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Subject : **Amended proposal for a Regulation of the European Parliament and of the Council on the coordination of social security systems**
– *Partial political agreement*

Delegations will find enclosed the text of the draft Regulation, excluding the Annexes as drawn up by the Social Questions Working Party, with a view to the EPSCO Council reaching a partial political agreement on 1/2 December.

DRAFT

**Regulation of the European Parliament and of the Council
on coordination of social security systems**

(Text with relevance for the EEA and for Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 308 thereof,

Having regard to the Commission proposal presented after consultation with the social partners and the Administrative Commission on Social Security for Migrant Workers¹,

Having regard to the opinion of the European Economic and Social Committee²,

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

Whereas:

1. the rules for coordination of national social security systems fall within the framework of free movement for persons and should contribute towards improving their standard of living and conditions of employment;

¹ OJ C 38, 12.2.1999, p. 11 and OJ C (modified proposal).

² OJ C 75, 15.3.2000, p. 29.

2. Council Regulation No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community³ has been amended and updated on numerous occasions in order to take into account not only developments at Community level, including judgements of the Court of Justice, but also changes in legislation at national level; such factors have played their part in making the Community coordination rules complex and lengthy; replacing, while modernising and simplifying, these rules is therefore essential to achieve the aim of the free movement of persons;
3. it is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination;
4. the close link between social security legislation and those contractual provisions which complement or replace such legislation and which have been the subject of a decision by the public authorities rendering them compulsory or extending their scope may call for similar protection with regard to the application of those provisions as that afforded by this Regulation; as a first step, the experience of Member States who have notified such schemes might be evaluated;
5. due to the large differences existing between national legislation in terms of the persons covered, it is preferable to lay down the principle that the Regulation applies to nationals of a Member State, stateless persons and refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, as well as to the members of their families and to their survivors;
6. it is necessary, within the framework of such coordination, to guarantee within the Community equality of treatment under the various national legislation to the persons involved;

³ OJ L 149, 5.7.1971, p. 2, as last amended by ...

7. the general principle of equal treatment is of particular importance for workers who do not reside in the State of their employment, including frontier workers;
8. the Court of Justice has on several occasions given an opinion on the possibility of equal treatment of benefits, income and facts; this principle should be adopted explicitly and developed, while observing the substance and spirit of legal rulings;
9. however, the principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent State; periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods;
10. the assimilation of facts or events occurring in a Member State can in no way render another Member State competent or its legislation applicable;
11. in the light of proportionality, care should be taken so that the principle of assimilation of facts or events shall not lead to objectively unjustified results or to the overlapping of benefits of the same kind for the same period;
12. the coordination rules must guarantee that persons moving within the Community and their dependants and their survivors retain the rights and the advantages acquired and in the course of being acquired;
13. these objectives must be attained in particular by aggregation of all the periods taken into account under the various national legislation 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;

14. it is necessary to subject persons moving within the Community to the social security scheme of only one single Member State in order to avoid overlapping of national legislation applicable and the complications which could result therefrom;
15. within the Community, it is not in principle justified to make social security rights dependent on the place of residence of the person involved, nevertheless, in specific cases, in particular as regards special benefits linked to the economic and social context of the person involved, the place of residence could be taken into account;
16. with a view to guaranteeing the equality of treatment of all persons occupied in the territory of a Member State as effectively as possible, it is appropriate to determine as the legislation applicable, as a general rule, that of the Member State in which the person involved pursues his activity as an employed or self-employed person;
17. in specific situations which justify other criteria of applicability, it is necessary to derogate from this general rule;
18. in some cases maternity and paternity benefits may be enjoyed by the mother or the father and since, for the latter, these benefits are different from parental benefits and can be assimilated to maternity benefits *strictu sensu* in that they are granted during the first months of a newborn's life, it is appropriate that maternity and paternity benefits be regulated jointly;
19. in the field of sickness, maternity and paternity benefits, insured persons, as well as the members of their families, living or staying in a Member State other than the competent Member State, should be afforded protection;
20. provisions on sickness, maternity and paternity benefits were drawn up in the light of the Court of Justice case law; provisions on prior authorisation have been improved, taking into account the relevant decisions of the Court of Justice;

21. the specific position of pension claimants and pensioners and the members of their families makes it necessary to have provisions governing sickness insurance adapted to this situation;
22. in view of the differences between the various national systems, it is appropriate that Member States make provision, where possible, for medical treatment for family members of frontier workers in the Member State where the latter pursue their activity;
23. it is necessary to establish specific provisions regulating the non-overlapping of sickness benefits in kind and sickness benefits in cash which are of the same nature as those which were the subject of Court of Justice judgements in Case C-215/99, *Jauch*, and C-160/96, *Molenaar*, provided that those benefits cover the same risk;
24. in respect of benefits for accidents at work and occupational diseases, rules should be laid down, for the purpose of affording protection, covering the situation of persons residing or staying in a Member State other than the competent Member State;
25. for invalidity benefits, a system of coordination should be drawn up which respects the specific characteristics of national legislation, in particular as regards recognition of invalidity and aggravation thereof;
26. it is necessary to devise a system for the award of old-age benefits and survivors' benefits where the person involved has been subject to the legislation of one or more Member States;
27. there is a need to determine the amount of a pension calculated in accordance with the method used for aggregation and pro-rata calculation and guaranteed by Community law where the application of national legislation, including rules concerning reduction, suspension or withdrawal, is less favourable than the aforementioned method;

28. to protect migrant workers and their survivors against excessively stringent application of the national rules concerning reduction, suspension or withdrawal, it is necessary to include provisions strictly governing the application of such rules;
29. as has constantly been reaffirmed by the Court of Justice, the Council is not deemed competent to enact rules imposing a restriction on the overlapping of two or more pensions acquired in different Member States by a reduction of the amount of a pension acquired solely under national legislation;
30. according to the Court of Justice, it is for the national legislator to enact such rules, bearing in mind that it is for the Community legislator to fix the limits within which the national provisions concerning reduction, suspension or withdrawal are to be applied;
31. in order to foster mobility of workers, it is particularly appropriate to facilitate search for employment in the various Member States; it is therefore necessary to ensure closer and more effective coordination between the unemployment insurance schemes and the employment services of all the Member States;
32. it is necessary to include statutory pre-retirement schemes within the scope of this Regulation, thus guaranteeing both equal treatment and the possibility of exporting pre-retirement benefits as well as the granting of family and health-care benefits to the person concerned, in accordance with the provisions of this Regulation, but that the rule on the aggregation of periods should not be included as only a very limited number of Member States have statutory pre-retirement schemes;
33. since family benefits have a very broad scope, affording protection in situations which could be described as classic as well as in others which are specific in nature, with the latter type of benefit having been the subject of the Court of Justice judgements in Joined Cases C-245/94 and C-312/94, Ingrid Hoever and Iris Zachow v. Land Nordrhein-Westfalen and in Case C-275/96, Anne Kuusijärvi v. Riksförsäkringsverket, it is necessary to regulate all such benefits;

34. in order to avoid unwarranted overlapping of benefits, there is a need to lay down rules of priority in the case of overlapping of rights to family benefits pursuant to the legislation of the competent State and pursuant to the legislation of the country of residence of the members of the family;
35. advances of maintenance allowances are recoverable advances intended to compensate for a parent's failure to fulfil his legal obligation of maintenance to his own child, which is an obligation derived from family law. Therefore, these advances should not be considered as a direct benefit from collective support in favour of families. Given these particularities, the coordinating rules shall not be applied to such maintenance allowances;
36. as the Court of Justice has repeatedly stated, provisions which derogate from the principle of the exportability of social security benefits must be interpreted strictly. This means that they can apply only to benefits which fulfil the specified conditions. It follows that Chapter 9 of Title III of this Regulation can only apply to benefits which are both special and non-contributory and are listed in Annex X to this Regulation;
37. it is necessary to establish an Administrative Commission consisting of a government representative from each of the Member States, charged in particular with dealing with all administrative questions or questions of interpretation arising from the provisions of this Regulation, and with promoting further cooperation between the Member States;
38. the development and use of data-processing services for the exchange of information has been found to require the creation of a Technical Commission, under the aegis of the Administrative Commission on Social Security for Migrant Workers, with specific responsibilities in the field of data-processing;

39. the use of data-processing services for exchanging data between institutions requires provisions guaranteeing that the documents exchanged or issued by electronic means are accepted as equivalent to paper documents; such exchanges are to be carried out in accordance with the Community provisions on the protection of natural persons with regard to the processing of personal data and the free movement of such data;
40. it is necessary to lay down special provisions which correspond to the special characteristics of the national legislation in order to facilitate the application of the rules of coordination;
41. in line with the principle of proportionality, in accordance with the premise for the extension of the Regulation to all European nationals and in order to find a solution that takes account of any constraints which may be connected with the special characteristics of systems based on residence, a special derogation by means of an Annex XI - "DENMARK" entry, limited to social pension entitlement exclusively in respect of the new category of non-active persons, to whom this Regulation has been extended, was deemed appropriate due to the specific features of the Danish system and in the light of the fact that those pensions are exportable after a ten-year period of residence under the Danish legislation in force (Pension Act);
42. in line with the principle of equality of treatment, a special derogation by means of an Annex XI - "FINLAND" entry, limited to residence-based national pensions, is deemed appropriate due to the specific characteristics of Finnish social security legislation, the objective of which is to ensure that the amount of the national pension cannot be less than the amount of the national pension calculated as if all insurance periods completed in any Member State were completed in Finland;
43. it is necessary in introducing a new Regulation to repeal Council Regulation (EEC) No. 1408/71, however, it is necessary that Regulation No 1408/71 remains in force and continues to have legal effect for the purposes of certain Community acts and agreements to which the European Community is a party, in order to secure legal certainty;

44. since Community action in the form of coordination measures is necessary to guarantee that the right to free movement of persons can be exercised effectively, such measures may be taken in accordance with principle of subsidiarity as enshrined in Article 5 of the Treaty. In line with the principle of proportionality as laid down in that article, this Regulation does not go beyond what is necessary to make for effective coordination.⁴

⁴ L: scrutiny reservation.

HAVE ADOPTED THIS REGULATION:

TITLE I
GENERAL PROVISIONS

Article 0
Definitions

For the purposes of applying this Regulation:

- (a) "activity as an employed person" means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in whose territory such activity or equivalent situation exists;
- (b) "activity as a self-employed person" means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in whose territory such activity or equivalent situation exists.
- (ba) "insured person", in relation to the social security branches covered by Title III, Chapters 1 and 3, means any person satisfying the conditions required under the legislation of the State competent under Title II to have the right to benefits, taking account of the provisions of this Regulation;
- (c) "civil servant" means a person considered to be such or treated as such by the Member State to which the administration employing him is subject;
- (xx) "special scheme for civil servants": means any social security scheme which is different from the general social security scheme applicable to employed persons in the Member State concerned and to which all, or certain categories of, civil servants or persons treated as such are directly subject;

- (ca) "frontier worker" means any person pursuing an activity as an employed or self-employed person in the territory of a Member State and who resides in the territory of another Member State to which he returns as a rule daily or at least once a week;
- (d) "refugee" shall have the meaning assigned to it in Article 1 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951;
- (e) "stateless person" shall have the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954;
- (f) "member of the family" means
- (1)
 - (i) for the purposes of the application of this Regulation, 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,
 - (ii) with regard to benefits in kind pursuant to Title III, Chapter 1 on sickness, maternity and paternity, any person defined or recognised as a member of the family or designated as a member of the household by the legislation of the Member State within whose territory he resides.
 - (2) If the legislation of a Member State which is applicable pursuant to subparagraph (1) does not make a distinction between the members of the family and other persons to whom it is applicable, the spouse, minor children, and dependent children who have reached the age of majority shall be considered members of the family.
 - (3) If, under the legislation which is applicable pursuant to subparagraphs (1) and (2), a person is only considered a member of the family or member of the household if he lives under the same roof as the insured person or pensioner, this condition shall be considered satisfied if the person in question is mainly dependent on the insured person or pensioner.

- (g) "residence" means the place where a person habitually resides;
- (h) "stay" means temporary residence;
- (i) "legislation" means, in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 2(1).

This term excludes contractual provisions. However, it includes those contractual provisions which serve to implement an insurance obligation arising from the laws and regulations referred to in the preceding subparagraph or which have been the subject of a decision by the public authorities which makes them obligatory or extends their scope, provided that the Member State concerned makes a declaration to that effect, notified to the President of the European Parliament and the President of the Council of the European Union. Such declaration shall be published in the Official Journal of the European Communities;

- (j) "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;
- (k) "Administrative Commission" means the commission referred to in Article 65;
- (l) "institution" means, in respect of each Member State, the body or authority responsible for administering all or part of the legislation;
- (m) "competent institution" means:
 - (i) the institution with which the person involved is insured at the time of the application for benefit; or

- (ii) the institution from which the person involved is entitled or would be entitled to benefits if he or a member or members of his family resided 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 obligations in respect of the benefits set out in Article 2(1), either the employer or the insurer involved or, in default thereof, the body or authority designated by the competent authority of the Member State concerned;
- (n) "institutions of the place of residence" and "institutions of the place of stay" mean respectively the institution which is competent to provide benefits in the place where the person involved resides and the institution which is competent to provide benefits in the place where the person involved is staying, in accordance with the legislation administered by that institution or, where no such institution exists, the institution designated by the competent authority of the Member State concerned;
- (o) "competent State" means the Member State in whose territory the competent institution is situated;
- (p) "period of insurance" means periods of contribution, employment or self-employment as defined or recognised as periods of insurance 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 periods of insurance;
- (q) "period of employment" or "period of self-employment" mean periods so defined or recognised 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 or to periods of self-employment;

- (r) "periods of residence" means periods so defined or recognised by the legislation under which they were completed or considered as completed;
- (s) "pension" covers not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement of contributions and, subject to the provisions of Title III, revaluation increases or supplementary allowances;
- (t) "pre-retirement benefits" mean:
all cash benefits, other than an unemployment benefit or an early old-age benefit, provided from a specified age to workers who have reduced, ceased or suspended their remunerative activities until the age at which they qualify for an old-age pension or an early retirement pension, the receipt of which is not conditional upon the person involved being available to the employment services of the competent State; "early old-age benefit" means a benefit provided before the normal pension entitlement age required is reached and which either continues to be provided once the said age is reached or is replaced by another old-age benefit;
- (u) "death grants" mean any one-off payment in the event of death exclusive of the lump-sum benefits referred to in subparagraph(s).
- v) "Family benefits" means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I.

Article 1
Persons covered

1. This Regulation shall apply to nationals of a Member State, stateless persons and refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, as well as to the members of their families and to their survivors.

2. It shall also apply to the survivors of persons who have been subject to the legislation of one or more Member States, irrespective of the nationality of such persons, where their survivors are nationals of a Member State, stateless persons and/or refugees residing within the territory of one of the Member States.

Article 2
Matters covered

1. This Regulation shall apply to all legislation concerning the following branches of social security:
 - (a) sickness benefits;
 - (b) maternity and equivalent paternity benefits;
 - (c) invalidity benefits;
 - (d) old-age benefits;
 - (e) survivors' benefits;
 - (f) benefits in respect of accidents at work and occupational diseases;
 - (g) death grants;
 - (h) unemployment benefits;
 - (i) pre-retirement benefits;
 - (j) family benefits.

2. Unless otherwise provided for in Annex XI, this Regulation shall apply to general and special social security schemes, whether contributory or non-contributory, and to schemes relating to the obligations of an employer or shipowner.⁵
3. This Regulation shall also apply to the special non-contributory cash benefits covered by Article 63.
4. The provisions of Title III of this Regulation shall not, however, affect the legislative provisions of any Member State concerning a shipowner's obligations.
5. This Regulation shall not apply to social and medical assistance or to benefit schemes for victims of war or its consequences.

Article 3

Equality of treatment

Subject to the special provisions of this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.

⁵ See joint statement in Annex II.

Article 3(a)⁶

Equal treatment of benefits, income, facts or events

Subject to the derogations and in the light of the special implementing provisions laid down by this Regulation:

- (a) where, under the legislation of the competent State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;
- (b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.

Article 4⁷

Aggregation of periods

Subject to the special provisions of this Regulation, the competent institution of a Member State whose legislation makes the acquisition, retention, duration or recovery of the right to benefits, the coverage by legislation or the access to or the exemption from insurance conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take account of periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were periods completed under the legislation which it administers.⁸

⁶ See joint statement in Annex II.

⁷ See joint statement in Annex II.

⁸ UK: positive scrutiny reservation.

Article 5

Waiving of residence rules

Save as otherwise provided in this Regulation, cash benefits payable under the legislation of one or more Member States or under this Regulation may not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his family reside in the territory of a Member State other than that in which the institution responsible for providing benefits is located.

Article 6

Relations between this Regulation and other coordination instruments

1. This Regulation shall replace any social security convention applicable between Member States falling under its scope. Certain provisions of social security conventions entered into by the Member States prior to the entry into force of the Regulation shall, however, continue to apply provided that they are more favourable to the beneficiaries or if they arise from specific historical circumstances and their effect is limited in time. For these provisions to remain applicable, they shall be included in Annex II, also specifying if, on objective grounds, it is not possible to extend some of these provisions to all persons to whom the Regulation applies.
2. Two or more Member States may, as the need arises, conclude conventions with each other based on the principles and in the spirit of this Regulation.

Article 6(a)

Declarations by the Member States on the scope of this Regulation

1. The Member States shall submit notifications of the legislation and schemes referred to in Article 2, the Conventions entered into as referred to in Article 6(2), the declarations referred to in Article 0(i) and the minimum benefits referred to in Article 39, as well as substantive amendments made subsequently. Such notifications shall indicate the date of entry into force of the laws and schemes in question or, in the case of the declarations provided for in Article 0(i), the date from which this Regulation will apply to the schemes specified in the declarations by the Member States.
2. These notifications shall be forwarded to the Commission every year and their contents shall be published in the Official Journal of the European Communities.

Article 6(b)

Prevention of overlapping of benefits

Unless otherwise specified, 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.

Article 7

(...) has become Article 0

TITLE II

DETERMINATION OF THE LEGISLATION TO WHICH A PERSON IS SUBJECT

Article 8

General rules

1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with the provisions of this Title.
2. For the purposes of this Title, persons enjoying cash benefits because or as a consequence of their activity as an employed person or their activity as a self-employed person shall be considered to be pursuing the said activity. This shall not apply to invalidity, old-age or survivor's pensions paid in cash or to pensions in respect of industrial accidents or occupational disease or to sickness benefits in cash covering treatment for an unlimited period.
3. Subject to Articles 9 to 13:
 - (a) a person pursuing an activity as an employed or self-employed person in the territory of a Member State shall be subject to the legislation of that State;
 - (b) civil servants shall be subject to the legislation of the Member State to which the administration employing them is subject;

- (ba) a person receiving unemployment benefits in conformity with Article 58 under the legislation of his State of residence shall be subject to the legislation of that Member State;⁹
- (c) a person called up or recalled for service in the armed forces or for civilian service in a Member State shall be subject to the legislation of that State;
- (d) any other person to whom subparagraphs (a) to (c) do not apply shall be subject to the legislation of the Member State in whose territory they reside, without prejudice to other provisions of this Regulation guaranteeing them benefits pursuant to the legislation of one or more other Member States.

4. For the purposes of this Title, work normally done on board a vessel at sea flying the flag of a Member State shall be deemed to be work done in the territory of the said Member State. However, a person 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.

⁹ B/E/F/IRL/P: agreement subject to the definitive wording of Article 58(4).

Article 9

Special rules in the event of the temporary pursuit of an activity in another Member State

1. A person who pursues an activity as an employed person in the territory of a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to the territory of another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed twenty-four months and that he is not sent to replace another person.
2. A person normally pursuing an activity as a self-employed person in the territory of a Member State who goes to perform a similar activity in the territory of another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed twenty-four months.

Article 10

Pursuit of activities in the territory of two or more Member States

1. A person normally pursuing an activity as an employed person in the territory of two or more Member States shall be subject to:
 - (a) the legislation of the Member State in whose territory he resides if he pursues a substantial part of his activity in that territory or if he is employed by various undertakings or various employers whose registered office or place of business is in the territory of different Member States, or

- (b) the legislation of the Member State in whose territory the registered office or place of business of the undertaking or employer employing him is situated, if he does not pursue a substantial part of his activities in the territory of the Member State where he resides.
- 2. A person normally pursuing an activity as a self-employed person in the territory of two or more Member States shall be subject to:
 - (a) the legislation of the Member State in whose territory he resides if he pursues a substantial part of his activity in that territory; or
 - (b) the legislation of the Member State in whose territory the centre of interest of his activities is located, if he does not reside in the territory of one of the Member States in which he pursues a substantial part of his activity.
- 3. A person who normally pursues an activity as an employed person and an activity as a self-employed person in the territory of different Member States shall be subject to the legislation of the Member State in whose territory he pursues an activity as an employed person or, if he pursues such an activity in the territory of two or more Member States, to the legislation determined in accordance with paragraph 1.
- 4. A person who is employed as a civil servant by one Member State and who pursues an activity as an employed person and/or as a self-employed person in the territory of one or more other Member States shall be subject to the legislation of the Member State in which he is insured as a civil servant.
- 5. (...)

6. Persons referred to in paragraphs 1 to 4 shall be treated, for the purposes of applying the legislation determined in accordance with these provisions, as though they were pursuing all their activities as employed or self-employed persons and were receiving all their income in the territory of the Member State concerned.

Article 11

Rules concerning voluntary insurance or optional continued insurance

1. Articles 8 to 10 shall not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches referred to in Article 2(1), only a voluntary scheme of insurance exists in a Member State.
 - 1a. Where, by virtue of its legislation, the person concerned is subject to compulsory insurance in one Member State, he may not be subject to a voluntary insurance scheme or an optional continued insurance scheme in another Member State. In all other cases in which, for a given branch, there is a choice between several voluntary insurance schemes or optional continued insurance schemes, the person concerned shall join only the scheme of his choice.
2. However, in respect of invalidity, old age and death (pensions), the person involved 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, provided that he has been subject, at some stage in his career, to the legislation of the first State because or as a consequence of a professional activity and if such overlapping is explicitly or implicitly allowed pursuant to the legislation of the first Member State.
 - 2a. If the legislation of any Member State makes admission to voluntary insurance or optional continued insurance conditional upon residence in the territory of that State, the equal treatment of residence in the territory of another Member State as provided under Article 3a(b) shall only apply to persons who have been subject, at some earlier stage, to the legislation of the first State because of their pursuit of an activity as an employed person or as a self-employed person.

Article 12

Special rules regarding auxiliary staff of the European Communities

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 scheme applicable to such staff. This right of option, which may be exercised once only, shall take effect from the date of entry into service.

Article 13

Exceptions to the provisions of Articles 8 to 12

1. Two or more Member States, the competent authorities of these States or the bodies designated by these authorities may by common agreement provide for exceptions to the provisions of Articles 8 to 12 in the interest of certain categories of persons or of certain persons.
2. The recipient of a pension due under the legislation of a Member State or of pensions due under the legislation of several Member States who resides in the territory of another Member State may at his request be exempted from application of the legislation of the latter State provided that he is not subject to that legislation on account of pursuing an activity as an employed or self-employed person.

TITLE III
PROPOSAL FOR SPECIAL PROVISIONS
CONCERNING THE VARIOUS CATEGORIES OF BENEFITS

CHAPTER 1

Sickness, maternity and paternity benefits

Section 1

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

Article 14

Residence in a Member State other than the competent State

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

Article 15

Stay in the competent State although residence is situated in a Member State other than the competent State – Special rules for the members of the families of frontier workers

1. Unless otherwise provided in paragraph 2, the insured persons referred to in Article 14 and the members of their families shall also be entitled to benefits in kind while staying in the territory of the competent State. The benefits in kind shall be provided by the competent institution and at its own expense, in accordance with the provisions of the legislation of that State, as though the persons involved resided in it.

2. The members of the family of a frontier worker shall be entitled to benefits in kind during their stay within the competent State's territory, unless this State is listed in Annex III. In this event, the members of the family of a frontier worker shall be entitled to benefits in kind in the competent State's territory under the conditions laid down in Article 16(1).¹⁰

Article 16

Stay outside the competent State

1. Without prejudice to paragraph 3, an insured person and the members of his family staying in a Member State other than the competent State shall be entitled to the benefits in kind which become medically necessary during their stay, taking into account the nature of the benefits and the expected length of the stay. The benefits in kind shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation administered by that institution, as though they were insured pursuant to the said legislation.
2. (deleted)
3. The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require for practical reasons a prior agreement between the person involved and the institution providing the care.

Article 17

(deleted)

¹⁰ DK/D: scrutiny reservations.

Article 18

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

0. Save as otherwise provided under this Regulation, an insured person travelling to another Member State with the purpose of receiving benefits in kind during the stay shall seek authorisation from the competent institution.
1. An insured person 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 receive the benefits in kind provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the provisions of the legislation administered by that institution, as though he were insured pursuant to the said legislation. The authorisation must be accorded where the treatment in question is among the benefits provided for by the legislation in the Member State where the person involved resides and where he cannot be given such treatment within a time-limit which is medically justifiable, taking account of his current state of health and the probable course of the illness.¹¹
2. (deleted)
3. The provisions in paragraphs 0 and 1 shall apply mutatis mutandis to the members of an insured person's family.

¹¹ See joint statement in Annex II.

4. If the members of the family of an insured person reside in the territory of a Member State other than the Member State in which the insured person resides, and this Member State has opted for reimbursement on the basis of fixed amounts, the cost of the benefits in kind referred to in paragraph 1 shall be borne by the institution of the place of residence of the members of the family. In this case, for the purposes of applying paragraph 0, the institution of the place of residence of the members of the family shall be considered to be the competent institution.

Article 19

Cash benefits

0. An insured person and members of his family residing or staying in a Member State other than the competent State shall be entitled to cash benefits from the competent institution in accordance with the legislation administered by that institution. By agreement between the competent institution and the institution of the place of residence or stay, such benefits may, however, be provided by the institution of the place of residence or stay at the expense of the competent institution in accordance with the legislation of the competent State.
1. The competent institution of a Member State whose legislation stipulates that the calculation of cash benefits shall be founded on average income or on an average contribution basis shall determine such average income or average contribution basis exclusively by reference to the incomes confirmed as having been paid, or contribution bases applied, during the periods completed under the said legislation.
2. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on standard income shall take account exclusively of the standard income or, where appropriate, of the average of standard incomes for the periods completed under the said legislation.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to cases where the legislation applicable to the competent institution lays down a specific reference period, and where that period corresponds in the case in question either wholly or partly to the periods which the person concerned has completed under the legislation of one or more other Member States.

Article 20

Pension claimants and members of their families – benefits in kind

1. An insured person who on making, or during the investigation of, a claim for a pension, ceases to be entitled to benefits in kind under the legislation of the Member State last competent, shall remain entitled to benefits in kind under the legislation of the Member State in which he is resident, provided that the pension claimant fulfils the conditions of the legislation of the State described in paragraph 2 below regarding insurance. The right to benefits in kind in the State of residence also applies to the members of the family of the pension claimant.
2. The benefits in kind shall be chargeable to the institution of the State which, in the event of a pension being awarded, would become competent under the provisions of Articles 21 to 23.

Section 2

Pensioners and members of their families

Article 21

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

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

Article 22¹²

Pensions under the legislation of one or more Member States, in cases where there is no right to benefits in kind in the country of residence

1. A person who receives a pension 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 benefits in kind for himself and the members of his family, insofar as he would be entitled thereto under the legislation of the Member State, or of at least one of the Member States, competent in respect of pensions, if he were resident in the territory of such State. The benefits in kind shall be provided at the expense of the institution referred to in paragraph 2 by the institution of the place of residence, as though the person concerned were entitled to a pension and benefits in kind under the legislation of the State in whose territory he resides.

¹² See joint statement in Annex II.

2. In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution as determined according to the following rules:
 - (a) where the pensioner is entitled to benefits in kind under the legislation of a single Member State, the cost shall be borne by the competent institution of that State;
 - (b) where the pensioner is entitled to benefits in kind under the legislation of two or more Member States, the cost thereof shall be borne by the competent institution of the Member State to whose legislation the person has been subject for the longest period of time; should the application of this rule result in several institutions being responsible for the cost of benefits, the cost shall be borne by the institution administering the legislation to which the pensioner was last subject.

Article 23

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

Where the person receiving a pension under the legislation of one or more Member States resides in the territory of a Member State under whose legislation the right to receive benefits in kind is not subject to conditions of insurance, gainful employment or self-employment, nor is any pension received from that State, the cost of benefits in kind provided to him and to members of his family shall be borne by the institution of one of the Member States competent in respect of pensions determined according to the rules laid down in Article 22(2), to the extent that the pensioner and members of his family would have been entitled to such benefits under the legislation administered by the said institution if they resided in the territory of the Member State where that institution is situated.

Article 24

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

Members of the family of a person receiving a pension 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 be entitled to receive benefits in kind from the institution of the place of their residence in accordance with the provisions of the legislation administered by that institution, insofar as the pensioner is entitled to benefits in kind according to the legislation of a Member State. The costs shall be borne by the competent institution responsible for the costs of the benefits in kind granted to the pensioner in his State of residence.

Article 25

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

1. Article 16 shall apply mutatis mutandis to a person receiving a pension under the legislation of one or more Member States and entitled to benefits in kind under the legislation of one of those Member States, or to the members of his family, who are staying in the territory of a Member State other than the one in which they reside.
 - 1a. Article 15(1) shall apply mutatis mutandis to the persons described in paragraph 1 when they stay in the territory of the Member State in which the competent institution responsible for the cost of the benefits in kind granted to the pensioner in his State of residence is situated, and the said Member State has opted for this and is listed in Annex IV.
2. (deleted)

3. Article 18 shall apply mutatis mutandis to a pensioner or the members of his family who stay in the territory of a Member State other than the one in which they reside, to receive there the treatment appropriate to their condition.
4. Unless otherwise provided for in paragraph 5, the cost of the benefits in kind referred to in paragraphs 1 to 3 shall be borne by the competent institution responsible for the cost of benefits in kind granted to the pensioner in his State of residence.
5. The cost of the benefits in kind referred to in paragraph 3 shall be borne by the institution of the place of residence of the pensioner or of the members of the family, if these persons reside in a Member State which has opted for reimbursement on the basis of fixed amounts. In these cases, for the application of paragraph 3, the institution of the place of residence of the pensioner or of the members of the family shall be considered the competent institution.¹³

Article 25.0a

Special rules for retired frontier workers and the members of their families

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

¹³ See joint statement in Annex II.

2. A pensioner who, in the five years preceding the effective date of an old-age or invalidity pension, has been employed or self-employed as a frontier worker for at least two years shall be entitled to benefits in kind in the territory of the Member State in which he was thus employed or self-employed, unless the State in which is situated the competent institution responsible for the costs of the benefits in kind granted to the pensioner in his State of residence is listed in Annex VI.¹⁴
3. Paragraph 2 shall apply mutatis mutandis to the members of the family of a former frontier worker or his survivors if, during the periods referred to in paragraph 2, they were entitled to benefits in kind pursuant to the second paragraph of Article 15(2), even if the frontier worker died before his pension commenced, provided he had been employed or self-employed as a frontier worker for three years in the five years preceding his death.
- 3a. Paragraphs 2 and 3 shall be applicable until the person concerned becomes subject to the legislation of a Member State because of the exercise of a gainful employment or self-employment.
4. The cost of the benefits in kind referred to in paragraphs 1 to 3 shall be borne by the competent institution responsible for the cost of benefits in kind granted to the pensioner in his State of residence, or to his survivors in their State of residence, as the case may be.

¹⁴ S: wondered whether it would also be necessary to modify paragraph 1. D: reservation. DK/L/NL/S/FIN/UK: scrutiny reservations. D/UK: would prefer the drafting agreed in December 2002, adapted in accordance with the most recently accepted amendments:
" 2. *A pensioner who in the five years preceding the effective date of an old-age or invalidity pension has been employed or self-employed for at least two years as a frontier worker shall be entitled to benefits in kind in the territory of the Member State in which he was employed or self-employed as a frontier worker, if this State and the State in which the competent institution responsible for the costs of the benefits in kind granted to the pensioner in his State of residence is situated have opted for this and are both listed in Annex VI.*"

Article 25a

Cash benefits for pensioners and members of their families

1. Cash benefits shall be paid to a person receiving a pension under the legislation of one or more Member States, by the competent institution of the Member State in which the competent institution responsible for the cost of benefits in kind granted to the pensioner in his State of residence is situated. Article 19 shall apply *mutatis mutandis*.
2. Paragraph 1 shall also apply to the members of a pensioner's family.

Article 26

Contributions payable by pensioners

1. The institution of a Member State which is responsible under the legislation which it applies for making deductions in respect of contributions for sickness, maternity and paternity, may request and recover such deductions, calculated in accordance with the legislation it applies, only to the extent that the cost of the benefits under Articles 21 to 24 is to be borne by an institution of the said Member State.
2. (deleted)¹⁵
3. Where, in the cases referred to in Article 23, the acquisition of benefits in respect of sickness, maternity and paternity is subject to the payment of contributions or similar payments under the legislation of a Member State in whose territory the pensioner in question resides, by virtue of such residence, these contributions shall not be payable.

¹⁵ See joint statement in Annex II.

Section 3

Common provisions

Article 26a

General provision

Articles 21 to 26 shall not apply to a pensioner or the members of his family who are entitled to benefits under the legislation of a Member State as a result of gainful employment or self-employment. In such a case, the person in question shall, for the application of the provisions of this Chapter, be treated under Articles 14 to 19.

Article 27

Prioritising of the right to benefits in kind – Special rule for the right to benefits in the country of residence for members of the family

1. An independent right to benefits in kind according to a Member State's legislation or the provisions of this Chapter shall take priority over a derivative right to benefits for members of a family. A derivative right to benefits in kind shall, however, take priority over independent rights, where the independent right in the State of residence exists directly and only on the basis of the residence of the person in question in that State.
2. (deleted)
3. Where the members of the family of an insured person reside in the territory of a Member State under whose legislation the right to benefits in kind is not subject to conditions of insurance, gainful employment or self-employment, benefits in kind shall be provided at the expense of the competent institution in the Member State in which they reside, if the spouse or the person caring for the children of the insured person pursues a gainful activity in the territory of the said Member State or receives a pension from that State by virtue of the pursuit of gainful employment or self-employment.

Article 28

Substantial benefits in kind

1. An insured person or a member of his family who has had a right to a prosthesis, a major appliance or other substantial benefits in kind recognised by the institution of a Member State, before he became insured pursuant to the legislation administered by the institution of another Member State, shall receive such benefits at the expense of the first institution, even if they are accorded after the said person has already become insured pursuant to the legislation administered by the second institution.
2. The Administrative Commission shall draw up the list of benefits to which the provisions of paragraph 1 apply.

Article 28a¹⁶

1. If a recipient of long-term care benefits in cash which have to be treated as sickness benefits and are therefore provided by the Member State competent in respect of cash benefits under Article 19 or Article 25a is, at the same time, entitled to claim benefits in kind intended for the same purpose from the institution of the place of residence or stay of another Member State pursuant to the provisions of this Chapter, and an institution in the first Member State is also required to reimburse the cost of these benefits in kind under Article 30, the general ban on overlapping of benefits laid down in Article 6b shall be applicable, with the following restriction only: if the person concerned claims and receives the benefit in kind, the amount of the benefit in cash shall be reduced by the amount of the benefit in kind which is or could be claimed from the institution of the first Member State required to reimburse the cost.

¹⁶ See joint statement in Annex II.

2. The Administrative Commission shall draw up the list of the cash benefits and benefits in kind which are covered by paragraph 1.
3. Two or more Member States, or the competent authorities of those States, may agree on other or supplementary measures which shall not be less advantageous for the persons concerned than the principles laid down in paragraph 1.

Article 29

(deleted)

Article 30

Reimbursements between institutions

1. The benefits in kind provided by the institution of a Member State on behalf of the institution of another Member State pursuant to the provisions of this Chapter shall give rise to full reimbursement.
2. The reimbursements described in paragraph 1 shall be determined and effected in accordance with the arrangements set out in the Implementing Regulation referred to in Article 80, either on production of proof of actual expenditure or on the basis of fixed amounts for the Member States, whose legal or administrative structures are such that the use of reimbursement on the basis of actual expenditure is not appropriate.¹⁷
3. Two or more Member States, or the competent authorities of such States, may provide for other methods of reimbursement or waive all reimbursement between the institutions coming under their jurisdiction.

¹⁷ See joint statement in Annex II.

CHAPTER 2

Accidents at work and occupational diseases

Article 31

Right to benefits in kind and in cash

1. Without prejudice to any more favourable provisions in paragraph 1a, Articles 14, 15(1), 16(1) and 18(1) also apply to benefits relating to accidents at work or occupational diseases.
- 1a. A person who has sustained an accident at work or has contracted an occupational disease and who resides or stays in a Member State other than the competent State shall be entitled to the special benefits in kind of the scheme covering accidents at work and occupational diseases provided, on behalf of the competent institution, by the institution of the place of stay or of residence in accordance with the provisions of the legislation which it administers as though he were insured pursuant to the said legislation.
2. Article 19 shall also apply to benefits falling within this Chapter.

Article 32

(deleted)

Article 33

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 meeting the costs of transporting the body of a person killed in an accident at work to the place of burial shall, in accordance with the provisions of 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.

Article 34

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

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

Article 35

Aggravation of an occupational disease for which benefits have been awarded

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

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

Article 36

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 the person involved resides or stays, or if such insurance exists but there is no institution responsible for providing benefits in kind, those benefits shall be provided by the institution of the place of stay or residence responsible for providing benefit in kind in the event of sickness.
2. (deleted)
- 2a. If there is no insurance against accidents at work or occupational diseases in the territory of the competent State, the provisions of this Chapter on benefits in kind shall nevertheless be applied to a person who is entitled to benefits in kind in case of sickness, maternity or paternity according to the legislation of the competent State if the person sustains an accident at work or suffers from an occupational disease during a temporary stay or residence in the territory of another Member State. The costs shall be borne by the institution which is competent for the benefits in kind under the legislation in the competent State.
3. Article 3a shall apply to the competent institution in a Member State as regards the equivalence of accidents at work and occupational diseases which have occurred or been confirmed subsequently under the legislation of another Member State when assessing the degree of incapacity, the right to benefits or the amount thereof, on condition that:
 - (a) no compensation is due in respect of an accident at work or an occupational disease which had occurred or had been confirmed previously under the legislation which it administers;

- (b) no compensation is due in respect of an accident at work or an occupational disease which had occurred or been confirmed subsequently under the legislation of the other Member State under which the accident at work or the occupational disease had occurred or been confirmed.

Article 36a

Reimbursements between institutions

1. Article 30 shall also apply to benefits falling within this Chapter, as reimbursement shall be effected on the basis of actual costs.
2. Two or more Member States, or the competent authorities of such States, may provide for other methods of reimbursement or waive all reimbursement between the institutions coming under their jurisdiction.

Article 37

(deleted)

CHAPTER 3

Death grants

Article 37a

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

1. When an insured person or a member of his family dies in 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 38

Provision of benefits in the event of the death of a pensioner who had resided in a Member State other than that of the institution responsible for the cost of benefits in kind

1. In the event of the death of a pensioner who was entitled to a pension under the legislation of one Member State, or to pensions under the legislations of two or more Member States, when such pensioner was residing in the territory of a Member State other than that of the institution responsible for the cost of benefits in kind granted in accordance with the provision of Articles 22 and 23, the death grants payable under the legislation administered by that institution shall be provided at its own expense as though the pensioner had been residing in the territory of the Member State of that institution at the time of his death.
2. The provisions of the preceding paragraph shall apply mutatis mutandis to the members of the family of a pensioner.

CHAPTER 4
Invalidity Benefits

Section 1

Persons subject only to type A legislation

Article 39

General provisions – Award of benefits

1. For the purposes of applying this Chapter, “type A legislation” means any legislation under which the amount of invalidity benefits is independent of the duration of the periods of insurance or residence and which is expressly included by the competent State in Annex VI, and “type B legislation” means any other legislation.
2. A person who has been successively or alternately subject to the legislation of two or more Member States and who has completed periods of insurance or residence exclusively under type A legislations, shall be entitled to benefits only from the institution of the Member State whose legislation was applicable at the time when the incapacity for work followed by invalidity occurred, taking into account, where appropriate, the provisions of Article 40, and shall receive such benefits in accordance with that legislation.
3. A person who is not entitled to benefits under paragraph 2, shall receive the benefits to which he is still entitled under the legislation of another Member State, taking account, where appropriate, of Article 40.
4. If the legislation referred to in paragraph 2 or 3 contains rules for the reduction, suspension or withdrawal of invalidity benefits in the case of overlapping with other income or with benefits of a different kind within the meaning of Article 48(2), the provisions of Article 48(3) and Article 50(3) shall apply *mutatis mutandis*.
5. (...).

Article 40

Special provisions on aggregation of periods of insurance or residence for the acquisition, retention or recovery of the right to benefits

The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of periods of insurance or residence shall, where necessary, apply the provisions of Article 46(1) *mutatis mutandis*.

Section 2

Persons subject either only to type B legislation or to both legislation of that type and to type A legislation

Article 41

General provisions¹⁸

1. A person who has been successively or alternately subject to the legislation of two or more Member States, of which at least one is not a type A legislation, shall be entitled to benefits under the provisions of Chapter 5, which shall apply *mutatis mutandis* taking into account the provisions of paragraph 3.
2. However, if the person concerned has been previously subject to a type B legislation and suffers incapacity for work leading to invalidity while subject to a type A legislation, he shall receive benefits in accordance with the provisions of Article 39, provided that:
 - he satisfies the conditions of that legislation exclusively or of others of the same type, taking account where appropriate of Article 40, but without having recourse to periods of insurance or residence completed under a type B legislation, and

¹⁸ See joint statement in Annex II.

- he does not assert any claims to old-age benefits, account being taken of Article 45(1).
3. A decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State concerned, provided that the concordance between the legislation of these States on conditions relating to the degree of invalidity is acknowledged in Annex VII.

Section 3

Aggravation of invalidity

Article 42

1. In the case of aggravation of an invalidity for which a person is receiving benefits under the legislation of one or more Member States, the following provisions shall apply taking the aggravation into account:
 - a) the benefits shall be granted in accordance with the provisions of Chapter 5, applied *mutatis mutandis*;
 - b) however, where the person concerned has been subject to two or more type A legislations and since receiving benefit has not been subject to the legislation of another Member State, the benefit shall be granted in accordance with the provisions of Article 39(2).
2. If the total amount of benefit or benefits payable under paragraph 1 is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously liable for payment, that institution shall pay him a supplement equal to the difference between the two amounts.

3. If the person concerned is not entitled to benefits at the expense of an institution of another Member State, the competent institution of the Member State previously competent shall grant the benefits, according to the provisions of the legislation it administers, taking into account, where appropriate, the provisions of Article 40.

Section 4

Conversion of invalidity benefits into old-age benefits – Recalculation of benefits granted under Article 39

Article 43

(deleted)

Article 44

1. Invalidity benefits shall be converted into old-age benefits, where appropriate, under the conditions laid down by the legislation or legislations under which they are granted and in accordance with the provisions of Chapter 5.
2. Where a person receiving invalidity benefits can establish a claim to old-age benefits under the legislation of one or more other Member States, in accordance with Article 45, any institution which is responsible for providing invalidity benefits under the legislation of a Member State shall continue to provide such a person with the invalidity benefits to which he is entitled under the legislation which it administers until the provisions of paragraph 1 become applicable in respect of that institution, or otherwise for as long as the person concerned fulfils the conditions for such benefits.

3. Where invalidity benefits granted under the legislation of a Member State, in accordance with Article 39, are converted into old-age benefits and where the person concerned does not yet satisfy the conditions laid down by the legislation of one or more of the other Member States for receiving those benefits, the person concerned shall receive, from that or those Member States, invalidity benefits from the date of the conversion.

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

4. The invalidity benefits granted under Article 39 shall be recalculated pursuant to the provisions of Chapter 5 as soon as the beneficiary satisfies the qualifying conditions for invalidity benefits laid down by a type B legislation, or as soon as he receives old-age benefits under the legislation of another Member State.

Section 5

Special provisions for persons covered by a special scheme for civil servants

Article 44a

The provisions of Articles 4 and 39, of Sections 2, 3 and 4 and of Article 54a (2) and (3) shall apply *mutatis mutandis* to persons covered by a special scheme for civil servants.

CHAPTER 5
Old-age and survivors' pensions

Article 45

**General provisions for the award of benefits where a person has been subject
to the legislation of two or more Member States**

1. All the competent institutions shall determine entitlement to benefit, in respect of all the legislations of the Member States to which the person concerned has been subject, when a request for award has been submitted, unless the person concerned expressly requests deferment of the award of old-age benefits under the legislation of one or more Member States.¹⁹
2. If at a given moment the person concerned does not fulfil or no longer fulfils the conditions laid down by all the legislations of the Member States to which he has been subject, the institutions administering a legislation whose conditions have been fulfilled shall not take into consideration, when performing the calculation in accordance with Article 47(1) (a) or (b), the periods completed under the legislations whose conditions have not been fulfilled or are no longer fulfilled where this gives rise to a lower amount of benefit.
3. The provisions of paragraph 2 shall apply mutatis mutandis when the person concerned has expressly requested deferment of the award of old-age benefits.
4. A new calculation shall be performed automatically as and when the conditions required under the other legislations are fulfilled or when a person requests the award of an old-age benefit deferred in accordance with paragraph 1, unless the periods completed under the other legislations have already been taken into account by virtue of paragraph 2 or 3.
5. (...).

¹⁹ See joint statement in Annex II.

Article 46²⁰

Special provisions on aggregation of periods of insurance or residence for the acquisition, retention or recovery of the right to benefits

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

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

2. The periods of insurance completed under a special scheme of a Member State shall be taken into account for granting the benefits of the general scheme or, failing that, of the scheme applicable to manual or clerical workers, as the case may be, of another Member State, subject to the condition that the person concerned has been affiliated to one or other of those schemes, even if those periods have already been taken into account in the latter State under a special scheme.
3. Where the legislation of a Member State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied in the case of insurance under the legislation of another Member State, in accordance with the procedures provided in Annex XI for each Member State concerned.

²⁰ See joint statement in Annex II.

Article 47²¹

Award of benefits

1. The competent institution shall calculate the amount of the benefit that would be due:
 - (a) pursuant to the provisions of the legislation which it administers, only where the conditions required for entitlement to benefits have been satisfied exclusively under national law (independent benefit);
 - (b) by calculating a theoretical amount and subsequently an actual amount (pro-rata benefit), as follows:
 - (i) the theoretical amount of the benefit is equal to the benefit to which the person concerned could lay claim if all the periods of insurance and/or of residence which have been completed under the legislations of the other Member States had been completed under the legislation which it administers on the date of the award of the benefit. If, under this legislation, the amount does not depend on the duration of the periods completed, the amount shall be regarded as being the theoretical amount;
 - (ii) the competent institution shall then establish the actual amount of the pro-rata benefit by applying to the theoretical amount the ratio between the duration of the periods completed prior to materialisation of the risk under the legislation which the institution administers and the total duration of the periods completed prior to materialisation of the risk under the legislations of all the Member States concerned.

²¹ See joint statement in Annex II.

2. Where appropriate, the competent institution shall apply, to the amount calculated in accordance with subparagraphs 1(a) and (b), all the rules relating to reduction, suspension or withdrawal, under the legislation which it administers, within the limits provided for by the provisions of Articles 48 to 50 of this Chapter.
3. The person concerned shall be entitled to receive the higher amount calculated in accordance with subparagraphs 1(a) and (b) from the competent institution of each Member State.
4. Where the calculation pursuant to subparagraph 1(a) in one Member State always leads to a result that the independent benefit is equal to or higher than the pro-rata benefit, calculated in accordance with subparagraph 1(b), the competent institution may waive the pro-rata calculation, under the conditions provided for in the Implementing Regulation referred to in Article 80. Such situations are set out in Annex VIII.

Article 48

**General provisions relating to reduction, suspension or withdrawal applicable to benefits in respect of invalidity, old age or survivors pursuant to the legislation of the Member States
(Rules to prevent overlapping)**

1. Any overlapping of invalidity, old-age and survivors' benefits calculated or provided on the basis of periods of insurance and/or residence completed by the same person shall be considered to be overlapping of benefits of the same kind.
2. Overlapping of benefits which cannot be considered to be of the same kind within the meaning of paragraph 1 shall be considered to be overlapping of benefits of a different kind.
3. The following provisions shall be applicable for the application of rules to prevent overlapping laid down by the legislation of a Member State in the case of overlapping of a benefit in respect of invalidity, old age or survivors with a benefit of the same kind or a benefit of a different kind or with other income:

- (a) the competent institution shall take into consideration the benefits or incomes acquired in another Member State only where the legislation which it administers provides for the taking into account of benefits or income acquired abroad;
- (b) the competent institution shall take into account the amount of benefits to be paid by another Member State before deduction of tax, social security contributions and other individual levies or deductions, unless the legislation it administers provides for the application of rules to prevent overlapping after such deductions, under the conditions and the procedures laid down in the Implementing Regulation referred to in Article 80;
- (c) the competent institution shall not take into account the amount of benefits acquired under the legislation of another Member State on the basis of voluntary insurance or continued optional insurance;
- (d) if a single Member State applies rules to prevent overlapping because the person concerned receives benefits of the same kind or of a different kind pursuant to the legislation of other Member States or income acquired in the territory of other Member States, the benefit due may be reduced solely by the amount of benefits due pursuant to the legislation of the other Member States or by the income acquired in their territory.

Article 49²²

Special provisions on overlapping of benefits of the same kind due under the legislation of two or more Member States

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

²² See joint statement in Annex II.

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

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

Article 50

Overlapping of one or more benefits of the same kind with one or more benefits of a different kind or with other income where two or more Member States are concerned

1. If the receipt of benefits of a different kind or other income engenders application of the rules to prevent overlapping provided for by the legislation of the Member States concerned as regards:
 - (a) two or more independent benefits, the competent institutions shall divide the amounts of the benefit or benefits or other income, as they have been taken into consideration, by the number of benefits subject to the said rules;

however, the application of this provision cannot deprive the person concerned of his status as a pensioner for the purpose of the application of the other Chapters of Title III under the conditions and the procedures laid down in the Implementing Regulation referred to in Article 80;

- (b) one or more pro-rata benefits, the competent institutions shall take into consideration the benefit or benefits or other income and all the elements stipulated for applying the rules to prevent overlapping as a function of the ratio between the periods of insurance and/or residence established for the calculation referred to in Article 47(1)(b)(ii);
- (c) one or more independent benefits and one or more pro-rata benefits, the competent institutions shall apply *mutatis mutandis* subparagraph (a) as regards benefits of the first category and subparagraph (b) as regards benefits of the latter category.

2. The competent institution shall not apply the stipulated division in respect of independent benefits, if the legislation which it administers provides for account to be taken of benefits of a different kind and/or other income and all other elements for calculating part of their amount determined as a function of the ratio between periods of insurance and/or residence referred to in Article 47(1)(b)(ii).
3. All the above-mentioned provisions shall apply *mutatis mutandis* where the legislation of one or more Member States provides that a right to a benefit cannot be acquired in the case where the person concerned is in receipt of a benefit of a different kind, payable under the legislation of another Member State, or of other income.

Article 51²³

Additional provisions for the calculation of benefits

1. For the calculation of the theoretical and pro-rata amounts referred to in Article 47(1)(b), the following rules shall apply:
 - (a) where the total length of the periods of insurance and/or residence completed before the risk materialised under the legislations of all the Member States concerned is longer than the maximum period required by the legislation of one of these States for receipt of full benefit, the competent institution of that State shall 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 cost of a benefit greater than the full benefit provided for by the legislation which it administers. This provision shall not apply to benefits, the amount of which does not depend on the length of insurance;
 - (b) the procedure for taking account of overlapping periods is laid down in the Implementing Regulation referred to in Article 80;
 - (c) if the legislation of a Member State provides that the benefits shall be calculated on the basis of incomes, contributions, bases of contributions, increases, earnings, other amounts or in a combination of more than one of them (average, proportional, fixed or credited), the competent institution shall:
 - (i) determine the basis for calculation of the benefits in accordance only with periods of insurance completed pursuant to the legislation which it administers;

²³ See joint statement in Annex II.

- (ii) utilise, in order to determine the amount to be calculated in accordance with the periods of insurance and/or residence completed under the legislation of the other Member States, the same elements determined or recorded for the periods of insurance completed under the legislation which it administers;

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

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

Article 52

Periods of insurance or of residence of less than one year

1. Notwithstanding Article 47(1)(b), the institution of a Member State shall not be required to award benefits in respect of periods completed under the legislation it administers which are taken into account when the risk materialises, if:
 - the duration of the said periods does not amount to one year,

and

 - taking only these periods into consideration, no right to benefit is acquired by virtue of the provisions of that legislation.

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

2. The competent institution of each of the Member States concerned shall take into account the periods referred to in paragraph 1, for the purposes of applying Article 47(1)(b), excepting subparagraph (ii).
3. If the effect of applying paragraph 1 would be to relieve all the institutions of the Member States concerned of their obligations, benefits shall be awarded exclusively under the legislation of the last of those States whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with Articles 4 and 46 (1) and (2) had been completed under the legislation of that State.

Article 53

Award of a supplement where 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 recipient's State of residence

1. 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 payable to him, be awarded a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with the provisions of this Chapter.
2. The competent institution of that State shall pay him throughout the period of his residence in its territory a supplement equal to the difference between the total of the benefits due pursuant to this Chapter and the amount of the minimum benefit.

Article 54

Recalculation and revaluation of benefits

1. If the method for determining benefits or the rules for calculating benefits should be altered pursuant to the legislation of a Member State, or if the personal situation of the person concerned undergoes a relevant change which pursuant to that legislation would lead to an adjustment of the amount of the benefit, a recalculation shall be carried out in accordance with Article 47.
2. On the other hand, if, by reason of an increase in the cost of living or changes in the level of income or other grounds for adjustment, the benefits of the Member State concerned should be altered by a percentage or fixed amount, such percentage or fixed amount must be applied directly to the benefits determined in accordance with Article 47, without the need for a recalculation in accordance to that Article.

Article 54a²⁴

Special provisions for persons covered by a special scheme for civil servants

1. The provisions of Article 4, Article 45, Article 46(3) and Articles 47 to 54 shall apply *mutatis mutandis* to persons covered by a special scheme for civil servants.
2. However, if the legislation of a Member State makes the acquisition, liquidation, retention or recovery of the right to benefits under a special scheme for civil servants subject to the condition that all periods of insurance have been completed under one or more special schemes for civil servants in that Member State, or are regarded by the legislation of that Member State as equivalent to such periods, the competent institution of that State shall take into account only the periods which can be recognised under the legislation which it administers.

²⁴ See joint statement in Annex II.

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

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

CHAPTER 6²⁵

Unemployment

Article 55

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

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

²⁵ L: reservation on this chapter as a whole, linked to final agreement on Article 79.

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

2. Except in the cases referred to in Article 58(3)(a), application of the provisions of the preceding paragraph shall be conditional on the person concerned having lastly completed, in accordance with the provisions of the legislation under which the benefits are claimed:
 - periods of insurance, if those provisions require periods of insurance,
 - periods of employment, if those provisions require periods of employment, or
 - periods of self-employment, if those provisions require periods of self-employment.

Article 56

Calculation of benefits

1. The competent institution of a Member State whose legislation provides that the calculation of benefits shall be based on the amount of the previous salary or professional income shall take into account exclusively the salary or professional income received by the person concerned in respect of his last employment or self-employment under the said legislation.²⁶
2. Paragraph 1 shall also apply where the legislation applied by the competent institution provides for a specific reference period for the determination of the salary to serve as a basis for the calculation of benefits and where, for all or part of that period, the person concerned was subject to the legislation of another Member State.

²⁶ See joint statement in Annex II.

3. By derogation from the preceding paragraphs, as far as the frontier workers covered by Article 58(3)(a) are concerned, the institution of the State of residence shall take account of the salary or professional income received by the person concerned in the Member State to whose legislation he was subject during his last activity as an employed or self-employed person, in accordance with the rules laid down in the Implementing Regulation.

Article 56a

For the purposes of the application of this chapter, Article 5 shall apply only in the cases provided for in Articles 57 and 58 and within the limits prescribed therein.

Article 57

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

- 1 A wholly unemployed person who satisfies the conditions of the legislation of the competent Member State for entitlement to benefits going to a Member State other than the competent State in order to seek work there shall retain his entitlement to unemployment benefits in cash under the following conditions and within the following limits:
 - (a) before his departure he must have been registered as a person seeking work and have remained available to the employment services of the competent State for at least four weeks after becoming unemployed. However, the competent services or institutions may authorise his departure before such time has expired;

- (b) the unemployed person must register as a person seeking work with the employment services of the State to which he has gone, be subject to the control procedure organised there and adhere to the conditions laid down under the legislation of the said State. This condition shall be considered satisfied for the period before registration if the person concerned registers within seven days of the date on which he ceased to be available to the employment services of the State which he left. In exceptional cases, this period may be extended by the competent services or institutions;
 - (c) entitlement to benefits shall be retained for three months from the date when the unemployed person ceased to be available to the employment services of the State which he left, provided that the total duration for which the benefits are granted does not exceed the duration of the period of benefits he was entitled to pursuant to the legislation of that State; the competent institution may extend that period up to a maximum of six months.
 - (d) the benefits shall be provided by the competent institution in accordance with the legislation which it administers and at its own expense.
2. If the person concerned returns to the competent State on or before the expiry of the period during which he is entitled to benefits pursuant to the provisions of paragraph 1(c), he shall continue to be entitled to benefits under the legislation of that State; he shall lose all entitlement to benefits pursuant to the legislation of the competent State if he does not return there on or before the expiry of the said period, unless the provisions of that legislation are more favourable. In exceptional cases, this period may be extended by the competent services or institutions.
- 2a. Unless the provisions of the legislation of the competent Member State are more favourable, between two periods of employment the maximum total period for which entitlement to benefits shall be retained under the provisions of paragraph 1 is three months; the competent institution may extend that period up to a maximum of six months.

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

Article 58

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

0. A person who is partially or intermittently unemployed and who, during his last activity as an employed or self-employed person, resided in a Member State other than the competent State, must make himself available to his employer or to the employment services in the competent State. He 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 institution of the competent State.
1. A wholly unemployed person who, during his last activity as an employed or self-employed person, resided in a Member State other than the competent State and who continues to reside in that State or returns to that State must make himself available to the employment services in the State in which he resides. Without prejudice to the application of Article 57, a wholly unemployed person may, as a supplementary step, make himself available to the employment services of the State in which he pursued his last activity as an employed or self-employed person²⁷. An unemployed person other than a frontier worker, who does not return to its State of residence shall make himself available to the employment services in the State to whose legislation he was last subject.

²⁷ L: reservation, linked to final agreement on Article 79.

2. The unemployed person referred to in paragraph 1, first sentence, must register as a person seeking work with the competent employment services of the State in which he resides, be subject to the control procedure organised there and adhere to the conditions laid down under the legislation of that State. If he also chooses to register as a person seeking work in the State in which he pursued his last activity as an employed or self-employed person, he must comply with the obligations applicable in that State.²⁸ The implementation of the preceding sentence and of paragraph 1, second sentence, as well as the arrangements for exchanges of information, cooperation and mutual assistance between the institutions and services of the State of residence and the State in which he pursued his last occupation, shall be laid down in the implementing Regulation.

3. (a) The unemployed person referred to in paragraph 1, first and second sentences, shall receive benefits in accordance with the legislation of the State in which he resides as if he had been subject to that legislation during his last occupation. Those benefits shall be provided by the institution of the place of residence.

- (b) However, a worker other than a frontier worker who has been granted benefits at the expense of the competent institution of the Member State to whose legislation he was last subject, shall firstly receive, on his return to the State of residence, benefits in accordance with Article 57, receipt of the benefits in accordance with (a) being suspended for the period during which he receives benefits under the legislation to which he was last subject.

²⁸ L: reservation, linked to final agreement on Article 79.

4. The benefits provided by the institution of the place of residence pursuant to paragraph 3 shall continue to be at its expense. However, the competent institution of the Member State to whose legislation he was last subject shall reimburse to the institution of the place of residence the full amount of the benefits provided by the latter institution during not more than the first six²⁹ months. The amount of the reimbursement during this period cannot be higher than the amount payable, in case of unemployment, under the legislation of the competent State. In the case referred to in paragraph 3(b) above, the period during which benefits are granted in application of Article 57 shall be deducted from the maximum period referred to in the second sentence. The arrangements for reimbursement shall be laid down in the implementing Regulation.³⁰

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

CHAPTER 7

Pre-retirement benefits

Article 59

When the legislation applicable makes the right to pre-retirement benefits conditional on completion of periods of insurance, of employment or of self-employment, Article 4 shall not apply.

²⁹ DK/L/S/UK: reservation on six months instead of three. B/D/EL/A/P/FIN: scrutiny reservations. F/IRL/NL: positive scrutiny reservations. L: suggested a shorter period of reimbursement accompanied by the possibility for the Member States of establishing different rules on a voluntary basis through bilateral agreements.

³⁰ See joint statement in Annex II.

CHAPTER 8
Family benefits

Article 60

**Persons the members of whose families reside in a Member State other than
the competent State**

Persons to whom this Regulation is applicable shall be entitled to family benefits in accordance with the legislation of the competent State, including for their family members residing in the territory of another Member State, as if they were residing in the territory of the former State. However, pensioners shall be entitled to family benefits in accordance with the legislation of the Member State competent for that pension.

Article 61

Priority rules in the event of overlapping of family benefit entitlements

- 1 Where, in the same period for the same family members, benefits are provided for under the legislation of more than one Member State the following priority rules shall apply:
 - (a) in the case of benefits payable by more than one Member State on different grounds, the order of priority shall be as follows: firstly rights available because of activity as an employed or self employed person, then rights available on the grounds of receipt of a pension and finally rights obtained by residence;
 - (b) in the case of benefits payable by more than one Member State on the same grounds, the order of priority shall be established by referring to the following subsidiary criteria:

- (i) in the case of rights available on the grounds of activity as an employed or self employed person: the place of residence of the children, provided there is such activity, and additionally, where appropriate, the highest amount of the benefits provided for by the conflicting legislations. In the latter case, the cost of benefits will be shared in accordance with criteria to be laid down in the implementing Regulation;
 - (ii) in the case of rights available on the grounds of receipt of pensions: the place of residence of the children, provided a pension is payable under this legislation, and additionally, where appropriate, the longest period of insurance or residence under the conflicting legislations;
 - (iii) in the case of rights available on the grounds of residence: the place of residence of the children.
3. In the case of overlapping entitlements, family benefits shall be granted in accordance with the legislation designated as having priority in accordance with paragraph 1. Entitlements to family benefits by virtue of other conflicting legislation or legislations shall be suspended up to the amount provided for by the first legislation and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount. However, such a differential supplement does not need to be provided for children residing in another Member State, when entitlement to the benefit in question is based on residence only.
4. If, under Article 60, an application for family benefits is submitted to the competent institution of a Member State whose legislation is applicable, but not by priority right in accordance with paragraphs 1 and 2:

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

Article 62

Additional provisions

- 1 If, under the legislation designated by virtue of Articles 60 and 61, no right is acquired to the payment of additional or special family benefits for the benefit of orphans, such benefits shall be paid by default, and in addition to the other family benefits acquired in accordance with the first legislation, by the legislation of the Member State to which the deceased worker was subject for the longest period of time, insofar as the right is acquired under that legislation. If no right is acquired under that legislation, the conditions for the acquisition of such right under the legislations of the other Member States shall be examined and benefits granted in decreasing order of the length of periods of insurance or residence completed under the legislation of those Member States.
2. Benefits paid in the form of pensions or supplements to pensions shall be granted and calculated in accordance with the provisions of Chapter 5.

CHAPTER 9

Special non-contributory cash benefits

Article 63³¹

1. The provisions of this Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement has characteristics both of the social security legislation referred to in Article 2(1) and of social assistance.
 2. For the purposes of applying this Chapter, “special non-contributory cash benefits” means those which:
 - (a) are intended to provide either:
 - (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 2(1), and which guarantee to the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;
 - or
 - (ii) solely specific protection for the disabled, closely linked to the said person’s social environment in the Member State concerned,
- and

³¹ See joint statement in Annex II.

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

and

(c) are listed in Annex X.

3. The provisions of Article 5 and of the other Chapters of Title III shall not apply to the benefits referred to in paragraph 2.
4. Persons to whom this Regulation applies shall be granted the benefits referred to in paragraph 2 exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State. Such benefits shall be granted by and at the expense of the institution of the place of residence.

TITLE IV
ADMINISTRATIVE COMMISSION AND ADVISORY COMMITTEE
FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

Article 65

Composition and working methods of the Administrative Commission

1. The Administrative Commission for the Coordination of Social Security Systems (hereinafter called "the Administrative Commission") attached to the Commission shall be made up of a government representative from each of the Member States, assisted, where necessary, by expert advisers. A representative of the Commission shall attend the meetings of the Administrative Commission in an advisory capacity.

2. 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 66(a) shall be adopted under voting rules established by the Treaty and shall be given the necessary publicity.

3. Secretarial services for the Administrative Commission shall be provided by the European Commission.

Article 66
Tasks of the Administrative Commission

The Administrative Commission shall:

- (a) deal with all administrative questions and questions of interpretation arising from the provisions of this Regulation, of the implementing Regulation, or from any agreement or arrangement concluded thereunder, without prejudice to the right of the authorities, institutions and persons involved to have recourse to the procedures and tribunals provided for by the legislation of the Member States, by this Regulation or by the Treaty;
- (b) facilitate the uniform application of Community law, especially by promoting exchange of experience and best administrative practices;
- (c) foster and develop cooperation between Member States and their institutions in social security matters in order, inter alia, to take into account particular questions regarding certain categories of persons; facilitate realisation of actions of crossborder cooperation activities in the area of the coordination of social security systems;
- (d) encourage as far as possible the use of new technologies in order to facilitate the free movement of persons, in particular by modernising procedures for exchanging information, and adapting the information flow between institutions for the purposes of exchange by electronic means, taking account of the development of data processing in each Member State; the Administrative Commission shall adopt the common architecture rules for data processing services, in particular on security and the use of standards, and it shall lay down provisions for the operation of the common part of those services;
- (e) undertake any other function coming within its competence under the provisions of this Regulation and the implementing Regulation or any agreement or arrangement made thereunder;

- (f) make any relevant proposals to the Commission concerning the coordination of social security schemes, with a view to improving and modernising the Community "acquis" by drafting subsequent Regulations or by means of other instruments provided for in the Treaty;
- (g) establish 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 those institutions, based on the report of the Audit Board referred to in Article 67a.
- (h) (...) ³²

Article 67

Technical Commission for Data Processing

1. A Technical Commission for Data Processing (hereinafter called the "Technical Commission") shall be attached to the Administrative Commission. The Technical Commission shall propose to the Administrative Commission common architecture rules for the operation of data-processing services, in particular on security and the use of standards; it shall deliver reports and a reasoned opinion before decisions are taken by the Administrative Commission pursuant to Article 66(d). The composition and the working methods of the Technical Commission shall be determined by the Administrative Commission.
2. To this end the Technical Commission shall:
 - (a) gather together the relevant technical documents and undertake the studies and other work required to accomplish its tasks;

³² D: reservation on the deletion of "*carry out all the translations of the documents relating to the implementation of this Regulation.*".

- (b) submit to the Administrative Commission the reports and reasoned opinions referred to in paragraph 1;
- (c) carry out all other tasks and studies on matters referred to it by the Administrative Commission;
- (d) ensure the management of Community pilot projects using data-processing services and, for the Community part, operational systems using data-processing services.

Article 67a

Audit Board

1. An Audit Board shall be attached to the Administrative Commission.
The composition and working methods of the Audit Board shall be determined by the Administrative Commission.

The Audit Board shall:

- (a) verify the method of determining and calculating the annual average costs presented by Member States;
- (b) collect the necessary data and carry out the calculations required for establishing the annual statement of claims of each Member State;
- (c) give the Administrative Commission periodic accounts of the results of the implementation of the Regulations, in particular as regards the financial aspect;

- (d) provide the data and reports necessary for decisions to be taken by the Administrative Commission pursuant to Article 66(g);
- (e) make any relevant suggestions it may have to the Administrative Commission, including those concerning provisions of this Regulation, in connection with the provisions of points (a), (b) and (c);
- (f) carry out all work, studies or assignments on matters referred to it by the Administrative Commission.

Article 67b

Advisory Committee for the Coordination of Social Security Systems

1. An Advisory Committee for the Coordination of Social Security Systems (hereinafter referred to as "Advisory Committee") is hereby established, comprising, from each Member State:
 - (a) one government representative;
 - (b) one representative from the trade unions;
 - (c) one representative from the employers' organisations.

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

The members and alternate members of the Advisory Committee shall be appointed by the Council. The Advisory Committee shall be chaired by a representative of the Commission. The Advisory Committee shall draw up its rules of procedure.

2. The Advisory Committee shall be empowered, at the request of the Commission, the Administrative Commission or on its own initiative:
 - (a) to examine general questions or questions of principle and problems arising from the implementation of the Community provisions on social security matters, especially regarding certain categories of persons;
 - (b) to formulate opinions on the subject for the Administrative Commission and proposals for any revisions of the said provisions.

TITLE V
MISCELLANEOUS PROVISIONS

Article 68

**Cooperation between competent authorities and institutions and relations
with persons covered by this Regulation**

1. The competent authorities of the Member States shall communicate to each other all information regarding:
 - (a) measures taken to implement this Regulation;
 - (b) changes in their legislation which may affect the implementation of this Regulation.
2. For the purposes of applying this Regulation, the authorities and institutions of the Member States shall lend one another 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 Administrative Commission shall establish the nature of reimbursable expenses and the limits above which their reimbursement is due.

3. The authorities and institutions of the Member States may, for the purposes of applying this Regulation, communicate directly with one another and with the persons involved or their representatives.
4. The institutions and persons covered by this Regulation have a duty of mutual information and cooperation to ensure the correct implementation of this Regulation.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall in this connection provide the persons concerned with any information required for exercising the rights conferred on them by this Regulation.

The persons concerned must inform the institutions of the competent State and of the State of residence as soon as possible of any change in their personal or family situation which affects their right to benefits under this Regulation.

5. Failure to respect the obligation of information referred to in the third subparagraph of paragraph 4 may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures must be equivalent to those applicable to similar situations under domestic law and must not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Regulation.
6. In the event of difficulties in the interpretation or application of this Regulation which could jeopardise the rights of a person covered by it, the institution of the competent State or of the State of residence of the person concerned shall contact the institution(s) of the Member State(s) concerned. If a solution cannot be found within a reasonable period, the authorities concerned may call on the Administrative Commission to intervene.

7. The authorities, institutions and tribunals of one Member State may not reject applications or other documents submitted to them on the grounds that they are written in an official language of another Member State, recognised as an official language of the Community institutions in accordance with Article 290 of the Treaty.

Article 69

Protection of personal data

1. Where, under this Regulation or under the implementing Regulation, the authorities or institutions of a Member State communicate personal data to the authorities or institutions of another Member State, such communication shall be subject to the legal provisions governing protection of data laid down by the Member State transmitting the data. Any communication from the authority or institution of the receiving Member State as well as the storage, alteration and destruction of the data provided by that Member State shall be subject to the provisions of the data protection legislation of the receiving Member State.
2. Transmission of data required to apply this Regulation and its implementing Regulation by one Member State to another Member State must be effected in conformity with Community provisions on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

Article 70

Data processing

1. The Member States shall progressively use new technologies for the exchange, access and processing of the data required to apply the Regulation and its implementing Regulation. The Commission shall lend its support to activities of common interest as soon as the Member States have established such data-processing services.

2. Each Member State shall be responsible for managing its own part of the data-processing services in accordance with the Community provisions on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
3. An electronic document sent, or issued by, an institution in conformity with the provisions of this Regulation and its implementing Regulation may not be rejected by any authority or institution of another Member State on the grounds that it was received by electronic means, once the receiving institution has declared its ability to receive electronic documents. Reproduction and recording of such documents shall be presumed to be a correct and accurate reproduction of the original document or representation of the information it relates to, unless there is proof to the contrary.
4. An electronic document shall be considered valid if the computer system on which the document is recorded contains the safeguards necessary in order to prevent any alteration, disclosure or unauthorised access to the recording. It shall at any time be possible to reproduce the recorded information in an immediately readable form. When an electronic document is transferred from one social security institution to another, appropriate security measures shall be taken in accordance with the Community provisions on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

Article 71

Funding of activities in the social security field

In connection with this Regulation and the implementing Regulation, the Commission may fund in full or in part:

- (a) activities aimed at improving exchanges of information between the social security authorities and institutions of the Member States, particularly the electronic exchange of data;

- (b) any other activity aimed at providing information to the persons covered by this Regulation and their representatives about the rights and obligations deriving from this Regulation, using the most appropriate means.

Article 72

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 in application of the legislation of that State shall be extended to similar certificates or documents required to be produced in application 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 in application of this Regulation shall be exempt from authentication by diplomatic or consular authorities.

Article 73

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

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

Article 74

Medical examinations

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 claimant or the person entitled to benefits, under the conditions laid down in the implementing Regulation or under the conditions agreed between the competent authorities of the Member States concerned.

Article 75

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

(...)

Article 76

Special provisions for implementing the legislation of certain Member States

Special provisions for implementing the legislation of certain Member States are referred to in Annex XI.

Article 77³³

Collection of contributions and recovery of benefits provided but not due

1. Collection of contributions due to an institution of one Member State and recovery of benefits provided by the institution of one Member State but not due may be effected in the territory of another Member State in accordance with the procedures and with the guarantees and privileges applicable to the collection of contributions due to the corresponding institution of the latter State and the recovery of benefits provided by it but not due.
2. Enforceable decisions of the judicial and administrative authorities relating to the collection of contributions, interest and any other charges or to the recovery of benefits provided but not due pursuant to the legislation of one Member State shall be recognised and enforced at the request of the competent institution in the territory of another Member State within the limits and in accordance with the procedures laid down by the legislation and any other procedures applicable to similar decisions of that latter State. Such decisions shall be declared enforceable in the territory of that Member State insofar as the legislation and any other procedures of that Member State so require.
3. Claims of an institution of one Member State shall in enforcement, bankruptcy or settlement proceedings in the territory of another Member State enjoy the same privileges as the legislation of that latter Member State accords to claims of the same kind.

³³ See joint statement in Annex II.

4. The procedure for implementing the provisions of this Article, including costs reimbursement, shall be governed by the implementing Regulation or, where necessary and as a complementary measure, by means of agreements between Member States.

Article 78

Rights of institutions responsible for providing benefits against liable third parties

1. If a person receives benefits pursuant to the legislation of one Member State in respect of an injury resulting from events occurring in the territory of another Member State, any rights of the institution responsible for providing benefits against a third party liable to provide compensation for the injury shall be governed by the following rules:
 - (a) where the institution responsible for providing benefits is, pursuant to the legislation which it administers, subrogated to the rights which the beneficiary has against the third party, such subrogation shall be recognised by each Member State;
 - (b) where the institution responsible for providing benefits has a direct right against the third party, each Member State shall recognise such rights.
2. If a person receives benefits pursuant to the legislation of one Member State in respect of an injury resulting from events occurring 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 the persons employed by them is to be excluded shall apply with regard to the said person or to the competent institution.

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

3. Where, in accordance with the provisions of Article 30(3) and/or Article 36a(2), two or more Member States or the competent authorities of those States have concluded an agreement to waive reimbursement between institutions under their jurisdiction, or, where reimbursement does not depend on the amount of benefits actually provided, any rights arising against a liable third party shall be governed by the following rules:

- (a) where the institution of the Member State of stay or residence accords benefits to a person in respect of an injury sustained in its territory, that institution, in accordance with the provisions of the legislation which it administers, shall exercise the right to subrogation or direct action against the third party liable to provide compensation for the injury;
- (b) for the application of (a):
 - (i) the person receiving benefits shall be deemed to be insured with the institution of the place of stay or residence, and
 - (ii) that institution shall be deemed to be the institution responsible for providing benefits;
- (c) the provisions of paragraphs 1 and 2 shall remain applicable in respect of any benefits not covered by the waiver agreement or a reimbursement which does not depend on the amount of benefits actually provided.

TITLE VI
TRANSITIONAL AND FINAL PROVISIONS

Article 79
Transitional provisions

1. No rights shall be acquired under this Regulation for the period prior to its date of application in the territory of the Member State concerned.
2. Any period of insurance and, where appropriate, any period of employment, self-employment or residence completed under the legislation of a Member State prior to the date of application of this Regulation in the territory of that Member State shall be taken into consideration for determination of rights acquired under the provisions of this Regulation.
3. Subject to the provisions of paragraph 1, a right shall be acquired, under this Regulation, even if it relates to a contingency arising prior to its date of application in the territory of the Member State concerned.
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 involved shall, at the request of the person involved, be awarded or resumed with effect from the date of application of this Regulation in the territory of the Member State concerned, provided that the rights for which benefits were previously awarded have not given rise to a lump-sum payment.
5. The rights of a person to whom a pension was awarded prior to the date of application of this Regulation in the territory of the Member State concerned may, at the request of the person involved, be reviewed, account being taken of the provisions of this Regulation.

6. If a request referred to in paragraphs 4 or 5 is submitted within two years from the date of application of this Regulation in the territory of the Member State concerned, the rights acquired pursuant to 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 involved.
7. If a request referred to in paragraphs 4 or 5 is submitted after the expiry of the two-year period following the date of application of this Regulation in the territory of the Member State concerned, rights not forfeited or not time-barred shall have effect from the date on which the request was submitted, subject to any more favourable provisions under the legislation of any Member State.
8. If, as a result of this Regulation, a person is subject to the legislation of a Member State other than the one determined in accordance with Title II of Regulation (EEC) No 1408/71, that legislation shall continue to apply as long as the relevant situation remains unchanged, unless the person concerned requests that he be subject to the legislation applicable under this Regulation. The request must be submitted within three months of the date of application of this Regulation to the competent institution of the Member State whose legislation is applicable under this Regulation if the person concerned is to be subject to the legislation of that Member State as of the date of application of this Regulation. If the request is made after the time limit indicated, the changeover shall take place on the first day of the following month.³⁴
9. Article 50 of this Regulation shall apply only to pensions not subject to Article 46c of Regulation (EEC) No 1408/71 on the date of application of this Regulation.
10. The provisions referred to in the second sentences of Article 58(1) and (2) shall be applicable to Luxembourg at the latest two years after the date of application of this Regulation.

³⁴ See joint statement in Annex II.

11. Member States shall ensure that appropriate information is provided about the changes in rights and obligations introduced by this Regulation and its implementing Regulation.

Article 79a
Updating of the Annexes

The Annexes of this Regulation shall be revised periodically.

Article 80
Implementing Regulation

A subsequent Regulation shall lay down the procedure for implementing this Regulation.

Article 81
Entry into force

This Regulation shall enter into force on the twentieth day after its publication in the Official Journal of the European Union. It shall apply from the date of entry into force of the implementing Regulation.

Article 82
Repeal

1. Council Regulation (EEC) No 1408/71 of 14 June 1971 shall be repealed from the date of application of this Regulation.

2. However, Regulation (EEC) No 1408/71 shall remain in force and shall continue to have legal effect for the purposes of:
- a) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality³⁵, for as long as that Regulation has not been repealed;
 - b) Council Regulation (EEC) No 1661/85 of 13 June 1985 laying down the technical adaptations to the Community rules on Social Security for migrant workers with regard to Greenland³⁶, for as long as that Regulation has not been repealed or modified;
 - c) the Agreement on the European Economic Area³⁷ and the Agreement between the European Community and the Swiss Confederation on the free movement of persons³⁸ and other agreements which contain a reference to Regulation (EEC) No 1408/71, for as long as those agreements have not been modified in the light of this Regulation.
3. References to Regulation (EEC) No 1408/71 in the Directive 98/49/EC of the Council of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community are to be read as referring to the present Regulation.

Article 83

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

³⁵ OJ L 124, 20.5.2003, p. 1.

³⁶ OJ L 160, 20.6.1985, p. 7.

³⁷ OJ L 1, 3.1.1994, p. 1.

³⁸ OJ L 114, 30.4.2003, p. 6.

STATEMENTS FOR THE COUNCIL MINUTES

Statement from the Council

The Council agrees that Annexes should be established in line with the following structure:

Annex I, the Annex mentioned in Article 0(v);

Annex II, the Annex mentioned in Article 6(1);

Annex III, the Annex mentioned in Article 15(2);

Annex IV, the Annex mentioned in Article 25(1a);

Annex V, the Annex mentioned in Article 25.0a(2);

Annex VI, the Annex mentioned in Article 39(1);

Annex VII, the Annex mentioned in Article 41(3);

Annex VIII, the Annex mentioned in Article 47(4);

Annex IX, the Annex mentioned in Article 49(2)(b);

Annex X, the Annex mentioned in Article X(2)(c);

Article XI, the Annex mentioned in Article 46(3), in Article 51(1)(c) and in Article 76.

Joint statement from the Council and the Commission:

"Recognising that,

- the text currently submitted to the Council has to be completed by a number of Annexes not yet definitively agreed;

- moreover, as it is clearly indicated in Article 82, the application of the Regulation to be adopted on the basis of this draft legal text depends on the subsequent adoption of the Implementing Regulation referred to in Article 80, which the Commission can draw up only once agreement is reached on this draft legal text;
- delegations' acceptance of the text now tabled depends, particularly in certain specific cases, on the definitive wording of certain entries in the Annexes and of certain provisions to be inserted in the Implementing Regulation;
- as mentioned in Article 82, international agreements have to be modified in the light of this Regulation;

the Council and the Commission agree that a number of entries or provisions should be inserted into the Annexes and the Implementing Regulation, as follows:

1) **Annex XI** (ad Articles 2(2) and 63(2)(c)):

Taking into account the specific situation under Austrian and German legislation concerning special non-contributory cash benefits, the territorial scope of which is confined to part of their territory and which are excluded by virtue of Article 4(2b) of Regulation (EEC) No 1408/71, the following entries should be inserted in Annex XI to the Regulation:

“AUSTRIA”

This Regulation does not apply to benefits granted under Bundeslaender legislation for disabled persons and persons in need of care.

“GERMANY”

This Regulation does not apply to benefits granted under Laender legislation for the disabled, and in particular for the blind.

2) **the Implementing Regulation and Annex XI** (ad Articles 3a and 4)

Specific provisions, to be established in the context of the Implementing Regulation, should aim both at preventing any possible overlapping impact of the principle of assimilation of facts or events under the legislation of two or more Member States and, at complementing, by analogy, the priority rules already provided for under the existing Article 15 of Regulation (EEC) No 574/72, which will be reintroduced in the new Implementing Regulation.

In cases where it is ascertained that, due to the specific features of national legislation, the unconditional implementation of the principle of assimilation of facts or events could lead to objectively unjustified results, the Member State concerned would seek for the appropriate Annex XI entry, guaranteeing specific coordination in the light of the principle of proportionality.

3) **the Implementing Regulation** (ad Articles 22 to 24 and 30)

A balanced sharing between Member States of the cost of benefits in kind for pensioners and members of their family must be established.

In cases where the reimbursement between States of the cost of benefits in kind to pensioners and members of their families – under Articles 22 to 24 of the draft text – is carried out on the basis of a fixed amount, the fixed amount will constitute 85% of the average annual cost of benefits in kind for pensioners and members of their families in the State of residence. The remaining 15% is expected to concern the cost of benefits in kind for pensioners and members of their families, which become medically necessary during their stay in Member States other than the State of residence. To avoid Member States which have opted for the possibility under Article 25(1a), and are listed in Annex IV, being overburdened by comparison with Member States which have not so opted, the States listed in Annex IV will reimburse to the State of residence of the pensioner or the members of his family only a reduced lump sum amounting to 80 % of the cost.

This condition shall be reflected in the provisions on the reimbursement of the cost of benefits in kind for pensioners and members of their families that are to be laid down in the Implementing Regulation.

Provision shall also be made in the Implementing Regulation to ensure that a Member State that calculates average annual costs does not impose double payment on other Member States.

4) **the Implementing Regulation** (ad Article 25(5))

Ireland, Germany and the Netherlands being concerned about the administrative and possible financial implications of Article 25(5), a satisfactory solution should be found in the implementing regulation in order to avoid problems of double payment cost control.

5) **the Implementing Regulation** (ad Article 26(2))

The application of Article 3a, in relation to Article 26(2), will be dealt with in the Implementing Regulation.

6) **Annex XI** (ad Article 28a)

The following paragraph shall be registered in Annex XI:

“(b) When applying Article 28a, the Netherlands will provide a list of estimates of the amounts which are as close as possible to the actual expenditure incurred.”

7) **Annex XI** (ad Article 41)

The following entry concerning the United Kingdom should be inserted in Annex XI:

Where Article 41 applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, the United Kingdom shall, for the purposes of Section 30A(5) of the Social Security Contributions and Benefits Act 1992, take account of any periods during which the person concerned has received, in respect of that incapacity for work:

- (i) cash sickness benefits or wages or salary in lieu thereof,*
- (ii) benefits within the meaning of Chapters 4 and 5 granted in respect of the invalidity which followed that incapacity for work,*

under the legislation of the other Member State, as though they were periods of short-term incapacity benefit paid in accordance with Sections 30A(1)-(4) of the Social Security Contributions and Benefits Act 1992.

The following entry concerning Ireland should be inserted in Annex XI:

Where Article 41 applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, Ireland shall, for the purposes of Section 95(1)(a) of the Social Welfare (Consolidation) Act, 1993 take account of any periods during which, in respect of the invalidity that followed that incapacity for work, he was regarded as being incapable of work under Irish legislation.

8) Implementing Regulation (ad Article 45):

Given the general interest in determining a common procedure for implementing uniformly this Article with regard to the date to be counted for the date of submission of a claim in respect of each institution concerned, in those “extraordinary” cases where the person concerned, when submitting the initial claim, provides no indication whatsoever of periods of insurance or residence having been completed under the legislation of a particular Member State, providing full information of his/her entire insurance career only at a later date (second claim or effective submission of the initial claim, sometimes at a very remote date), it was agreed that the issue of the administrative and economic consequences of such a retroactive – “deferred” – involvement of the institutions concerned, both for the latter and the ad hoc claimant, shall be dealt with under a comprehensive provision of a general character, to be established in the context of the Implementing Regulation, which should expressly and comprehensively define the overall mutual rights and obligations both for the insured and the institutions involved.

In the light of the principles of equivalence and effectiveness for the purposes of fulfilling the objectives of Article 42 of the Treaty (from which Article 45 stems), to the extent that such a delayed – a posteriori effective – claim may be assimilated to an express request for postponement of the award of benefits (intentional omission), specific provisions should first expressly state that such an assimilation is subject to the legislation in question containing more favourable provisions in respect of the retroactive effects of a claim than those of the Implementing Regulation and, secondly, that, although the person concerned has submitted the initial claim on a form, clearly asking for detailed information on the periods of insurance, employment or residence in the territory of another State and has been informed about the consequences of possible omissions from his/her part, has either given no indication or has merely given a negative reply in the corresponding sections of the document.

9) **Annex XI** (ad Article 46):

The following entry concerning Denmark should be inserted in Annex XI:

1. *Notwithstanding the provisions of Article 4 of the Regulation, persons who have not been gainfully employed in one or more Member States are entitled to a Danish social pension only if they have been, or have previously been, permanent residents of Denmark for at least three years, subject to the age-limits prescribed by Danish legislation. Subject to Article 3, Article 5 does not apply to a Danish social pension to which entitlement has been acquired by such persons.*
2. *The above-mentioned provisions do not apply to Danish social pension entitlement for the family members of persons who are or have been gainfully employed in Denmark, nor for students or the members of their families.*

10) **Annex XI** (ad Article 47):

The agreement of Sweden on Article 47 is subject to the solution to be found to an issue which already concerns the implementation of the existing Regulation; it was agreed to have it first examined by the Administrative Commission and, if an appropriate solution could not be found in that context, to solve it by an Annex XI – “SWEDEN” entry.

11) **Annex XI** (ad Article 49):

The following entry concerning Finland should be inserted in Annex XI:

For the purposes of determining entitlement and of calculating the amount of the Finnish national pension under Articles 47 to 49, pensions acquired under the legislation of another Member State are treated in the same way as pensions acquired under Finnish legislation.

12) **Implementing Regulation** (ad Article 51):

For the calculation of benefits or parts of benefits which are financed exclusively by a funded pension scheme, only the capital accrued in this sense in this scheme is taken into account. It will depend on the ongoing further examination of this question whether an explicit provision in this sense is necessary in the Implementing Regulation.

13) **Annex XI** (ad Article 54a)

The existing Annex VI entries in respect of special schemes for civil servants shall be maintained by Spain in Annex XI.

14) **Annex XI** (ad Article 56(1))

Ireland underlined that the agreement on this paragraph should not anticipate the outcome of the discussions on Annex XI.

15) **Implementing regulation** (ad Article 79(8))

Provisions concerning the notification to the previously competent institution by the person concerned or by the newly competent institution shall be included in the Implementing Regulation.

The Council and the Commission further acknowledged that

16) **International agreements** (ad Article 58(4))

The agreement of Portugal on Article 58(4) is without prejudice to Portugal's request for fair treatment in the sharing of costs between Portugal and other States which are not members of the European Union, in the context of the agreements to be negotiated following the adoption of the this Regulation.

The Council and the Commission also agree that the following articles should be interpreted as follows:

17. ad Article 18(1)

Without prejudice to the provisions outlined in Article 18(1), Ireland seeks to clarify that national criteria in addition to the ‘medically justifiable time limit’ referred to in the text of Article 18(1) can be applied by the Irish competent institutions when considering the referral of patients to another Member State under the Regulation. Ireland does, however, fully agree that the application of such additional national criteria must be in accordance with the provisions of Community Law.

18. ad Article 30 (2)

It is up to each individual Member State as a creditor to determine whether its legal or administrative structure is such that a reimbursement on the basis of actual expenditure is appropriate or not. This determination applies vis-à-vis all Member States unless other methods of reimbursement have been mutually agreed according to paragraph 3.

19. ad Article 77(2)

Article 77(2) shall not be interpreted as imposing obligations on a Member State to do more than is required or permitted according to national legislation or procedures."