the mines shall be provided only for workers employed in French mines.
3. Law No 65-655 of 10 July 1965 which grants to French nationals who are pursuing, or who have pursued, a professional or trade activity abroad the right to join the voluntary old-age insurance scheme, shall apply to nationals of other Member States under the following conditions:
 - the professional or trade activity giving rise to voluntary insurance under the French system should not be, or have been, pursued either on French territory or on the territory of the Member State of which the worker is a national;
 - the worker must produce evidence, when making his claim, either that he has resided in France for at least ten consecutive years, or that he has been continuously subject to French legislation on a compulsory or optional basis for the same length of time.
4. Within the meaning of Article 73 (3) of the Regulation, the expression 'family benefits' shall include:
 - (a) prenatal allowances provided for in Article L 516 of the Social Security Code;
 - (b) the family allowances provided for in Articles L 524 and L 531 of the Social Security Code;
 - (c) the compensatory allowance for scheduled taxes provided for in Article L 532 of the Social Security Code;

However, this benefit can only be paid if the wage or salary received during the period of the posting is subject to tax on income in France;
 - (d) the single wage or salary allowance provided for in Article L 533 of the Social Security Code.

D. ITALY

None.

E. LUXEMBOURG

By way of derogation from Article 94 (2) of the Regulation, insurance periods or periods treated as such completed before 1 January 1946 under Luxembourg legislation for invalidity, old-age or death pension insurance shall only be taken into consideration for the purpose of applying this legislation to the extent that rights in the process of being acquired should be maintained until 1 January 1959 or subsequently recovered in accordance with that legislation alone, or in accordance with bilateral conventions in force or to be concluded. Where several bilateral conventions apply, the insurance periods or periods treated as such dating the farthest back shall be taken into consideration.

F. NETHERLANDS

1. *Sickness insurance for old-age pensioners*

- (a) A person receiving an old-age pension under Netherlands legislation and a pension under the legislation of another Member State shall, for the purposes of Article 27 and/or 28, be considered to be entitled to benefits in kind if, taking into account Article 9 where appropriate, he satisfies the conditions required for entitlement to voluntary sickness insurance for elderly persons.

- (b) The contribution for voluntary sickness insurance for elderly persons shall amount, in respect of the persons concerned who are residing in one of the other Member States, to half of the average costs incurred in the Netherlands for medical treatment for an elderly person and members of his family.

2. *Application of Netherlands legislation on general old-age insurance*

- (a) Insurance periods before 1 January 1957 during which a recipient, not satisfying the conditions permitting him to have such periods treated as insurance periods, resided in the territory of the Netherlands after the age of 15 or during which, whilst residing in the territory of another Member State, he pursued an activity as an employed person in the Netherlands for an employer established in that country, shall also be considered as insurance periods completed in application of Netherlands legislation for general old-age insurance.
- (b) Periods to be taken into account in pursuance of subparagraph (a) above shall not be taken into account if they coincide with periods taken into account for the calculation of the pension payable under the legislation of another Member State in respect of old-age insurance.
- (c) As regards a married woman whose husband is entitled to a pension under Netherlands legislation on general old-age insurance, periods of the marriage preceding the date when she reached the age of sixty-five years and during which she resided in the territory of one or more Member States shall also be taken into account as insurance periods, in so far as those periods coincided with insurance periods completed by her husband under that legislation and with those to be taken into account in pursuance of subparagraph (a).
- (d) Periods to be taken into account in pursuance of subparagraph (c) shall not be taken into account where they coincide with periods taken into account for calculating a pension payable to the married woman in question under the old-age insurance legislation of another Member State or with periods during which she received an old-age pension in pursuance of such legislation.
- (e) As regards a woman who has been married and whose husband has been subject to Netherlands legislation on old-age insurance, or is deemed to have completed insurance periods in pursuance of subparagraph (a), the provisions of the two preceding subparagraphs shall apply by analogy.
- (f) The periods referred to in subparagraphs (a) and (c) shall only be taken into account for calculation of the old-age pension if the person concerned has resided for six years in the territory of one or more Member States after the age of fifty-nine years and for as long as that person is residing in the territory of one of those Member States.

3. *Application of Netherlands legislation on general insurance for widows and orphans*

- (a) For the purposes of Article 46 (2) of the Regulation, periods before 1 October 1959 during which the worker resided in the territory of the Netherlands after the age of fifteen years or during which, whilst residing in the territory of another Member State, he pursued an activity as an employed person in the Netherlands for an employer established in that country shall also be considered as insurance periods completed under Netherlands legislation relating to general insurance for widows and orphans.
- (b) Periods to be taken into account in pursuance of subparagraph (a) shall not be taken into account where they coincide with insurance periods completed under the legislation of another State in respect of survivors' pensions.

4. *Application of Netherlands legislation on insurance against incapacity for work*

- (a) For the purposes of Article 46 (2) of the Regulation, periods of paid employment and periods treated as such completed under Netherlands legislation before 1 July 1967 shall also be considered as insurance periods completed under Netherlands legislation on insurance against incapacity for work.
 - (b) The periods to be taken into account in pursuance of subparagraph (a) shall be considered as insurance periods completed under a legislation of the type referred to in Article 37 (1) of the Regulation.
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