

## **P6\_TA(2008)0348**

### **Coordination of social security systems \*\*\*I**

**European Parliament legislative resolution of 9 July 2008 on the proposal for a regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (COM(2006)0016 – C6-0037/2006 – 2006/0006(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0016),
  - having regard to Article 251(2) and Articles 42 and 308 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0037/2006),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Women's Rights and Gender Equality (A6-0251/2008),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and the Commission.

## **P6\_TC1-COD(2006)0006**

**Position of the European Parliament adopted at first reading on 9 July 2008 with a view to the adoption of Regulation (EC) No .../2008 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems *and repealing Regulation (EEC) No 574/72***

**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 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems<sup>1</sup>, and in particular Article 89 thereof,

Having regard to the proposal from the Commission ||,

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<sup>1</sup> OJ L 166, 30.4.2004, *p.1*, as corrected by OJ L 200, 7.6.2004, p.1.

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>2</sup>,

Whereas:

- (1) Regulation (EC) No 883/2004 modernises the rules on the coordination of Member States' social security systems, specifying the measures and procedures for implementing it and simplifying them for all players involved. Implementing rules should be laid down.
- (2) Closer and more effective cooperation between social security institutions is a key factor in allowing the persons covered by Regulation (EC) No 883/2004 to access their rights as quickly as possible and under optimum conditions.
- (3) Electronic communication is a suitable means of rapid and reliable data exchange between Member States' institutions. Processing || data electronically should help to speed up the procedures for everyone involved. The persons concerned must also benefit from all of the guarantees provided for in the Community provisions on the protection of natural persons with regard to the processing and free movement of personal data. ***Member States should therefore take the necessary measures to ensure that data relating to national social security legislation covered by Regulation (EC) No 883/2004 is adequately dealt with in accordance with the protection of individuals with regard to the processing of personal data and its exchange in the context of this Regulation.***
- (4) Availability of the details (including electronic details) of those national bodies likely to be involved in implementing Regulation (EC) No 883/2004, in a form which allows them to be updated in real time, should facilitate exchanges between Member States' institutions. This approach, which focuses on the relevance of purely factual information and its immediate accessibility to citizens, is a valuable simplification which is to be introduced by this Regulation.
- (5) ***Achieving the smoothest possible operation and efficient management of the complex procedures implementing the rules on the coordination of social security systems requires a system for the immediate updating of Annex IV. The preparation and application of provisions to that effect calls for close cooperation between the Member States and the Commission and their implementation should be carried out rapidly, in view of the consequences of delays for citizens and administrative authorities alike. The Commission should therefore be empowered to establish and manage a database and ensure that it is operational at least from the date of entry into force of this Regulation. The Commission should, in particular, take the necessary steps to integrate into that database the information listed in Annex IV.***
- (6) Strengthening certain procedures should ensure greater legal certainty and transparency for the users of Regulation (EC) No 883/2004. For example, setting common deadlines for fulfilling certain obligations or completing certain administrative tasks should *assist in clarifying and structuring* relations between insured persons and institutions.

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<sup>1</sup> OJ C 324, 30.12.2006, p. 59.

<sup>2</sup> Position of the European Parliament of 9 July 2008.

- (7) || Member States, their competent authorities and the social security institutions must have the option of agreeing among themselves on simplified procedures and administrative arrangements which they consider to be more effective and *suitable* to the circumstances of their respective social security systems. However, such arrangements must not affect the rights of those covered by Regulation (EC) No 883/2004.
- (8) The inherent complexity of the field of social security requires all institutions of the Member States to make a *particular* effort to support insured persons in order to avoid penalising those who have not submitted their claim or certain information to the institution responsible for processing this application in accordance with the rules and procedures set out in Regulation (EC) No 883/2004 and in this Regulation.
- (9) To determine the competent institution, namely the one whose legislation applies or which is liable for the payment of certain benefits, the circumstances of the insured person and those of the family members must be examined by the institutions of *one or more* Member States. To ensure that the person concerned is protected for the duration of the necessary communication between institutions, provision should be made for provisional membership of a social security system.
- (10) ***Member States should cooperate to determine the place of residence of persons to whom this Regulation and Regulation (EC) No 883/2004 apply and, in the event of a dispute, should take into consideration all relevant criteria to resolve the matter. To this end, Member States may take into account the relevant provisions of this Regulation.***
- (11) Many measures and procedures provided for in this Regulation are intended to ensure greater transparency concerning the criteria which the institutions of the Member States must apply under Regulation (EC) No 883/2004. They are the result of the case-law of the Court of Justice of the European Communities, the decisions of the Administrative Commission and the experience of more than thirty years of application of the coordination of social security systems in the context of the fundamental freedoms enshrined in the Treaty.
- (12) ***This Regulation provides for measures and procedures to promote the mobility of employees and unemployed persons. Frontier workers who have become wholly unemployed may make themselves available to the employment services in both their country of residence and the Member State where they were last employed. However, they should be entitled to benefits only from their Member State of residence.***
- (13) Extending the scope of Regulation (EC) No 883/2004 to all insured persons, including the non-working population, requires certain specific rules and procedures for these persons, notably to define the legislation applicable for taking account of periods which persons who have never been employed or self-employed in the various Member States in which they have been resident have devoted to bringing up children.
- (14) Certain procedures must also reflect the need for a balanced sharing of costs between Member States. In particular in the area of sickness, these procedures must take account of the position of Member States which bear the costs of allowing insured persons access to their healthcare system and the position of Member States whose institutions bear the cost of benefits in kind received by their insured persons in a

Member State other than that in which they are resident.

- (15) In the specific context of Regulation (EC) No 883/2004, it is necessary to clarify the conditions for meeting the costs of sickness benefits in kind as part of scheduled treatments, namely treatments for which an insured person goes to a Member State other than that in which he/she is insured or resident. The obligations of the insured person with regard to the application for prior authorisation *should be* specified, as *should* the institution's obligations towards the patient with regard to the conditions of authorisation. The consequences for the chargeability of the costs of care received in another Member State on the basis of an authorisation should also be clarified.
- (16) More binding procedures to reduce the time needed for payment of these claims between Member States' institutions are essential in order to maintain confidence in the exchanges and meet the need for sound management of Member States' social security systems. Procedures for the processing of claims relating to sickness and unemployment benefits must therefore be strengthened.
- (17) Because the social security schemes covered by Regulation (EC) No 883/2004 are based on solidarity between all insured persons, provision should be made for mechanisms to ensure more effective recovery of claims relating to benefits not due or contributions not paid. Procedures for mutual assistance between institutions must be clarified in line with the provisions laid down in *Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures*<sup>1</sup> so as to better protect the financial interests of the Member States by organising cooperation, especially between tax authorities.
- (18) Informing insured persons of their rights and obligations is a crucial component of a relationship of trust with the competent authorities and the Member States' institutions.
- (19) Given that the objective of *this Regulation* , namely the adoption of coordination measures to guarantee the effective exercise of free movement of persons, cannot be sufficiently achieved by the Member States and can therefore  $\parallel$ , be better achieved at Community level, the Community may take action in accordance with the subsidiarity principle enshrined in Article 5 of the Treaty. In accordance with the proportionality principle set out in the above Article, this Regulation does not go beyond what is necessary to achieve the objective.
- (20) This Regulation *should* replace Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community<sup>2</sup>.

HAVE ADOPTED THIS REGULATION:

## TITLE I

### GENERAL PROVISIONS

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<sup>1</sup> *OJ L 150, 10.6.2008, p. 28.*

<sup>2</sup> *OJ L 74, 27.3.1972, p. 1.  $\parallel$*

## Chapter I

### Definitions

#### Article 1 Definitions

1. For the purposes of this Regulation:
  - (a) **"the basic Regulation" shall mean Regulation (EC) No 883/2004;**
  - (b) **"the implementing Regulation" shall mean this Regulation; and**
  - (c) the definitions set out in **the basic** Regulation shall apply.
2. In addition to the definitions referred to in paragraph 1, *for the purposes of this Regulation:*
  - (a) "access point" shall mean **any body designated as an electronic contact point** || by the competent authority of a Member State **for one or more branches of social security referred to in Article 3 of the basic Regulation** to send and receive electronically the data necessary for the application of **the basic** Regulation and the **implementing** Regulation via the joint network || between the || Member States;
  - (b) "liaison body" shall mean **any** body designated by the competent authority of a Member State for one or more branches of social security referred to in Article 3 of **the basic** Regulation to respond to requests for information and assistance **for the purposes of the application of the basic Regulation and the implementing Regulation** and which **has to fulfil the tasks assigned to it under** Title IV of **the implementing** Regulation;
  - (c) "document" shall mean a set of data, irrespective of the medium used, **structured in such a way that it can** be exchanged electronically and which must be communicated to **enable the operation of the basic** Regulation and the **implementing** Regulation;
  - (d) "standardised electronic message" shall mean any **structured** document **in a** format **designed** for the **electronic** exchange of information between Member **States**;
  - (e) "transmission by electronic means" shall mean transmission using electronic equipment for processing (including digital compression) of data and employing wires, radio transmission, optical technologies or any other electromagnetic means;
  - (f) "Technical Commission" shall mean the body referred to in Article 73 of **the basic** Regulation;
  - (g) "Audit Board" shall mean the body referred to in Article 74 of **the basic** Regulation.

## Chapter II

## Provisions concerning cooperation and exchanges of data

### Article 2

#### Scope and rules for exchanges between institutions

1. *For the purposes of the implementing Regulation, exchanges between Member States' authorities and institutions and persons covered by the basic Regulation shall be based on the principles of public service, objectivity, cooperation, active assistance, efficiency, accessibility for disabled people and rapid delivery.*

2. The institutions shall *provide or exchange, within the deadlines prescribed by the social security legislation of the Member State in question*, all data necessary for establishing and determining the rights and obligations of persons *to whom the basic Regulation applies*. *Such data shall be transferred between Member States directly by the institutions themselves or indirectly via the liaison bodies.*

3. Where a person has mistakenly submitted information, documents or claims to an institution *in the territory of a Member State* other than that *in which the institution designated in accordance with the implementing Regulation is situated*, the information, documents or claims *shall be resubmitted without delay* by the former institution to the institution designated in accordance with *the implementing Regulation*, indicating the date on which they were initially submitted. This date shall be binding on the latter institution. *Member States' institutions shall not, however, be held liable, or be deemed to have taken a decision by virtue of their failure to act, where this is a result of the late transmission of information, documents or claims by other Member States' institutions.*

4. Where data are transferred indirectly via the access point or the liaison body, this access point or liaison body shall be regarded as fulfilling the role and function of the competent institution in this Member State with regard to time-limits for responding to claims submitted.

### Article 3

#### Scope and rules for exchanges between beneficiaries and institutions

1. *Persons covered by the basic Regulation* shall be required to forward to the *relevant institution the information, documents or supporting evidence* necessary to establish *their* situation or that of *their families*, to establish or maintain *their* rights and obligations and to determine the applicable legislation and *their* obligations under it.

2. *When collecting, transmitting or processing personal data pursuant to its legislation for the purposes of implementing the basic Regulation, each Member State shall ensure that the persons concerned are able fully to exercise their rights regarding personal data protection*, in accordance with Community provisions on the protection of individuals with regard to the processing of personal data and the free movement of *such* data.

*In particular, Member States shall guarantee that such personal data is not used for purposes other than those of social security except where expressly so authorised by the person concerned. Member States shall also, upon request, provide the persons concerned*

*with specific and adequate information on the processing of their personal data required for the purposes of this Regulation.*

*The persons concerned shall be able to exercise their rights as data subjects in the areas covered by this Regulation through the competent institution, irrespective of the origin of the data.*

*The list and contact details of the personal data protection officers, who are appointed in each Member State in accordance with Article 18 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>, and who deal with data related to social security legislation covered under the basic Regulation shall constitute part of Annex IV to the implementing Regulation.*

3. *To the extent necessary for the application of the basic Regulation and the implementing Regulation, the relevant institutions shall forward the information and issue the documents to the persons concerned within the deadlines prescribed by the social security legislation of the Member State in question.*

4. The competent institution of a Member State which directly sends a document containing a decision on the rights of a person residing or staying in the territory of another Member State shall request an acknowledgement of receipt, irrespective of the medium or the method of dispatch used. The acknowledgement of receipt may be given using any medium and in any form.

5. In the absence of proof that the decision referred to in paragraph 4 has been sent, the time-limits relating to the forfeiture or limitation of rights acquired under the basic Regulation shall not be invoked against the beneficiaries.

6. Where the date on which the decision referred to in paragraph 4 was sent is duly established, the decision of the competent institution shall be held to be invoked against the person concerned within a month of that date. However, if the legislation of the Member State which made the decision provides for a longer time-limit, that time-limit shall apply.

7. In any event, the person concerned shall be entitled to the remedies and procedures provided for in the legislation applied by the institution responsible for the decision.

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#### Article 4

##### Format and method of exchanging data

1. The Administrative Commission shall lay down the *structure*, content, *format and methods of exchange* of the documents and the standardised electronic messages.

2. The transmission of data between the institutions, the access points or the liaison bodies shall be carried out by electronic means under a common secure framework that can guarantee the confidentiality and protection of exchanges of data.

3. In their communications with *the persons concerned*, the *relevant* institutions shall *use the modalities appropriate to each case, favouring* the use of electronic means *as far as*

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<sup>1</sup> OJL 281, 23.11.1995, p. 31.

*possible. The Administrative Commission shall lay down the practical arrangements for sending information, documents or decisions by electronic means to the person concerned.*

#### Article 5

##### Legal value of documents and supporting documents issued in another Member State

1. Documents issued by the institution of a Member State || and showing the position of a person for the purposes of the application of *the basic Regulation* and of *the implementing Regulation*, and supporting documents issued by the authorities of another Member State, including the taxation authorities, shall be accepted by the institutions of the other Member States *provided* they have not been withdrawn or declared to be invalid by the competent authority or institution of the Member State in which they were issued.
2. Where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the *receiving* institution shall *ask* the issuing institution || for the necessary clarification and, where appropriate, the withdrawal of *that* document. ***The issuing institution shall reconsider the grounds for issuing the document and, if necessary, withdraw it.***
3. Where no agreement is reached between the institutions concerned *one month after* the date on which the *receiving* institution || submitted its request, the matter may be brought before the Administrative Commission in accordance with Article 76(6) of *the basic Regulation* in order to reconcile the points of view within six months of the date on which the matter was brought before it.

#### Article 6

##### Provisional application of legislation and provisional payment of benefits

1. ***Unless otherwise provided for in the implementing Regulation, where there is a difference of views between the institutions or authorities of two or more Member States concerning the determination of the applicable legislation, || the person concerned shall be made provisionally subject to the legislation of one of those Member States, the order of priority being determined as follows:***
  - a) ***the legislation of the Member State where the person actually pursues his/her employment or self-employment if the employment or self-employment is pursued in only one Member State; or***
  - b) *the legislation of the Member State of residence when the person concerned performs part of his/her activity/activities there or when the person is not employed or self employed; or*
  - c) ***the legislation of the Member State concerned the application of whose legislation was first requested, where the person pursues an activity or activities in two or more Member States.***
2. Where there is a difference of views between the competent institutions or authorities of two or more Member States about which institution should provide the benefits, the person concerned who could claim benefits if there was no dispute shall be entitled, on a provisional basis, to the benefits foreseen by the legislation applied by the institution of his/her place of residence or, if that person does not reside on the territory of one of the Member States concerned, to the benefits foreseen by the legislation applied by the institution to which the



*application* was first submitted.

3. ***Where no agreement is reached between the institutions or authorities concerned, the matter may be brought before the Administrative Commission by the competent authorities no earlier than one month after the date on which the difference of views as mentioned in paragraph 1 or 2 arose. The Administrative Commission shall seek to reconcile the points of views within six months of the date on which the matter was brought before it.***

4. Where it is established *either* that the applicable legislation is not that of the Member State of provisional membership, or **||**the institution *which provisionally granted* the benefits **||** was not the competent institution, the institution identified as being competent shall be deemed *retroactively to have been so, as if that difference of views had not existed, at the latest* from *either* the date of provisional membership or of the first provisional *granting* of the benefits concerned.

5. If necessary, the competent institution shall settle the financial situation of the person concerned as regards contributions and *cash* benefits ***paid provisionally, where appropriate,*** on the basis of the arrangements laid down in Articles 71 to 81 ***of the implementing Regulation.***

***Provisional benefits in kind granted under paragraph 2 shall be reimbursed by the competent institution in accordance with Title IV of the implementing Regulation.***

#### Article 7

##### Obligation of provisional award

1. ***Unless otherwise provided for in the implementing Regulation, where a person is either eligible for a benefit or liable to pay a contribution in accordance with the basic Regulation, and the competent institution does not have all the information concerning the situation in another Member State that is necessary to calculate definitively the amount of that benefit or contribution, that institution shall award this benefit on request of the person concerned or calculate this contribution on a provisional basis, if such a calculation is possible on the basis of the information at the disposal of the institution.***

2. The benefit or the contribution concerned shall be recalculated as soon as the documentary evidence is provided to the institution concerned.

### Chapter III

#### Other general provisions for the application of *the basic* Regulation

#### Article 8

##### Administrative arrangements between two or more Member States

1. The provisions of this Regulation shall replace **||**the arrangements for the application of the conventions referred to in Article 8 (1) of *the basic* Regulation , *except* the provisions *concerning* the arrangements *for* the conventions referred to in Annex II of *the basic* Regulation, provided that the provisions of the said arrangements are included in Annex I of *the implementing* Regulation.

2. The Member States may conclude *among* themselves, if necessary, arrangements pertaining to the application of conventions referred to in Article 8(2) of *the basic* Regulation provided that these arrangements do not adversely affect the rights *and obligations* of *the persons concerned and are included in Annex I to the implementing Regulation*.

#### Article 9

##### Other procedures between institutions

1. Two or more Member States, or their competent authorities, **█** may agree **█** procedures *other* than those foreseen by the *implementing Regulation*, provided that these procedures do not adversely affect the rights *or obligations* of *the persons concerned*.

2. Any agreements concluded to *that* end shall be notified to the Administrative Commission and listed in Annex I to this Regulation.

#### Article 10

##### Prevention of overlapping of benefits

When benefits due under the legislation of two or more Member States are mutually reduced, suspended or withdrawn, any amounts that would not be paid in the event of strict application of the rules concerning reduction, suspension or withdrawal laid down by the legislation of the Member States concerned shall be divided by the number of benefits subjected to reduction, suspension or withdrawal.

#### Article 11

##### Elements for determining residence

1. *Where there is a difference of views* between the institutions of *two or more* Member States *about the determination of* the residence of a person *to whom the basic* Regulation *applies*, these institutions shall establish by common accord the centre of interests of the person concerned, *based on an overall assessment of all available and relevant information, which may include, as appropriate*:

(a) the duration and continuity of *presence on the territory of the Member States concerned*;

(b) *personal circumstances, including*:

(i) *the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract*;

(ii) *his/her* family status and family ties;

(iii) *the exercise of any non-remunerated activity*;

(iv) *in the case of students, the source of their income*;

(v) *his/her housing situation, in particular how permanent it is*;

(vi) the Member State in which the person is *deemed to reside for taxation purposes*.

2. Where *consideration* of the various criteria ***based on relevant facts as*** set out in paragraph 1 does not lead to agreement between the institutions ***concerned***, the ***person's intention, as appears from the facts and circumstances of the case, especially the reasons that led the person to move***, shall be considered to be decisive for establishing his/her ***actual*** place of residence.

## Article 12 Aggregation of periods

1. For the purposes of applying Article 6 of ***the basic*** Regulation, the competent institution shall contact the ***institutions*** of the Member ***States*** to whose legislation the person ***concerned has also been*** subject, in order to ***determine all*** the periods **||** completed under this legislation

2. The periods of insurance, ***employment, self-employment*** or residence completed under the legislation of a Member State shall be added to ***those*** completed under the legislation of any other Member State, insofar as it is necessary ***for the purposes of applying Article 6 of the basic Regulation***, provided that these periods do not overlap.

3. Where a period of ***compulsory*** insurance or residence **||** completed **||** under the legislation of a Member State coincides with a period of ***voluntary or continued optional*** insurance **||** under the legislation of another Member State, only the period ***of compulsory*** insurance shall be taken into account.

4. Where a period of insurance or residence other than an equivalent period completed under the legislation of a Member State coincides with an equivalent period on the basis of the legislation of another Member State, only the period other than an equivalent period shall be taken into account.

5. Any period regarded as equivalent under the legislation of two or more Member States shall be taken into account only by the institution of the Member State to whose legislation the insured person was last compulsorily subjected before the said period. In the event that the insured person was not compulsorily subjected to the legislation of a Member State before the said period, the latter shall be taken into account by the institution of the Member State to whose legislation the insured person was compulsorily subjected for the first time after the said period.

6. In the event that **||** certain periods of insurance or residence **||** completed under the legislation of a Member State cannot be determined precisely, it shall be presumed that these periods do not overlap with periods of insurance or residence completed under the legislation of another Member State, and account shall be taken thereof, ***where advantageous to the person concerned***, insofar as they can reasonably be taken into consideration.

7. ***Where periods of insurance or residence are not taken into account under this Article because other periods that do not qualify for the benefit concerned take precedence, the periods not taken into account shall not lose their effect under national legislation, as regards the acquisition, retention or recovery of the right to benefits.***

## Article 13 Rules for conversion of periods of insurance

Where periods of insurance completed under the legislation of a Member State are expressed

in || units different to those || of another Member State, the conversion needed for the purpose of aggregation shall be carried out under the following rules:

- a) one day shall be equivalent to eight hours, and vice versa;
- b) five days shall be equivalent to one week, and vice versa;
- c) 22 days shall be equivalent to one month, and vice versa;
- d) three months or thirteen weeks or sixty-six days shall be equivalent to one quarter, and vice versa;
- e) for the conversion of weeks into months and vice versa, weeks and months shall be converted into days;
- f) the application of points a) to e) may not lead to the admission, for all the periods of insurance completed in a calendar year, of a total exceeding 264 days or 52 weeks or 12 months or four quarters.

Where the periods of insurance completed under the legislation of a Member State are expressed in months, the days that correspond to a fraction of a month, in accordance with the conversion rules set out in the first subparagraph, shall be considered to be a full month.

## TITLE II

### DETERMINATION OF THE LEGISLATION APPLICABLE

#### Article 14

Details relating to Articles 12 and 13 of *the basic Regulation*

**1. For the purposes of the application of Article 12(1) of the basic Regulation, a "person who pursues an activity as an employed person in a Member State on behalf of an employer ... and who is posted by that employer to another Member State" shall include a person who is recruited with a view to being posted to another Member State, provided that, immediately before commencing his/her employment, the person concerned is already subject to the legislation of the Member State in which his/her employer is established.**

**2. For the purposes of the application of Article 12(1) of the basic Regulation, the words "which normally carries out its activities there" shall refer to an employer that ordinarily performs substantial activities, other than purely internal management activities, in the territory of the Member State in which it is established, taking account of all criteria characterising the activities carried out by the undertaking in question. The relevant criteria must be suited to the specific characteristics of each employer and the real nature of the activities carried out.**

**3. For the purposes of the application of Article 12(2) of the basic Regulation, the words "who normally pursues an activity as a self-employed person" shall refer to a person who habitually carries out substantial activities in the territory of the Member State in which he/she is established. In particular, that person must have already pursued his/her activity for some time before the date when he/she wishes to take advantage of the provisions of that Article and, during any period of temporary activity in another Member State, must continue to maintain, in the Member State where he/she is established, the requirements for the pursuit of his/her activity in order to be able to pursue it on his/her**

*return.*

4. For the purposes of the application of Article 12(2) of *the basic Regulation*, the criterion for determining whether the activity that a self-employed person goes to pursue in another Member State is “similar” to the self-employed activity normally pursued, shall be that of the actual nature of the activity, rather than of the designation of employed or self-employed activity that may be given to this activity by the other Member State.

5. *For the purposes of the application of Article 13(1) of the basic Regulation, a person who “normally pursues an activity as an employed person in two or more Member States” shall refer, in particular, to a person who:*

(a) *while maintaining an activity in one Member State, simultaneously exercises a separate activity in one or more other Member States, irrespective of the duration or nature of that separate activity;*

(b) *continuously pursues activities in alternation, with the exception of marginal activities, in two or more Member States, irrespective of the frequency or regularity of the alternation.*

6. *For the purposes of the application of Article 13(2) of the basic Regulation a person who “normally pursues an activity as a self-employed person in two or more Member States” shall refer, in particular, to a person who simultaneously or in alternation pursues one or more separate self-employed activities, irrespective of the nature of those activities, in two or more Member States.*

7. *For the purpose of distinguishing the activities under paragraphs 5 and 6 from the situations described in Article 12(1) and (2) of the basic Regulation, the duration of the activity in one or more other Member States (whether it is permanent or of an ad hoc or temporary nature) shall be decisive. For these purposes, an overall assessment shall be made of all the relevant facts including in particular, in the case of an employed person, the place of work as defined in the employment contract.*

8. For the purposes of the application of Article 13(1) and (2) of *the basic Regulation*, a “substantial part of employed or self-employed activity” pursued in a Member State shall *mean* a quantitatively substantial part of all the activities of the employed or self-employed worker pursued there, without this necessarily being the *principal* part of these activities.

*To determine whether a substantial part of the activities is pursued in a Member State, the following indicative criteria shall be taken into account:*

(a) *in the case of an employed activity, the working time and/or remuneration; and*

(b) *in the case of a self-employed activity, the turnover, working time, number of services rendered and/or income.*

*In the framework of an overall assessment, a total of less than 25% in respect of the criteria mentioned above shall indicate that a substantial part of the activities is not pursued in the relevant Member State.*

9. For the purposes of the application of Article 13(2)(b) of *the basic Regulation* (, the “centre of interest” of the activities of a self-employed person shall be determined by taking account of all the aspects of that person’s occupational activities, notably the place where the person’s fixed and permanent place of business is located, the habitual nature or the duration

of the activities pursued, the Member State in which the person concerned is subject to taxation on all his/her income, irrespective of the source, and the intention of the person concerned as revealed by all the circumstances.

**10. For the determination of the applicable legislation under paragraphs 8 and 9, the institutions concerned shall take into account the situation projected for the following 12 calendar months.**

**11. If a person pursues his activity as an employed person in two or more Member States on behalf of an employer established outside the territory of the Union, and if this person resides in a Member State without pursuing substantial activity there, he/she shall be subject to the legislation of the Member State of residence.**

#### **Article 15**

**Procedures for the application of Article 11(3)(b) and (d), Article 11(4) and Article 12 of the basic Regulation (on the provision of information to the institutions concerned)**

**1. Unless otherwise provided for by Article 16 of the implementing Regulation, where a person pursues his/her activity in a Member State other than the Member State competent under Title II of the basic Regulation, the employer or, in the case of a person who does not pursue an activity as an employed person, the person concerned, shall inform the competent institution of the Member State whose legislation is applicable thereof, whenever possible in advance. That institution shall, without delay, make information concerning the legislation applicable to the person concerned pursuant to Article 11(3)(b) or Article 12 of the basic Regulation available to the institution designated by the competent authority of the Member State in which the activity is pursued.**

**2. The provisions of paragraph 1 shall apply mutatis mutandis to persons covered by Article 11(3)(d) of the basic Regulation.**

**3. An employer within the meaning of Article 11(4) of the basic Regulation who has an employee on board a vessel flying the flag of another Member State, shall inform the competent institution of the Member State whose legislation is applicable, whenever possible in advance. That institution shall, without delay, make information concerning the legislation applicable to the person concerned, pursuant to Article 11(4) of the basic Regulation, available to the institution designated by the competent authority of the Member State whose flag, the vessel on which the employee is to perform the activity, is flying.**

#### **Article 16**

**Procedure for the application of Article 13 of the basic Regulation**

**1. A person who pursues activities in two or more Member States shall inform the institution designated by the competent authority of the Member State of residence. This institution shall forward this information to the designated institution of each Member State in which an activity is pursued.**

**2. The institution designated by the competent authority of the Member State of**

*residence shall without delay determine the legislation applicable to the person concerned, having regard to the provisions of Article 13 of the basic Regulation and Article 14 of the implementing Regulation. That determination shall be provisional. The institution shall inform the institutions designated by the competent authorities of each Member State in which an activity is pursued of its provisional determination.*

3. The *provisional* determination of the applicable legislation, as provided for in paragraph 2, shall become *definitive* within *two months* of the designated institution in the Member States where the activity is pursued being informed of the provisional determination, unless the legislation has already been definitively determined on the basis of paragraph 4, or at least one of the institutions concerned informs the institution designated by the competent authority of the Member State of residence by the end of the two-month period that it cannot yet accept the determination or that it takes a different view on this

4. Where uncertainty about the determination of the applicable legislation requires contacts between the institutions or authorities of two or more Member States, at the request of one or more of the institutions designated by the competent authorities of the Member States concerned or of the competent authorities themselves, the legislation applicable to the person concerned shall be determined by common accord, having regard to the provisions of Article 13 of the basic Regulation and the relevant provisions of Article 14 of the implementing Regulation.

Where there is a difference of views between the institutions or competent authorities concerned, those bodies shall seek agreement in accordance with the conditions set out above, and the provisions of Article 6 of the implementing Regulation shall apply.

5. The competent institution of the Member State whose legislation is determined to be applicable either provisionally or definitively shall, without delay, inform the person concerned.

6. If the person concerned fails to provide the information referred to in paragraph 1, the provisions of this Article shall be applied at the initiative of the institution designated by the competent authority of the Member State of residence as soon as it becomes aware of that person's situation, possibly via another institution concerned.

#### *Article 17*

##### *Procedure for the application of Article 15 of the basic Regulation*

Auxiliary staff shall exercise the right of option foreseen in Article 15 of the basic Regulation at the time of conclusion of the contract of employment. The authority authorised to conclude this contract shall inform the designated institution of the Member State for whose legislation the member of auxiliary staff has opted.

#### *Article 18*

##### *Procedure for the application of Article 16(1) of the basic Regulation*

*A request by the employer or the person concerned for an exemption from Articles 11 to 15 of the basic Regulation, shall be submitted, whenever possible in advance, to the competent authority or the body designated by the authority of the Member State, whose legislation the employer or person concerned requests be applied.*

## Article 19

### Provision of information to **█** persons *concerned and employers*

1. The competent institution of the Member State whose legislation *becomes applicable by virtue of Title II of the basic Regulation* shall inform the person concerned and, where appropriate, his/her employer(s) of the obligations *pursuant to* this legislation. It shall provide them with the necessary assistance to complete the formalities *required by that* legislation.
2. The competent institution of the Member State whose legislation is applicable by virtue of a provision of Title II of *the basic Regulation* shall *issue to the person concerned a certificate of applicable legislation* **█** and shall indicate where appropriate, until what date and under what conditions. *The certificate shall indicate the wages stated by the employer.*

## Article 20

### Cooperation between institutions

1. The *relevant* institutions **█** shall communicate to the competent institution of the Member State, whose legislation is applicable to a person *by virtue of Title II of the basic Regulation*, the *necessary* information required to establish the *date on which this legislation becomes applicable and the* contributions which he/she and his/her employer(s) are liable to pay under this legislation.
2. The competent institution of the Member State whose legislation becomes applicable to a person shall inform the institution of the Member State to whose legislation that person was last subject, indicating the date on which the application of this legislation takes effect.

## Article 21

### Obligations of the employer

1. An employer **█** *who has his registered office or place of business outside the competent Member State* shall be obliged to fulfil all the obligations laid down by the legislation applicable to *the employee, in particular* the obligation to pay the contributions provided for by this legislation, *as if he had his registered office or place of business in the competent Member State.*
2. An employer that does not have *a place of business* in the Member State whose legislation is applicable and *his/her* employee may agree that the latter may fulfil the employer's obligations on its behalf as regards the payment of contributions *without prejudice to the employer's underlying obligations.* The employer shall **█** *send notice of* such an arrangement to the competent institution of this Member State.

## Title III

### Special provisions concerning the various categories of benefits

#### Chapter I

#### Sickness, maternity and equivalent paternity benefits

## Article 22



## General implementing provisions

1. The competent authorities *or institutions* shall ensure that ***any necessary information is made available to*** insured persons ***regarding*** the procedures and conditions for the ***granting*** of benefits in kind where these benefits are received ***in*** the territory of a Member State other than that of the competent institution .

2. Articles 25 and 26 *of the implementing regulation* shall not affect the application of the national provisions of a Member State that allow for a greater part of the cost of benefits in kind in the situations referred to in paragraph 1 to be borne, than under the terms of *the basic Regulation*

3. Two or more Member States, or their competent authorities, may agree between themselves on other procedures and arrangements for the application of Articles 25, 26 and 27 *of the implementing regulation*. However, the agreements concluded to this end may not have unfavourable effects on the conditions and amounts for the chargeability of the benefits in kind of the persons concerned that would stem from the application of this Regulation. These agreements shall be notified to the Administrative Commission.

4. ***Notwithstanding Article 5(a) of the basic Regulation, a Member State may become responsible for the cost of benefits in accordance with Article 22 of the basic Regulation only if either the insured person has made a claim for a pension under the legislation of that Member State or in accordance with Articles 23 to 30 of the basic Regulation he/she receives a pension under the legislation of that Member State.***

### Article 23

Regime applicable in the event of the existence of several regimes in the Member State of residence or stay

If the legislation of the place of residence or stay comprises several schemes of sickness, maternity and paternity insurance, the provisions applicable under Articles 17, 19(1), 20, 22, 24, 26 and 27 of *the basic Regulation* shall be those of the legislation on the general scheme for employed persons.

### Article 24

Residence in a Member State other than the competent Member State

1. For the purposes of the application of Article 17 of *the basic Regulation*, an insured person or members of his/her family shall be obliged to register with the institution of the place of residence, sending a document showing their right to the benefits in kind payable by the competent Member State.

This document shall be issued by the competent institution, where appropriate in the light of the information provided by the employer. If the insured person or the members of his/her family do not send the said document, the institution of the place of residence shall request the necessary information from the competent institution.

2. ***The document referred to in paragraph 1 shall remain valid until the competent institution informs the institution of the place of residence of its cancellation.***

The institution of the place of residence shall inform the competent institution of any registration *under paragraph 1 and of any change or cancellation of that registration.*

3. This Article shall apply *mutatis mutandis* to the persons referred to in Articles 22, 24, 25 and 26 of *the basic* Regulation.

#### Article 25

##### Stay in a Member State other than the competent Member State

###### A) Procedure and scope of right

1. For the purposes of the application of Article 19 of *the basic* Regulation, the insured person shall ***present a document issued by*** his/her competent institution *demonstrating his/her entitlement to benefits in kind. to the health care provider in the Member State of stay* ***If the insured person does not have such a document, the institution of the place of stay, upon request or if otherwise necessary, shall contact the competent institution to obtain one.***

2. ***That document shall demonstrate that*** the insured person *is entitled to benefits in kind under the conditions laid down in Article 19 of the basic Regulation on the same terms as those applicable to persons insured under the legislation of* the Member State of stay.

3. The benefits in kind referred to in Article 19(1) of *the basic* Regulation shall refer to the benefits in kind ***provided in the Member State of stay, in accordance with its national legislation, and which become necessary on medical grounds in order to prevent an insured person from being required to return, before the end of the planned duration of stay, to the competent Member State to obtain the necessary treatment***.

###### B) Procedure and arrangements for meeting the costs and providing reimbursement of benefits in kind.

4. If the insured person has actually borne the costs ***of all or part*** of the benefits in kind provided within the framework of Article 19 of *the basic* Regulation ***and if the legislation applied by the institution of the place of stay enables reimbursement of those costs to an insured person,*** he/she *may* send his/her application for reimbursement to the institution of the place of stay. ***In that case, that*** institution shall reimburse directly to that person the amount of the costs corresponding to these benefits within the limits and under the conditions of the ***reimbursement*** rates in its legislation.

5. If the reimbursement of these ***costs*** has not been requested directly from the institution of the place of stay, the ***costs*** incurred shall be reimbursed to the person concerned by the competent institution ***in accordance with*** the reimbursement rates ***administered*** by the institution of the place of stay ***or, if Article 61 of the implementing Regulation had applied in the case concerned, the amounts which would have been subject to reimbursement to the institution of the place of stay.***

The institution of the place of stay shall || provide the competent institution, ***upon request***, with all necessary information about these rates ***or amounts***.**█**

6. By way of derogation from ***paragraph 5***, the competent institution may reimburse the ***costs*** incurred ***within the limits of and at the rates laid down in its legislation***, provided that the insured person has agreed to this provision being applied to him/her.
7. ***The reimbursement to the insured person shall not, in any event, exceed the amount of costs actually incurred by him/her.***
8. In the case of ***significant*** expenditure, the competent institution may pay the insured person an appropriate advance as soon as ***that*** person submits his/her ***application*** for reimbursement to it.

C) ***Family Members***

9. ***Paragraphs 1-8 shall apply mutatis mutandis to the members of the family of the insured person.***

Article 26  
Scheduled treatment

A) Authorisation procedure

1. ***For the purposes of the application of Article 20(1) of the basic Regulation, the insured person shall present a document issued by the competent institution to the institution of the place of stay. For the purposes of this Article, the competent institution shall mean the institution which bears the cost of the scheduled treatment; in the cases referred to in Article 20(4) and 27(5) of the basic Regulation, in which the benefits in kind provided in the Member State of residence are reimbursed by fixed amounts, the competent institution shall mean the institution of the place of residence.***
2. ***If an insured person does not reside in the competent Member State, he/she shall request authorisation from the institution of the place of residence, which shall forward it to the competent institution without delay.***

***In that event, the institution of the place of residence shall certify whether the conditions set out in the second sentence of Article 20(2) of the basic Regulation are met in the Member State of residence.***

***The competent institution may refuse authorisation only if, in accordance with the assessment of the institution of the place of residence, the conditions set out in the second sentence of Article 20(2) of the basic Regulation are not met in the Member State of residence of the insured person, or if the same treatment can be provided in the competent Member State itself, within a time-limit which is medically justifiable, taking into account the current state of health and the prognosis of the person concerned.***

***The competent institution shall inform the institution of the Member State of residence of its decision.***

In the absence of a reply within fifteen “calendar days” of the date on which the request was sent, the authorisation shall be considered to have been granted by the competent institution.

■

3. ***If an insured person who does not reside in the competent Member State is in need of an urgent and vitally necessary treatment, the authorisation cannot be refused under the second sentence of Article 20(2) of the basic Regulation. In such circumstances, the authorisation shall be granted by the institution of the place of residence on behalf of the competent institution, which shall be immediately informed by the institution of the place of residence.***

The competent institution shall be obliged to accept the findings *made* and the treatment options *given by the doctors approved by the institution of the place of residence that issues the authorisation* concerning the need for ***urgent and vitally necessary treatment*** that is decided ¶

4. ***The competent institution shall retain the right to have the insured person examined by a doctor of its own choice in the Member State of stay or residence at any time during the procedure granting the authorisation.***
5. ***The institution of the place of stay shall, without prejudice to any decision regarding authorisation, inform the competent institution if it appears medically appropriate to supplement the treatment covered by the existing authorisation.***

B) Meeting the cost of benefits in kind ***incurred by the insured person***

6. ***Without prejudice to paragraph 7, Article 25(5) and (6) of the implementing Regulation shall apply mutatis mutandis.***
7. ***If the insured person has actually borne all or part of the costs for the authorised medical treatment, and the costs which the competent institution is obliged to reimburse to the institution of the place of stay or to the insured person pursuant to paragraph 6 (actual cost) are lower than the costs which it would have had to assume for the same treatment in the competent Member State (notional cost), the competent institution shall reimburse, upon request, the cost of treatment incurred by the insured person up to the amount by which the notional cost exceeds the actual cost. The reimbursed sum may not, however, exceed the costs actually incurred by the insured person and may take account of the amount which the insured person would have had to pay if the treatment had been delivered in the competent Member State.***

C) Meeting the costs of travel and stay as part of scheduled treatment.

8. ■ ***The costs of travel and stay that are inseparable from the treatment of the insured person and, if necessary, the costs of travel and stay for a person who must accompany him/her, shall be assumed by this institution when an authorisation is granted in the case of treatment in another Member State. In the event of the insured person being a person with disabilities, the travel and stay of an accompanying person shall be considered necessary.***

D) Family members

9. The provisions of paragraphs 1-8 shall apply *mutatis mutandis* to the members of the family of the insured persons.

Article 27

Cash benefits relating to incapacity for work in the event of a stay or residence in a Member State other than the competent Member State

A) Procedure to be followed by the insured person

1. ***If the legislation of the competent Member State requires that the insured person present a certificate*** in order to be entitled to cash benefits relating to incapacity for work pursuant to Article 21(1) of ***the basic*** Regulation, the insured person shall ask the doctor of the Member State of residence who established his/her state of health to **█** certify his/her incapacity for work ***and its probable duration***.
2. The insured person shall send the ***certificate*** to the competent institution ***within the time-limit laid down in the legislation of the competent Member State***.
3. ***Where doctors providing treatment in the Member State of residence do not issue certificates of incapacity for work, and where such certificates are required under the legislation of the competent Member State, the person concerned shall apply directly to the institution of the place of residence. That institution shall immediately arrange for a medical assessment of the person's incapacity for work and for the certificate referred to in paragraph 1 to be drawn up. The certificate shall be forwarded to the competent institution forthwith.***
4. The forwarding of the document referred to paragraphs 1, 2 ***and 3*** shall not exempt the insured person from fulfilling the obligations provided for by the applicable legislation, in particular with regard to his/her employer. ***Where appropriate the employer and/or the competent institution may call upon the employee to participate in activities designed to promote and assist his/her return to employment.***

█

B) Procedure to be followed by the institution of the Member State of residence

5. At the request of the competent institution or in the cases referred to in ***paragraph 3***, the institution of the place of residence shall have the medical condition of the insured person checked, where necessary, as if that person ***were*** insured by it. The information in the report of the examining doctor ***concerning***, in particular, the probable duration of the incapacity for work, shall be forwarded by the institution of the place of residence to the competent institution within three working days of the date of the examination.

█

C) Procedure to be followed by the competent institution

6. *The competent institution shall retain the right to have the insured person examined by a doctor of its choice.*
  7. *Without prejudice to the second sentence of Article 21(1) of the basic Regulation, the competent institution shall pay the cash benefits directly to the person concerned and shall, where necessary, inform the institution of the place of residence thereof.*
  8. For the purposes of the application of Article 21(1) of *the basic Regulation*, the particulars of the certificate of incapacity for work of an insured person drawn up in another Member State on the basis of the medical findings of the *examining doctor must* be accepted by the competent institution unless there *has been* any abusive conduct.
  9. If the competent institution decides to refuse the cash benefits, it *shall notify the insured person* of its decision and simultaneously *notify* the institution of the place of residence thereof.
- D) Procedure in the event of a stay in a Member State other than the competent Member State.
10. The provisions of paragraphs 1-9 shall apply *mutatis mutandis* when the insured person stays in a Member State other than the competent Member State.

#### *Article 28*

#### *Long-term care benefits in cash in the event of a stay or residence in a Member State other than the competent Member State*

- A) *Procedure to be followed by the insured person*
1. *In order to be entitled to cash benefits relating to long-term care pursuant to Article 21(1) of the basic Regulation, the insured person shall apply to the competent institution. The competent institution shall, where necessary, inform the institution of the place of residence thereof.*
- B) *Procedure to be followed by the institution of the place of residence*
2. *At the request of the competent institution, the institution of the place of residence shall examine the condition of the insured person with respect to his/her need for long-term care. The competent institution shall provide the institution of the place of residence with all the information necessary for such an examination.*
- C) *Procedure to be followed by the competent institution*
3. *In order to determine the degree of need for long-term care, the competent institution shall have the right to have the insured person examined by a doctor or any other expert of its choice.*
  4. *Article 27(7) of the implementing Regulation shall apply mutatis mutandis.*

D) *Procedure in the event of a stay in a Member State other than the competent Member State*

5. *Paragraphs 1-4 shall apply mutatis mutandis when the insured person stays in a Member State other than the competent Member State.*

E) *Family members*

6. *Paragraphs 1-5 shall apply mutatis mutandis to the members of the family of the insured person.*

#### *Article 29*

*Application of Article 28 of the basic Regulation*

*If the Member State where the former frontier worker last pursued his/her activity is no longer the competent Member State, and the former frontier worker or a member of his/her family travels there with the purpose of receiving benefits in kind by virtue of Article 28 of the basic Regulation, he/she shall submit to the institution of the place of stay a document issued by the competent institution.*

#### *Article 30*

*Contributions by pensioners*

■

*If a person receives a pension from more than one Member State, the amount of contributions deducted from all the pensions paid shall under no circumstances be greater than the amount deducted from a person with the same amount of pension obtained from the competent Member State.*

#### *Article 31*

*Application of Article 34 of the basic Regulation*

A) *Procedure to be followed by the competent institution*

1. The *competent* institution shall ■ inform the person concerned of the *provision contained in Article 34 of the basic Regulation regarding the prevention of overlapping of benefits*. The application of such rules shall ensure that the person not residing in ■ the competent Member State is entitled to *benefits of* at least the same *total amount or value* as *those* to which *he/she* would be entitled if *he/she* resided in that Member State.
2. *The competent institution shall also inform the institution of the place of residence or stay of the payment of long-term care cash benefits where the legislation applied by the latter institution provides for long-term care benefits in kind included in the list referred to in Article 34(2) of the basic Regulation.*

**B) Procedure to be followed by the institution of the place of residence or stay**

- 3. Having received the information provided for in paragraph 2, the institution of the place of residence or stay shall, without delay, inform the competent institution of any long-term care benefit in kind intended for the same purpose granted under its legislation to the person concerned and of the rate of reimbursement applicable thereto.**
4. The Administrative Commission shall lay down implementing measures for this Article where necessary.

Article 32

Special implementing measures

1. **For the Member States referred to in Annex II, the provisions of Title III, Chapter I, of the basic Regulation relating to benefits in kind shall apply to persons entitled to benefits in kind solely on the basis of a special scheme for civil servants only to the extent specified therein. The institution of another Member State shall not, on those grounds alone, become responsible for bearing the costs of benefits in kind or in cash provided to those persons or to members of their family.**
2. Notwithstanding the provisions of paragraph 1, Article 23 of the basic Regulation shall apply to persons who are entitled to both a pension under a civil servants' scheme in one of the Member States referred to in Annex 2 and a pension under the legislation of another Member State.
3. Practical implementing measures for paragraphs 1 and 2 shall be taken by the Administrative Commission.

Chapter II

Benefits in respect of accidents at work and occupational diseases

Article 33

Right to benefits in kind and in cash in the event of residence or stay in a Member State other than the competent Member State

For the purposes of applying Article 36(1) of the basic Regulation, the procedures laid down in Articles 24 to 27 of the implementing Regulation shall apply mutatis mutandis.

■

Article 34

Cooperation between institutions in the event of an accident at work or occupational disease which occurs in a Member State other than the competent Member State

1. If the accident at work or occupational disease is diagnosed for the first time in a Member State other than the competent Member State, the declaration of the occupational accident or disease shall be carried out in accordance with the legislation of the competent State, without prejudice, where appropriate, to the legal provisions in force in the Member



State in which the occupational accident occurred or in which the first medical diagnosis of the occupational disease was made, which remain applicable in such cases. This declaration shall be addressed to the competent institution and a copy shall be sent to the institution in the place of residence or stay.

2. The institution of the Member State in the territory of which the occupational accident occurred or in which the occupational disease was first diagnosed, shall notify the competent institution of medical certificates drawn up in the territory of that State and, at the request of that institution, shall provide any appropriate information.

3. Where, as a result of a commuting accident which occurs in the territory of a Member State other than the competent Member State, an inquiry is necessary in the territory of the first Member State, an investigator may be appointed for this purpose by the competent institution, which shall inform the authorities of that Member State. The authorities shall assist the investigator, in particular by appointing a person responsible for helping to consult the reports and any other documents relating to the accident.

4. Following treatment, a detailed report accompanied by medical certificates relating to the permanent consequences of the accident or illness, in particular the victim's present state and the recovery or stabilisation of injuries, shall be sent to the competent institution. The relevant fees shall be paid by the institution in the place of residence or by the institution in the place of stay, where appropriate, at the rate applied by that institution to the charge of the competent institution.

5. At the request of the institution in the place of residence or the institution in the place of stay, where appropriate, the competent institution shall notify it of the decision setting the date for the recovery or stabilisation of injuries and, where appropriate, the decision concerning the granting of a pension.

#### Article 35

##### Contestation of the occupational nature of the accident or disease

1. Where the competent institution contests application of the legislation relating to accidents at work or occupational diseases under Article 36(2) of *the basic Regulation*, it shall immediately inform the institution in the place of residence or stay which provided the benefits in kind, which will then be considered as sickness insurance benefits.

2. When a final decision has been taken on this subject, the competent institution shall immediately inform the institution in the place of residence or stay which provided the benefits in kind. The latter *institution* shall continue to pay benefits in kind as sickness insurance benefits if the employed or self-employed person is entitled to them and an occupational accident or disease is not involved. *If that is not the case*, benefits in kind paid to the beneficiary as sickness insurance shall be considered as occupational accident or disease benefits from the date on which the occupational accident or disease was first diagnosed.

#### Article 36

##### Procedure in the event of exposure to the risk of an occupational disease in several Member States

1. In the case referred to in Article 38 of *the basic Regulation*, the declaration of the occupational disease shall be sent either to the competent institution for occupational diseases of the last Member State under the legislation of which the victim pursued an

activity likely to cause the said disease, or to the institution in the place of residence, which shall forward the declaration to the || competent institution.

If the latter institution establishes that an activity likely to cause the occupational disease in question was last pursued under the legislation of another Member State, it shall send the declaration and the accompanying certificates to the equivalent *institution* in that Member State.

2. Where the institution of the last Member State under the legislation of which the victim pursued an activity likely to cause the occupational disease in question establishes that the victim or his/her survivors do not meet the requirements of that legislation, *that* institution shall forward immediately to the institution of the previous Member State under the legislation of which the victim pursued an activity likely to cause the occupational disease in question the declaration and all accompanying certificates, including the findings and reports of medical examinations performed by the first institution, as well as a copy of the decision referred to in the second paragraph.

It shall also inform the insured person of its decision, indicating in particular the reasons for refusing benefits, the remedies and periods allowed for appeals, as well as the date on which the dossier was sent to the institution of the Member State under the legislation of which the insured person previously pursued an activity likely to cause the occupational disease in question.

3. It is advisable, where appropriate, to *go back under the* same procedure || as far as the equivalent institution in the Member State under whose legislation the victim first pursued an activity likely to cause the occupational disease in question.

#### Article 37

Exchange of information between institutions and advance payments in the event of an appeal against rejection

1. In the event of an appeal against a decision to refuse benefits taken by the institution of one of the Member States under the legislation of which the victim pursued an activity likely to cause the occupational disease in question, that institution shall inform the institution to which the declaration was sent, in accordance with the procedure provided for in Article 36(2) *of the implementing regulation*, and shall subsequently inform it of the final decision.

2. Where a person is entitled to benefits under the legislation applied by the institution to which the declaration was sent, that institution shall make the advance payments, the amount of which shall be determined, where appropriate, after consulting the institution which made the decision against which the appeal was lodged. The latter institution shall reimburse the advance payments made if, as a result of the appeal, it is obliged to provide these benefits. That amount will then be deducted from the benefits due to the person concerned, in accordance with the procedure provided for in Article 71 *of the implementing regulation*.

#### Article 38

Aggravation of an occupational disease

In the cases covered by Article 39 of *the basic Regulation*, the claimant must give the institution in the Member State from which he/she is claiming entitlement to benefits all the details concerning benefits previously granted for the occupational disease in question.

That institution may contact any other previously competent institution in order to obtain the information it considers necessary.

#### Article 39

Assessment of the degree of incapacity in the event of occupational accidents or diseases which occurred previously or subsequently.

For the purposes of applying Article 40(3) of *the basic* Regulation, where a previous or subsequent incapacity for work was caused by an accident which occurred when the person concerned was subject to the legislation of a Member State which makes no distinction according to the origin of the incapacity to work, the competent institution in the case of the previous or subsequent incapacity for work or the body designated by the competent authority of the Member State in question shall be obliged, when requested to do so by the competent institution of another Member State, to provide information concerning the degree of the previous or subsequent incapacity for work, and, where possible, information making it possible to determine whether the incapacity is the result of an accident at work within the meaning of the legislation applied by the institution in the other Member State.

In *such cases*, the competent institution shall take into account the degree of incapacity caused by these previous or subsequent cases when determining the right to benefits and the amount, in accordance with the applicable legislation.

#### Article 40

Submission and investigation of claims for pensions or supplementary allowances

1. In order to receive a pension or supplementary allowance under the legislation of a Member State, the employed or self-employed person or his/her survivors residing in the territory of another Member State shall submit a claim either to the competent institution or to the institution in the place of residence, which shall send it to the competent institution. The claim shall be accompanied by the necessary supporting documents and be drawn up in accordance with the legislation applied by the competent institution.

2. The competent institution shall notify the claimant of its decision directly or through the liaison body of the competent State. *It* shall send a copy of this decision to the liaison body of the Member State in which the claimant resides.

#### Article 41

Special implementing measures

The provisions of Title III, Chapter 2 of *the basic* Regulation covering benefits in kind shall not apply to persons entitled to benefits in kind solely on the basis of a special scheme for civil servants in one of the Member States referred to in Annex II to *the implementing* Regulation.

### Chapter III

Death grants

#### Article 42

## Claim for death grants

For the purposes of applying Articles 42 and 43 of *the basic* Regulation, the claim for death grants shall be sent to the institution in the claimant's place of residence.

## Chapter IV

### Invalidity benefits and old-age and survivors' pensions

#### Article 43

##### Calculation of benefit

1. For the purposes of calculating the theoretical amount and the actual amount of the benefit in accordance with Article 52(1)(b) of *the basic* Regulation, **■** the rules provided for in Article 12(3), (4), (5) *and* (6) of *the implementing* Regulation shall apply.
2. Where periods of voluntary or optional continued insurance have not been taken into account under Article 12(3) of *the implementing* Regulation, the institution of the Member State under whose legislation these periods were completed shall calculate the amount corresponding to these periods under the legislation it applies. The actual amount of the benefit, calculated in accordance with Article 52(1)(b) of *the basic* Regulation, shall be increased by the amount corresponding to periods of voluntary or optional continued insurance.
3. The institution of each Member State shall calculate, under the legislation it applies, the amount due corresponding to periods of voluntary or optional continued insurance which, under Article 53(3)(c) of *the basic* Regulation, shall not be subject to another Member State's rules relating to withdrawal, reduction or suspension.

*Where the legislation applied by the competent institution does not allow it to determine this amount directly on the grounds that that legislation allocates different values to insurance periods, a notional amount may be established. The Administrative Commission shall lay down the modalities for the determination of that notional amount.*

#### **■** Article 44

##### *Taking into account of child-raising periods*

1. *For the purposes of this Article, "child-raising period" shall mean any period which is credited under the pension legislation of a Member State or which provides a supplement to a pension explicitly for the reason that a person has raised a child, irrespective of the method used to calculate those periods and whether they accrue during the time of child-raising or are acknowledged retroactively.*
2. *Where, under the legislation of the Member State which is competent under Title II of the basic Regulation, no child-raising period is taken into account, the institution of the Member State whose legislation was applicable to the person concerned, in accordance with Title II of the basic Regulation, on the grounds that he or she was pursuing an activity as an employed or self-employed person at the date when, under that legislation, the child-raising period started to be taken into account for the child concerned, shall remain responsible for taking into account that period as a child-raising period under its own legislation, as if such child-raising had taken place in its own territory.*

3. ***Paragraph 2 shall not apply if the person concerned is/or becomes subject to the legislation of another Member State due to the pursuit of an employed or self-employed activity there.***

Article 45  
Claim for benefits

- A) Submission of the claim for benefits under Article 44(2) of *the basic Regulation*
1. In order to receive benefits under ***type A legislation*** under Article 44(2) of *the basic Regulation*, the claimant shall submit a claim to the institution of the Member State **||** whose legislation was applicable at the time when the incapacity for work occurred followed by invalidity or the aggravation of this invalidity, ***or to the institution of the place of residence, which shall forward the claim to the former institution.***
  2. If sickness benefits in cash have been awarded, the expiry date of the period for awarding these benefits shall, where appropriate, be considered as the date of submission of the pension claim.
  3. In the case referred to in Article 47(1)(b) of *the basic Regulation* , the institution with which the person concerned was last insured shall inform the institution which initially paid the benefits of the amount and the date of commencement of the benefits under the applicable legislation. From that date benefits due before aggravation of the invalidity shall be withdrawn or reduced to the supplement referred to in Article 47(2) of *the basic Regulation*.
- B) Submission of other claims for benefits
4. In situations other than ***those*** referred to in ***paragraph 1***, the claimant shall submit a claim to the institution of his/her place of residence or to the institution of the last Member State whose legislation was applicable. ***If the person concerned was not, at any time, subject to the legislation applied by the institution of the place of residence, that institution shall forward the claim to the institution of the last Member State whose legislation was applicable.***
  5. The date of submission of the claim shall apply in all the institutions concerned.
  6. By way of derogation from paragraph 5, if the claimant does not specify all the periods of insurance or residence which were subject to the legislation of other Member States, despite being specifically asked to do so, the date on which the claimant completes his/her initial claim or submits a new claim for the missing periods shall be considered as the date of submission of the claim to the institution applying the legislation in question, subject to more favourable provisions of that legislation.



Article 46  
Certificates and information to be submitted with the claim by the claimant

1. The claim shall be submitted by the claimant in accordance with the provisions of the legislation applied by the institution referred to in Article 45(1) *or* (4) *of the implementing Regulation* and be accompanied by the supporting documents *required by that legislation*. *In particular*, the claimant shall *supply all available relevant information and supporting documents relating to periods of insurance (institutions, identification numbers), employment (employers) or self-employment (nature and place of activity) and residence (addresses) which may have been completed under other legislation, as well as the length of those periods*.

2. Where, in accordance with Article 50(1) of *the basic Regulation*, the claimant requests deferment of the award of old-age benefits ■ under the legislation of one or more Member States, he/she shall *state that in his/her claim and* specify under which legislation the deferment ■ is requested. *In order to enable the claimant to exercise that right, the institutions concerned shall, upon the request of the claimant, notify him/her of all the information available to them so that he/she can assess the consequences of concurrent or successive awards of benefits which he/she might claim*.

3. *Should the claimant withdraw a claim for benefits provided for under the legislation of a particular Member State, that withdrawal shall not be considered as a concurrent withdrawal of claims for benefits under the legislation of other Member States*.

#### Article 47

##### Investigation of claims by the institutions

###### A) Investigating institution

1. *The institution to which* the claim for benefits shall be *submitted* or forwarded in accordance with the provisions of Article 45(1) or (4) *of the implementing Regulation* shall be referred to hereinafter as the "*contact institution*". *The institution of the place of residence shall not be referred to as the contact institution if the person concerned has not, at any time, been subject to the legislation which that institution applies*.

*In addition to investigating the claim for benefits under the legislation which it applies, the contact institution shall promote the exchange of data, communication of decisions and operations necessary for the investigation of the claim by the institutions concerned, supply the claimant, upon request, with any information relevant to the Community aspects of the investigation and keep him/her informed of its progress*.

###### B) Investigation of claims for benefits under Article 44 of *the basic Regulation*

2. In the case referred to in Article 44(3) of *the basic Regulation*, the investigating institution shall send all the documents of the person concerned to the institution with which he/she was previously insured, which shall in turn examine the case.
3. Articles 48 to 52 shall not be applicable to the investigation of claims referred to in Article 44 of *the basic Regulation*.

###### C) Investigation of other claims for benefits

4. In situations other than *those* referred to in *paragraph 2*, the *contact institution*

shall, *without delay*, send claims for benefits *and all the documents which it has available and, where appropriate, the relevant documents supplied by the claimant* to all the institutions in question so that they can all *start the investigation of the claim* concurrently. *The contact institution* shall notify *the other institutions* of periods of insurance or residence subject to *its* legislation. *It shall also indicate which documents will be submitted at a later date and supplement the claim as soon as possible.*

5. Each of the **█** institutions in question shall notify the *contact institution and the other institutions in question, as soon as possible*, of *the* periods of insurance or residence subject to their legislation. **█**
6. *Each* of the institutions in question shall calculate *the amount* of benefits in accordance with *Article 52* of *the basic Regulation* **█** and shall notify the *contact institution and the other institutions concerned of its decision, of the amount of benefits due and of any information required for the purposes of Articles 53 to 55 of the basic Regulation.*
7. *Should an* institution *establish*, on the basis of the information referred to in *paragraphs 4 and 5 of this Article*, that *Article 46(2) or Article 57(2) or (3) of the basic Regulation is applicable*, it shall inform *the contact institution and the other institutions concerned.*

**█**

#### Article 48

##### Notification of decisions to the claimant

1. Each institution shall notify the claimant of the decision *it has taken* in accordance with the applicable legislation. Each decision shall specify the remedies and periods allowed for appeals. *Once the contact institution has been notified of all decisions taken by each institution, it shall send the claimant and the other institutions concerned a summary of those decisions. A model summary shall be drawn up by the Administrative Commission. The summary shall be sent to the claimant in the language of the institution or, at the request of the claimant, in any language of his/her choice recognised as an official language of the Community institutions in accordance with Article 290 of the Treaty.*
2. *Where it appears to the claimant, following receipt of the summary, that his/her rights may have been adversely affected by the interaction of decisions taken by two or more institutions, the claimant shall have the right to a review of the decisions by the institutions concerned within the time limits laid down in the respective national legislation. The time limits shall start to run on the date of receipt of the summary. The claimant shall be notified of the result of the review in writing.*

#### Article 49

##### Determination of the degree of invalidity

1. Where the provisions of *Article 46(3) of the basic Regulation* are applicable, the investigating institution alone shall be authorised to take the decision concerning the degree of invalidity of the claimant. It shall take this decision as soon as it *is in a position to* determine whether the conditions for eligibility laid down in the applicable legislation are met, taking into account, where appropriate, the provisions of *Articles 6 and 51 of the basic Regulation*. It

shall immediately notify the other institutions in question of this decision.

Where the eligibility criteria, other than those relating to the degree of invalidity, laid down in the applicable legislation are not met, taking into account the provisions of Articles 6 and 51 of the basic Regulation, the investigating institution shall immediately inform the competent institution of the last Member State to whose legislation the claimant was subject. The latter institution shall be authorised to take the decision concerning the degree of invalidity of the claimant if the conditions for eligibility laid down in the applicable legislation are met. *It* shall immediately notify the other institutions involved of this decision.

2. *When determining eligibility it is advisable, where appropriate, ||, to go back under the same procedure as far as the competent institution for invalidity in the Member State to whose legislation the claimant was first subject.*

3. Where the provisions of Article 46(3) of *the basic* Regulation are not applicable, each institution, shall, *in accordance with its legislation* have the possibility of having the claimant examined by a *medical* doctor *or other expert* of *its* choice to determine the degree of invalidity. However, the institution of a Member State shall take into consideration documents, medical reports and administrative information collected by the institution of any other Member State as if they had been drawn up in its own Member State.



#### Article 50

##### Provisional instalments and advance payment of benefits

1. Notwithstanding Article 7 of this Regulation, any institution which establishes while investigating a claim for benefits that the claimant is entitled to an independent benefit under the applicable legislation, in accordance with Article 52(1)(a) of *the basic* Regulation, shall pay this benefit immediately. This payment shall be considered provisional if the amount may be affected by the result of the claim investigation procedure.

2. Where no provisional benefit can be paid to the claimant under paragraph 1 but it is evident from the information received that the claimant is eligible under Article 52(1)(b) of *the basic* Regulation, the investigating institution shall make a recoverable advance payment, the amount of which shall be as close as possible to the amount which will probably be paid under Article 52(1)(b) of *the basic* Regulation.

3. *Each* institution which is obliged to pay the provisional benefits *or advance payment* under paragraphs 1 or 2 shall inform the claimant *without delay*, specifically drawing his/her attention to the provisional nature of the measure and *any rights of appeal in accordance with its legislation*.

#### Article 51

##### New calculation of benefits

1. Where there is a new calculation of benefits in accordance with Articles 48(3) and (4), 50(4) and 59(1) of *the basic* Regulation, Article 50 of the *implementing* Regulation shall be applicable *mutatis mutandis*.

2. Where there is a new calculation, withdrawal or suspension of the benefit, the institution which took the decision shall inform the person concerned immediately in



accordance with the procedure provided for in Article 3(4) to (7) of the *implementing Regulation* and shall inform each of the institutions in respect of which the person concerned has an entitlement.

#### Article 52

##### Measures intended to accelerate the *pension calculation process*

1. ***In order to facilitate and accelerate the investigation of claims and the payment of benefits, the institutions to whose legislation a person has been subject shall:***

(a) ***exchange with or make available to institutions of other Member States the elements for identifying persons who change from one applicable national legislation to another, and together ensure that those identification elements are retained and correspond, or, failing that, provide those persons with the means to access their identification elements directly;***

(b) ***sufficiently prior to the minimum age for commencing pension rights or an age to be determined, by the institutions to whose legislation a person has been subject, exchange with or make available to the person concerned and to institutions of other Member States information (periods completed or other important elements) on the pension entitlements of persons who have changed from one applicable legislation to another or, failing that, inform those persons of, or provide them with, the means of familiarising themselves with their prospective benefit entitlement.***

2. For the purposes of applying paragraph 1, ***the Administrative Commission shall determine the elements of information to be exchanged or made available and shall establish the appropriate procedures and mechanisms, taking account of the characteristics, administrative and technical organisation, and the technological means at the disposal of national pension schemes. The Administrative Commission shall ensure the implementation of those pension schemes by organising a follow-up to the measures taken and their application.***

3. ***For the purposes of applying paragraph 1, the institution in the first Member State where a person is allocated a Personal Identification Number (PIN) for the purposes of social security administration should be provided with the information mentioned above.***

■

#### Article 53

##### Coordination measures in a Member State

1. ***Without prejudice to Article 51 of the basic Regulation,*** where national legislation includes rules for determining the institution responsible ***or the scheme applicable or for designating periods of insurance to a specific scheme,*** those rules shall be applied, taking into account only periods of insurance completed under the legislation of the Member State concerned.

2. Where national legislation includes rules for the coordination of special schemes for civil servants and the general scheme for employed persons, those rules shall not be affected by the provisions of *the basic Regulation* and of *the implementing Regulation*.

## Chapter V

### Unemployment benefits

#### Article 54

##### *Aggregation of periods and calculation of benefits*

**1. Article 12(1) of the implementing Regulation shall apply mutatis mutandis to Article 61 of the basic Regulation. Without prejudice to the underlying obligations of the institutions involved, the person concerned may submit to the competent institution a document issued by the institution of the Member State to whose legislation he/she was subject in respect of his/her last activity as an employed or self-employed person specifying the periods completed under that legislation.**

2. For the purposes of applying Article 62(3) of *the basic Regulation*, the competent institution of the Member State to whose legislation the person concerned was subject in respect of his/her last activity as an employed or self-employed person shall, at the request of the institution in the place of residence, provide it with all the information necessary to calculate unemployment benefits, in particular the salary or professional income received.

3. For the purposes of applying Article 62 of *the basic Regulation* and notwithstanding Article 63 of *that Regulation*, the competent institution of a Member State whose legislation provides that the calculation of benefits varies with the number of members of the family shall also take into account the members of the family of the person concerned residing in another Member State as if they resided in the competent Member State. This provision shall not apply where, in the Member State of residence of members of the family, another person is entitled to unemployment benefits calculated on the basis of the number of members of the family.

#### Article 55

##### Conditions and restrictions on the retention of the entitlement to benefits for unemployed persons going to another Member State

1. In order to be covered by the provisions of Article 64 of *the basic Regulation*, the unemployed person going to another Member State shall inform the competent institution prior to his/her departure and request a document certifying that he/she retains entitlement to benefits under the conditions laid down in Article 64(1)(b) of *the basic Regulation*.

That institution shall inform the person concerned of his/her obligations and shall provide the abovementioned document which includes the following information:

- a) the date on which the unemployed person ceased to be available to the employment services of the competent State;
- b) the period granted in accordance with Article 64(1)(b) of *the basic Regulation* in order to register as a person seeking work in the Member State to which the unemployed person has gone;
- c) the maximum period during which the entitlement to benefits may be retained in accordance with Article 64(1)(c) of *the basic Regulation*;

d) circumstances likely to affect the entitlement to benefits.

2. The unemployed person shall register as a person seeking work with the employment services of the Member State to which he/she goes in accordance with the provisions of Article 64(1)(b) of *the basic* Regulation and shall send the document referred to in paragraph (1) to the institution of that Member State. If he/she fails to do this, the institution in the place to which the unemployed person has gone shall contact the competent institution in order to obtain the necessary information.

3. The employment services in the Member State to which the unemployed person has gone to seek employment shall inform the unemployed person of his/her obligations.

4. The institution in the place to which the unemployed person has gone shall immediately **send a document to** the competent institution **containing** the date on which the unemployed person registered with the employment services and his/her new address.

**If, throughout the period during which the unemployed person retains entitlement to benefits, any circumstance likely to affect the entitlement to benefits arises, the institution in the place to which the unemployed person has gone shall immediately to the competent institution and to the person concerned a document containing the relevant information.**

**At the request of the competent institution, the institution in the place to which the unemployed person has gone shall provide relevant information on a monthly basis** concerning the follow-up of the unemployed person's situation, in particular whether the latter is still registered with the employment services and is complying with organised checking procedures.

5. The institution in the place to which the unemployed person has gone shall carry out or arrange for checks to be carried out as if the person concerned were an unemployed person obtaining benefits under its own legislation. It shall immediately inform the competent institution of the occurrence of any circumstance referred to in paragraph 1(d).

6. The competent authorities or competent institutions of two or more Member States may agree amongst themselves a set of measures to promote the job-seeking activities of unemployed persons who go to one of those Member States under Article 64 of *the basic* Regulation.

#### Article 56

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

1. Where the unemployed person decides, in accordance with Article 65(2) of *the basic* Regulation, to register as a person seeking work in the Member State in which he/she resides as well as in the Member State in which he/she pursued his/her last activity as an employed or self-employed person, he/she shall inform as a priority the institution and employment services of his/her place of residence.

At the request of the employment services of the Member State in which he/she pursued his/her last activity as an employed or self-employed person, the employment services in the place of residence shall send the relevant information concerning the unemployed person's registration and search for employment.

2. Where the **legislation applicable in the Member States concerned requires** the fulfilment of certain obligations **and/or job-seeking activities** by the unemployed person, **the**

*obligations and/or job-seeking activities by the unemployed person in the Member State of residence shall have priority.*

*The non-fulfilment by the unemployed person of all the obligations and/or job-seeking activities in the Member State in which he/she pursued his/her last activity shall not affect the benefits awarded in the Member State of residence.*

3. For the purposes of applying Article 65(5)(b) of *the basic Regulation*, the institution of the Member State to whose legislation the worker was last subject shall inform the institution in the place of residence, when requested to do so by the latter, whether the worker is entitled to benefits under Article 64 of *the basic Regulation* ¶¶.

## Chapter VI

### Family benefits

#### Article 57

##### Priority rules in the event of overlapping

For the purposes of applying **Article 68(1)(b)(i) and (ii)** of *the basic Regulation*, where the order of priority cannot be established on the basis of the children's place of residence, each Member State concerned shall calculate the amount of benefits including the children not resident within its own territory. **When applying Article 68(1)(b)(i), the** competent institution of the Member State whose legislation provides for the highest level of benefits shall pay the full amount of such benefits and be reimbursed half this sum by the competent institution of the other Member State up to the limit of the amount provided for in the legislation of the latter Member State.

#### Article 58

##### Rules applicable where **the applicable** legislation **and/or the competence to grant family benefits changes**

1 **Where the applicable legislation and/or the competence to grant family benefits change between** Member States **during** a calendar month, irrespective of the payment dates of family benefits under the legislation of those Member States, the institution which has paid the family benefits by virtue of the legislation **under which the benefits have been granted at the beginning of this month** shall continue to do so until the end of the month in progress.

2. It shall inform the institution of the other Member State **or Member States concerned** of the date on which it ceases to pay the family benefits in question. **Payment of benefits from the other Member State or Member States concerned shall take effect from that date.**

#### Article 59

##### Procedure for applying Articles 67 and 68 of *the basic Regulation*

1. The application for family benefits shall be addressed ¶ to the **competent** institution. **For the purposes of applying Articles 67 and 68 of the basic Regulation, the situation of the whole family shall be taken into account as if all persons involved were subject to the legislation of the Member State concerned and residing there, in particular as regards a**

*person's entitlement to claim such benefits. Where a parent entitled to claim the benefits does not exercise his/her right, an application for family benefits submitted by the other parent, a person treated as a parent, or a person or institution acting as guardian of the child or children, shall be taken into account by the competent institution of the Member State whose legislation is applicable.*

2. The institution to which *an* application is made in accordance with paragraph 1 shall examine the application on the basis of the detailed information supplied by the applicant, taking into account the overall de facto and legal situation of the applicant's family.

*If that institution concludes that its legislation is applicable by priority right in accordance with Article 68(1) and (2) of the basic Regulation, it shall provide the family benefits according to the legislation it applies.*

*If it appears to that institution that there may be an entitlement to a differential supplement by virtue of the legislation of another Member State in accordance with Article 68(2) of the basic Regulation, that institution shall forward the application, without delay, to the competent institution of the other Member State and inform the person concerned; moreover it shall inform the institution of the other Member State of its decision on the application and the amount of family benefits paid.*

3. *Where the institution to which application is made concludes that its legislation is applicable, but not by priority right in accordance with Article 68(1) and (2) of the basic Regulation, it shall take a provisional decision, without delay, on the priority rules to be applied and shall forward the application, in accordance with Article 68(3) of the basic Regulation to the institution of the other Member State, also informing the applicant thereof. That institution shall have two months to take a position on the provisional decision taken.*

*If the institution to which the application was forwarded does not take a position within two months of receipt of the application, the provisional decision referred to above shall apply and the institution shall pay the benefits provided for under its legislation and inform the institution to which the application was made of the amount of benefits paid.*

4. *Where there is a difference of views between the institutions concerned about which legislation is applicable by priority, Article 6(2) to (5) of the implementing Regulation shall apply. For this purpose, the institution of the place of residence referred to in Article 6(2) shall be the institution of the child or children's place of residence.*

5. If the institution which has supplied benefits on a provisional basis has paid more than the amount for which it is ultimately responsible, it shall claim reimbursement of the excess from the institution with primary responsibility in accordance with the procedure laid down in Article 71.

#### Article 60

##### Procedure for applying Article 69 of *the basic Regulation*

For the purposes of applying Article 69 of *the basic Regulation*, *the Administrative Commission shall draw up a list of the additional or special family benefits for orphans covered by that Article. If there is no provision for the institution competent to grant, by priority right, such additional or special family benefits for orphans under the legislation it*

*applies*, it shall *without delay* forward *any* application *for family benefits*, together with all relevant documents and information, to the institution of the Member State to whose legislation the person concerned has been subject for the longest period of time *and which provides such additional or special family benefits for orphans*. In some cases, this may mean referring back, under the same conditions, to the institution of the Member State under whose legislation the person concerned has completed the shortest of his or her insurance or residence periods.

## TITLE IV

### FINANCIAL PROVISIONS

#### Chapter I

Reimbursement of the cost of benefits in application of Article 35(1) and Article 41 of *the basic Regulation*

#### Section 1

Reimbursement on the basis of actual expenditure

#### Article 61 Principles

1. For the purposes of applying Article 35(1) and Article 41 of *the basic Regulation*, the actual amount of benefits in kind, as shown in the accounts of the institution that provided them, shall be reimbursed to *that institution* by the competent institution, except where Article 62 of the implementing Regulation is applicable.

2. If any or part of the actual amount of the benefits referred to in paragraph 1 is not shown in the accounts of the institution that provided them, the amount to be refunded shall be determined on the basis of a lump-sum payment calculated from all the appropriate references obtained from the data available. The Administrative Commission shall assess the bases to be used for calculation of the lump-sum payment and shall decide the amount thereof.

3. Higher rates than those applicable to the benefits in kind provided to insured persons subject to the legislation applied by the institution providing the benefits referred to in paragraph 1 may not be taken into account in the reimbursement.

#### Section 2

Reimbursement of benefits on a lump-sum basis

#### Article 62 Identification of the Member States concerned

1. The Member States referred to in Article 35(2) of *the basic Regulation* whose legal or administrative structures are such that the use of reimbursement on the basis of actual expenditure is not appropriate are indicated in Annex III to *the implementing Regulation*.

2. In the case of the Member States indicated in Annex III to *the implementing Regulation*, the amount of benefits in kind supplied to family members who do not reside in the same Member State as the insured person, as provided for in Article 17 of *the basic Regulation*, and to pensioners and members of their family, as provided for in Article 22, Article 24(1) and Articles 25 and 26 of *the basic Regulation*, shall be reimbursed by the competent institutions to the institutions providing the said benefits, on the basis of a fixed amount established for each calendar year. This fixed amount shall be as close as possible to actual expenditure.

#### Article 63

##### Calculation method of *the monthly fixed amounts and the total fixed amount*

1. For each *creditor* Member State, the *monthly fixed amount per person* ( $F_i$ ) for a calendar year shall be *determined* by *dividing* the annual average cost per person ( $Y_i$ ), broken down by age group ( $i$ ), by 12 and *by* applying a reduction ( $X$ ) to the result *in accordance with the following formula*:

$$F_i = Y_i * 1/12 * (1 - X)$$

Where:

– the index ( $i = 1, 2$  and  $3$ ) represents the three age groups used for calculating the *fixed amounts*:

$i = 1$ : persons aged under 20

$i = 2$ : persons aged from 20 to 64

$i = 3$ : persons aged 65 and over

–  $Y_i$  represents the annual average cost for persons in age group  $i$ , as defined in paragraph 2.

– *the coefficient  $X$  (0,20 or 0,15) represents the reduction as defined in paragraph 3.*

2. The annual average cost per person ( $Y_i$ ) in age group  $i$  shall be obtained by dividing *the* annual expenditure on all benefits in kind provided by the institutions of the creditor Member State to all persons in the age group concerned subject to its legislation and residing within its territory by the average number of persons *concerned* in that age group *in the calendar year in question. The calculation shall be based on the expenditure* under the *schemes* referred to in Article 23 of *the implementing Regulation*.

3. *The reduction to be applied to the monthly fixed amount shall, in principle, be*

*equal to 20 % (X = 0,20). It shall be equal to 15 % (X = 0,15) for pensioners and members of their family where the competent Member State is not listed in Annex IV to the basic Regulation.*

4. For each debtor Member State, the total *fixed amount for a calendar year* shall be *the sum of the products obtained by multiplying, in each age group i, the determined monthly fixed amounts per person by the number of months completed by the persons concerned in the creditor Member State in that age group.*

*The number of months completed by the persons concerned in the creditor Member State shall be the sum of the calendar months in a calendar year during which the persons concerned were, because of their residence in the territory of the creditor Member State, eligible to receive benefits in kind in that territory at the expense of the debtor Member State. Those months shall be determined from an inventory kept for that purpose by the institution of the place of residence, based on documentary evidence of the entitlement of the beneficiaries supplied by the competent institution.*

5. *No later than...\**, the Administrative Commission shall present a specific report on the application of this Article and in particular on the reductions referred to in paragraph 3. On the basis of that report, the Administrative Commission may present a proposal containing any amendments that prove necessary in order to ensure that the calculation of fixed amounts comes as close as possible to the actual expenditure incurred and the reductions referred to in paragraph 3 do not result in unbalanced payments or double payments for the Member States.

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6. The Administrative Commission shall establish the methods for determining the elements for calculating the *fixed amounts* referred to in the above paragraphs.
7. *Notwithstanding paragraphs 1 to 4, Member States may continue to apply Articles 94 and 95 of Regulation (EEC) No 574/72 for the calculation of the fixed amount until .....\**, provided that the reduction referred to in paragraph 3 is applied.

#### Article 64

##### Notification of annual average costs

The annual average cost per person in each age group for a specific year shall be *notified* to the Audit Board by *the end* of the second year following the year in question at the latest. If the notification is not made by this deadline, the annual average cost per person *which the Administrative Commission has last determined* for a previous year will be taken.

The annual average costs shall be published in the Official Journal of the European Union.

#### Section 3

##### Common provisions

#### Article 65

##### Procedure for reimbursement between institutions

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\* *Five years after the entry into force of the implementing Regulation.*

\* *Five years after the entry into force of the implementing Regulation.*



1. ***The reimbursements between the Member States concerned shall be made as promptly as possible. Every institution concerned shall be obliged to reimburse claims before the deadlines mentioned in this Article, as soon as it is in a position to do so. A dispute concerning a particular claim must not hinder the reimbursement of another or other claims.***

2. The reimbursements between the institutions of the Member States, provided for in Articles 35 and 41 of *the basic Regulation*, shall be made via the liaison body. ***There may be a separate liaison body for reimbursements under Articles 35 and 41 of the basic Regulation.***

#### Article 66

##### Deadlines for the introduction and settlement of claims

1. Claims based on actual expenditure shall be introduced ***to the liaison body of the debtor Member State*** within *twelve* months of the end of the calendar half-year during which *those claims* were *recorded in the accounts of the creditor institution*.

2. ***Claims of fixed amounts*** for a calendar year shall be ***introduced to the liaison body of the debtor Member State*** within the six-month period following the month during which the average costs for the year concerned were published in the Official Journal of the European Union. ***The inventories provided for in Article 63(4) of the implementing Regulation shall be presented by the end of the year following the reference year.***

3. Claims introduced after the deadlines specified in paragraphs 1 and 2 shall not be considered.

4. The claims shall be paid ***to the liaison body of the creditor Member State referred to in Article 65 of the implementing Regulation*** by the debtor institution within six months of the end of the *month* during which they *were* introduced ***to the liaison body of the debtor Member State***. ***This does not apply to claims which the debtor institution has rejected for a relevant reason*** within *that* period.

5. Any ***disputes concerning*** a claim shall be settled, ***at the latest***, within one year of the ***month in*** which the claim was introduced.

6. ***The Audit Board shall facilitate the final closing of accounts in cases where a settlement cannot be reached within the period referred to in paragraph 5, and, upon a reasoned request by one of the parties, shall give its opinion on a dispute within six months of the month in which the matter was referred to it.***

#### Article 67

##### Interest on late payments ***and down payments***

1. From the end of the six-month period referred to in Article 66 (4) ***of the implementing Regulation***, interest ***may be charged by the creditor institution*** on outstanding claims, ***unless the debtor institution has made, within six months of the end of the month during which the claim was introduced, a down payment of at least 90 % of the total claim introduced pursuant to Article 66(1) or (2) of the implementing Regulation.*** For those parts of the claim not covered by the down payment, interest ***may be charged only*** from the end of the one-year period referred to in Article 66(5) ***of the implementing Regulation.***

2. The interest shall be *calculated on the basis of the reference rate applied by the European Central Bank to its main refinancing operations. The reference rate applicable shall be that in force on the first day of the month on which the payment is due.*

3. *No liaison body shall be obliged to accept a down payment as provided for in paragraph 1. However, if a liaison body declines such an offer the creditor institution shall no longer be entitled to charge interest on late payments related to the claims in question other than under the second sentence of paragraph 1.*

#### Article 68

##### Statement of annual accounts

1. The Administrative Commission shall establish the claims situation for each calendar year in accordance with Article 72(g) of *the basic* Regulation, on the basis of the Audit Board's report. To this end, the liaison bodies shall notify the Audit Board, by the deadlines and according to the procedures laid down by the latter, of the amount of the claims introduced, settled or contested (creditor position) and the amount of claims received, settled or contested (debtor position).

2. The Administrative Commission may perform any appropriate checks on the statistical and accounting data used as the basis for drawing up the annual statement of claims provided for in paragraph 1 in order, in particular, to ensure that they comply with the rules laid down under this Title.

#### Chapter II

##### Reimbursement of unemployment benefits pursuant to Article 65 of *the basic* Regulation

#### Article 69

##### Reimbursement of unemployment benefits

If there is no agreement in accordance with Article 65(8) of *the basic* Regulation, ■ the institution of the place of residence shall request reimbursement of unemployment benefits by virtue of Article 65(6) and (7) of *the basic* Regulation from the institution of the Member State to whose legislation the beneficiary was last subject. ***The request shall be made*** within six months of ***the end of the calendar half-year during which*** the last payment of unemployment benefit, for which reimbursement is requested, ***was made***. The request shall indicate the amount of benefit paid during the three or five month-period referred to in ***Article 65(6) and (7) of the basic*** Regulation, ■ the period for which the benefits were paid and the identification data of the unemployed person. ***The claims shall be introduced and paid via the liaison bodies of the Member States concerned.***

***There is no requirement to consider requests introduced after the time limit referred to in the first paragraph.***

*The provisions of Article 65(1) and Article 66(4) to (6) of the implementing Regulation shall apply mutatis mutandis.*

***From the end of the six-month period referred to in Article 66(4) of the implementing Regulation, interest may be charged by the creditor institution on outstanding claims. That***

*interest shall be calculated in accordance with Article 67(2) of the implementing Regulation.*

*The maximum amount of the reimbursement referred to in the third sentence of Article 65(6) of the basic Regulation is, in each individual case, the amount of the benefit to which a person concerned would be entitled according to the legislation of the Member State that he/she was last subject if registered with the employment services of that Member State. However, in relations between Member States listed in Annex XY, the competent institutions of one of those Member States to whose legislation the person concerned was last subject shall determine the maximum amount in each individual case on the basis of the average amount of unemployment benefits provided under the legislation of that Member State in the preceding calendar year.*

### Chapter III

Recovery of benefits paid in excess, recovery of provisional payments,  
compensation, assistance with recovery

#### Section 1

#### Principles

#### Article 70

1. For the purposes of applying Article 84 of *the basic Regulation* and within the framework defined therein, recovery of claims shall, wherever possible, be by way of compensation either between the creditor institutions (hereinafter referred to as “the applicant parties”), and the debtor institutions (hereinafter referred to as “the requested parties”), or vis-à-vis the insured person in accordance with Articles 71 and 72 of *the implementing Regulation*.

If it has not been possible to recover all or any of the claim via the compensation procedure referred to in the previous paragraph, the remainder of the amount payable by the beneficiary shall be recovered in accordance with the provisions of Articles 73 to 82 of *the implementing Regulation*.

2. The liaison body shall be considered as the requested party in respect of the claims addressed to it.

#### Section 2

#### Compensation

#### Article 71

Cash benefits received unduly or in excess

1. If the institution of a Member State has paid benefits to a recipient in excess of his or her entitlement, that institution shall, within the terms and limits laid down in the legislation it applies, request the institution of any other Member State responsible for paying benefits to that beneficiary to deduct the amount paid in excess from further sums owed to the beneficiary. The latter institution shall deduct the amount concerned subject to the

conditions and limits applying to this kind of compensation system by the legislation it applies in the same way as if it had made the overpayments itself, and shall transfer the amount deducted to the creditor institution.

2. In connection with Article 6, *within* two months at the latest after the applicable legislation has been determined or the institution responsible for paying the benefits identified, the institution that provisionally paid the cash benefits shall draw up a statement of the amount owed to it by the competent institution. Where contributions have been paid provisionally by the beneficiary and/or his or her employer, these shall be taken into account in establishing the amount owed.

The competent institution responsible for paying the benefits shall deduct the amount due in respect of the provisional payment from the amounts it owes to the beneficiary. The debtor institution shall deduct this amount subject to the conditions and limits applying to this kind of compensation system under the legislation it applies and transfer the amount deducted immediately to the creditor institution.

3. If an insured person has received social welfare assistance in one Member State during a period in which he/she was entitled to benefits under the legislation of another Member State, the body which provided the assistance may, if it is legally entitled to reclaim the benefits due to the said person, request the institution of any other Member State responsible for paying benefits in favour of that person to deduct the amount of assistance paid from the amounts which the latter pays to the said person.

This provision shall apply *mutatis mutandis* to any family member of an insured person who has received assistance in the territory of a Member State during a period in which the insured person was entitled to benefits under the legislation of another Member State in respect of the family member concerned.

The creditor institution shall send a statement of the amount due to the debtor institution, which shall then deduct the amount subject to the conditions and limits laid down for this kind of compensation system by the legislation it applies and transfer the amount immediately to the creditor body.

4. In the cases specified in paragraphs 2 and 3, the competent institution shall address a statement to the person concerned showing the amounts still due or paid in excess according to the legislation it applies.

#### Article 72

##### Contributions paid unduly or in excess

In the terms of Article 6, an institution which has provisionally received contributions from an insured person and/or his/her employer shall not reimburse the amounts in question to the persons who paid them until it has ascertained from the competent institution the sums due to it under Article 6(4).

#### Section 3

##### Recovery

#### Article 73

##### Requests for information

1. The requested party shall provide the applicant party at the latter's request with all relevant information for recovery of a claim.

In order to obtain such information, the requested party shall make use of the powers conferred under the laws, regulations or administrative provisions applicable to the recovery of similar claims arising in its own Member State.

2. The request for information shall indicate the name, address, and any other information to which the applicant party normally has access *with regard to* the person to whom the information to be provided relates and the nature and amount of the claim in respect of which the request is being made.

3. The requested party shall not be obliged to transmit information it would not be able to obtain for the purposes of recovering similar claims arising in its own Member State.

4. The requested party shall inform the applicant party of any reasons preventing the information requested from being supplied.

#### Article 74 Notification

1. At the request of the applicant party, the requested party shall notify the addressee, in accordance with the rules of law in force on the notification of similar acts in its own Member State, of all instruments and decisions, including those of a judicial nature, relating to a claim or its recovery, emanating from the Member State of the applicant party.

2. The request for notification shall indicate the name and address of the addressee and any other information concerning the latter to which the applicant party would normally have access, the nature and the subject of the instrument or decision to be notified and, where applicable, the name, address and any other information to which the applicant party would normally have access on the debtor and the claim to which the instrument or decision relates, and any other useful information.

3. The requested party shall inform the applicant party immediately of the action taken in response to the request for notification and, more particularly, of the date on which the decision or instrument was forwarded to the addressee.

#### Article 75 Request for recovery

1. The request for recovery of contributions or of benefits paid unduly or in excess, addressed by the applicant party to the requested party, shall be accompanied by an official or certified copy of the instrument permitting its enforcement, issued in the Member State of the applicant party and, where applicable, the original or a certified copy of other documents needed for recovery.

2. The applicant body may make a request for recovery only if:

- a) the claim and/or the instrument permitting its enforcement are not contested in the Member State, except where the second subparagraph of Article 78(2) is applied;
- b) it has, in its own Member State, applied the recovery procedure available to it on the

basis of the instrument referred to in paragraph 1, and the measures taken will not result in the payment in full of the claim.

3. The recovery request shall indicate:
  - a) the name, address and any other relevant information relating to the identification of the person concerned and/or to the third party holding his or her assets;
  - b) any information relevant for identifying the requested party;
  - c) the instrument permitting enforcement, issued in the Member State of the applicant party;
  - d) the nature and amount of the claim, including the principal, the interest and any other penalties, fines and costs due, indicated in the currencies of both parties' Member States;
  - e) the date of notification of the instrument to the addressee by the applicant party and/or the requested party;
  - f) the date from which and the period during which enforcement is possible under the laws in force in the Member State of the applicant party;
  - g) any other relevant information.
4. The request for recovery shall also contain a statement by the applicant party confirming that the conditions laid down in paragraph 2 have been fulfilled.
5. As soon as any relevant information relating to the matter which gave rise to the request for recovery comes to the knowledge of the applicant party, the latter shall forward it to the requested party.

#### Article 76

##### Instrument permitting enforcement of the recovery

1. The instrument permitting enforcement of recovery of the claim shall be directly recognised and treated automatically as an instrument permitting the enforcement of a claim of the requested party.
2. Notwithstanding paragraph 1, the instrument permitting enforcement of the claim may, where appropriate and in accordance with the provisions in force in the Member State of the requested body, be accepted, recognized, supplemented, or replaced by an instrument authorising enforcement in the territory of that Member State.

Within three months of the date of receipt of the request for recovery, the competent authorities shall endeavour to complete the formalities for such acceptance, recognition, supplementing or replacement, except where the provisions of the third subparagraph are applied. They may not *refuse to complete such formalities*, if the instrument permitting enforcement is properly drawn up. If the three-month deadline is exceeded, the requested party shall inform the applicant party of the reasons for the delay.

If any of these formalities should give rise to contestation concerning the claim and/or the instrument permitting enforcement issued by the applicant party, Article 78 shall apply.

Article 77  
Payment arrangements and deadlines

1. Claims shall be recovered in the currency of the Member State of the requested party. The requested party shall transfer the entire amount of the recovered claim to the applicant party.

2. Where the laws, regulations or administrative provisions in force in its own Member State so permit, and after consulting the applicant party, the requested party may allow the debtor time to pay or authorise payment by instalment. Any interest charged by the requested party in respect of such extra time to pay shall also be remitted to the applicant party.

From the date on which the instrument permitting enforcement is directly recognised or accepted, recognised, supplemented or replaced in accordance with Article 76, interest shall be charged for late payment under the laws, regulations and administrative provisions in force in the Member State of the requested party and ¶ remitted to the applicant party.

Article 78  
Contestation of the claim or of the instrument permitting enforcement of its recovery

1. If, in the course of the recovery procedure, the claim and/or the instrument permitting its enforcement issued in the Member State of the applicant party are contested by the party concerned, the action shall be brought by the latter before the competent body of the Member State of the applicant party in accordance with the laws in force *in that Member State*. The applicant party shall notify the requested party of this action. The requested party may also be notified of it by the party concerned.

2. As soon as the requested party has received the notification referred to in paragraph 1 either from the applicant party or from the party concerned, it shall suspend the enforcement procedure pending the decision of the body competent in the matter, unless a request to the contrary is made by the applicant party in accordance with the second subparagraph. Should the requested party deem it necessary, it may take precautionary measures to guarantee recovery in as far as the laws or regulations of its own Member State allow such action for similar claims.

Notwithstanding the first subparagraph ¶, the applicant party may, in accordance with the laws, regulations and administrative practices in force in its own Member State, request the requested party to recover a contested claim, provided that the laws, regulations and administrative practices in the requested party's Member State so permit. If the contestation is settled in favour of the debtor, the applicant party shall be liable to reimburse any sums recovered, together with any compensation due in accordance with the legislation in force in the requested party's Member State.

3. Where the contestation concerns enforcement measures taken in the Member State of the requested party, the action shall be brought before the competent body of that Member State in accordance with its laws and regulations.

4. Where the competent body before which the action is brought in accordance with paragraph 1 is a judicial or administrative tribunal, the decision of that tribunal, if favourable to the applicant party and permitting recovery of the claim in the Member State of the applicant party, shall constitute the "instrument permitting enforcement" and recovery of the claim shall proceed on the basis of that decision.

Article 79  
Limits applying to assistance

The applicant party shall not be obliged:

- a) to grant the assistance provided for in Articles 73 to 78 *of the implementing regulation* if recovery of the claim may, because of the situation of the debtor, create serious economic or social difficulties in the *debtor's* Member State, in as far as the laws, regulations or administrative practices in the Member State of the applicant party allow such action for similar national claims;
- b) to grant the assistance provided for in Articles 73 to 78 *of the implementing regulation*, if the initial request under Articles 73 to 75 *of the implementing regulation*, applies to claims more than five years old, counted from the time the instrument permitting enforcement is established in accordance with the laws, regulations or administrative practices of the Member State of the applicant party up to the date of the request. However, if the claim or instrument is contested, the time limit shall *start to run* from the moment that the applicant state establishes that the claim or the instrument may no longer be contested.

Article 80  
Precautionary measures

Upon reasoned request by the applicant party, the requested party shall take precautionary measures to ensure recovery of a claim in as far as the laws and regulations in force in the Member State of the requested party so permit.

For the purposes of implementing the above paragraph, the provisions and procedures laid down in Articles 73 to 75 and Article 77 *of the implementing Regulation* shall apply *mutatis mutandis*.

Article 81  
Costs

1. No enforcement costs are payable where the debt is recovered via the compensation method provided for in Articles 71 and 72 *of the implementing Regulation*.
2. The requested party shall also recover from the person concerned any costs linked to recovery pursuant to Articles 73 to 77 and Article 81 *of the implementing regulation*, and retain them, in accordance with the laws and regulations of that party's Member State applicable to similar claims.
3. The Member States shall waive all claims upon each other for reimbursement of costs arising from the mutual assistance afforded under *the basic Regulation* or *the implementing Regulation*.
4. Where recovery poses a specific problem or concerns a very large amount in costs, the requesting and requested parties may agree reimbursement arrangements specific to the *case* in question.
5. The competent authority of the applicant party's Member State shall remain liable to the competent authority of the requested party's Member State for any costs and losses incurred as a result of actions deemed to be unfounded as far as the substance of the claim or



the validity of the instrument issued by the applicant party is concerned.

## Title V

### Miscellaneous, transitional and final provisions

#### Article 82

##### Administrative checks and medical examination

1. Without prejudice to the provisions of Article 27, where a recipient of benefits as referred to in Chapters I, II and IV of Title III is staying or residing within the territory of a Member State other than that in which the debtor institution is located, the medical examination shall be carried out, at the request of the *debtor* institution, by the institution of the beneficiary's place of stay or residence as provided for in the legislation applied by *that* institution. In *such* case, the debtor institution shall be bound by the findings of the institution of the place of stay or residence.

If, by virtue of Article 82 of *the basic* Regulation, the institution of the place of stay or residence is called upon to perform a medical examination, it shall follow the procedures laid down by the legislation it applies. If no such procedures have been specified, it shall consult the debtor institution on the procedures to be followed.

The debtor institution shall reserve the right to have the beneficiary examined subsequently by a doctor of *its choice*. However, the beneficiary may be asked to return to the Member State of the debtor institution only if he or she is able to make the journey without prejudice to his/her health and the cost of travel and accommodation is paid for by the debtor institution.

2. Where a recipient of benefits as referred to in Chapters I, II and IV of Title III is staying or residing in the territory of a Member State other than that in which the debtor institution is located, the administrative check shall, at the request of the debtor institution, be performed by the institution of the beneficiary's place of stay or residence. The debtor institution shall inform the institution of the place of stay or residence of the points to be covered by the administrative check. If this information is not provided, the institution of the place of stay or residence shall undertake the check in accordance with its own legislation.

The institution of the place *of* stay or residence shall forward a report to the debtor institution that requested the check.

#### Article 83

##### Notifications

1. The Member States shall notify the || Commission of the details of the bodies defined in Article 1(m), (q) and (r) of *the basic* Regulation and *Article 1(2)(a) and (b) of the implementing* Regulation, and the institutions *designated in accordance with the implementing* Regulation.

2. The bodies specified in paragraph 1 shall be provided with an electronic identity in the form of an identification code and electronic address.

3. The Administrative Commission shall establish the *structure, content and*

*modalities*, including the common format and model, for notification of the details specified in paragraph 1.

4. Annex IV to *the implementing* Regulation gives details of the public data base containing the information specified in paragraph 1. ***The database shall be established and managed by the Commission. The Member States shall, however, be responsible for the input of their own national contact information into this database. Moreover, the Member States shall ensure the accuracy of the input of the national contact information required under paragraph 1.***

5. The Member States shall be responsible for keeping the information specified in paragraph 1 up to date.



#### Article 84 Information

1. The Administrative Commission shall prepare the information needed to ensure that the parties concerned are aware of their rights and the administrative formalities required to assert them. This information shall, where possible, be disseminated electronically via publication on line on sites accessible to the public. The Administrative Commission shall ensure that the information is regularly updated.

2. The Advisory Committee referred to in Article 75 of *the basic* Regulation may issue opinions and recommendations on improving the information and its dissemination.

3. The Member States shall ensure that the necessary information is made available to the persons covered by *the basic* Regulation in order to inform them of the changes introduced by *the basic* Regulation and by *the implementing* Regulation to enable them to assert their rights.

4. The competent authorities shall ensure that their institutions are aware of and apply all the Community provisions, legislative or otherwise, including the decisions of the Administrative Commission, in the areas covered by and within the terms of *the basic* Regulation and *the implementing* Regulation.

#### Article 85 Currency conversion

For the purposes of applying *the basic* Regulation and *the implementing* Regulation, the exchange rate between two currencies shall be the reference rate published by the European Central Bank.

#### Article 86 Statistics

The competent authorities shall compile statistics on the application of *the basic* Regulation and *the implementing* Regulation and forward them to the secretariat of the Administrative Commission. These data shall be collected and organised according to the plan and method

defined by the Administrative Commission. The Commission shall be responsible for disseminating the information.

#### *Article 87*

##### Amendment of the Annexes

Annexes I, II, III and IV to *the implementing* Regulation and Annexes I, VI, VII, VIII and IX of *the basic* Regulation may be amended by Commission Regulation at the request of the Member State(s) concerned or their competent authorities, subject to the unanimous agreement of the Administrative Commission.

#### *Article 88*

##### Transitional provisions

The provisions of Article 87 of *the basic* Regulation shall apply to the situations covered by *the implementing* Regulation.

#### *Article 89*

##### Repeal

1. || Regulation (EEC) No 574/72 is repealed with effect from... \* ||

However, Regulation (EEC) No 574/72 shall remain in force and 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 grounds of their nationality<sup>1</sup> until such time as the said Regulation is repealed or amended;
  - 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 Greenland<sup>2</sup>, until such time as the said Regulation is repealed or amended;
  - c) the Agreement on the European Economic Area<sup>3</sup>, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons<sup>4</sup> and other agreements containing a reference to Regulation (EEC) No 574/72, until such time as the said agreements are amended on the basis of this Regulation.
2. In Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community<sup>5</sup> the references to Regulation (EEC) No 574/72 shall be understood as referring to this Regulation.

#### *Article 90*

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\* The date of *entry into force* of this Regulation.

<sup>1</sup> OJ L 124, 20.5.2003, p. 1.

<sup>2</sup> OJ L 160, 20.6.1985, p. 7.

<sup>3</sup> OJ L 1 of 3.1.1994, p. 1.

<sup>4</sup> OJ L 114, 30.4.2002, p. 6.

<sup>5</sup> OJ L 209, 25.7.1998, p. 46.

### Final provisions

This Regulation shall enter into force six months after the day following that of its publication in the Official Journal of the European Union.

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

Done at ||,

For the European Parliament  
The President

For the Council  
The President

*ANNEX I*

Implementing provisions for bilateral agreements remaining in force and new implementing provisions for bilateral agreements

(Article 8(1) and Article 9(2))

## ANNEX II

### Special schemes for civil servants

(Articles 32 and 41)

A. Special schemes for civil servants not covered by the provisions of Title III, Chapter 1 of Regulation (EC) No 883/2004 concerning benefits in kind

1. Germany

Versorgungssystem für Beamte (sickness scheme for civil servants)

2. Spain

Mutualismo administrativo (special scheme for civil servants, the armed forces and court administrative officials)

B. Special schemes for civil servants not covered by the provisions of Title III, Chapter 2 of Regulation (EC) No 883/2004 concerning benefits in kind

1. Germany

Unfallfürsorge für Beamte (accident scheme for civil servants)

*ANNEX III*

Member States reimbursing the cost of benefits on a lump-sum basis

(Article 62(1))

ANNEX IV

Competent authorities and institutions, institutions of the place of residence and stay, access points, institutions and bodies designated by the competent authorities

(Article 83(4))