



COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(1998) 779 final

98/0360 (CNS)

Proposal for a
COUNCIL REGULATION (EC)
on coordination of social security systems

(presented by the Commission)

Explanatory Memorandum

GENERAL COMMENTS

Community legislation on social security is a *sine qua non* for exercising the right to free movement of persons. Only by ensuring that persons moving within the Community do not suffer disadvantages in their social security rights will this freedom guaranteed by the Treaty be of real and tangible value. However, it is quite clear that the existing secondary legislation on social security does not, in any sense, aim to replace the different national social security systems; those systems are a result of longstanding traditions, deeply rooted in national cultures and preferences. Therefore, this Community legislation contains no harmonisation measures. There is, indeed, no need for any such harmonisation; the necessary guarantees for free movement of persons can be achieved adequately and efficiently by other means. This does not mean, however, that a Member State's regulations on social security are such as to exclude direct application of the Treaty provisions other than those relating to the free movement of persons.

Given the aim of free movement of persons, the appropriate and effective way of achieving this goal is through coordination of the national systems. In other words, it is up to every Member State to decide whom to insure and how to insure; the Member State must also decide what benefits are given and under what conditions. Therefore, the existing Community coordination does not introduce new types of benefits nor does it replace national rules. What it does is establish certain common rules and principles to ensure that application of the different national systems does not adversely affect persons exercising their right to freedom of movement of persons. In simple terms, the objective of the Community rules is to ensure that a person who has exercised his/her freedom to move within the Community is not placed in a worse position than a person who has always resided and worked in a single Member State.

Community provisions on the coordination of social security provisions date from 1971, when Council Regulation 1408/71¹ was adopted. Since that date the Regulation has been amended and updated on numerous occasions; it has had to adapt to take into account not only developments at Community level, including interpretations of the Court of Justice of the European Communities, but also changes in legislation at national level. Such factors play their part in making the Community coordination rules complex and lengthy. The need for a general overhaul of the legislation was recognised as early as 1992 when the Edinburgh Council appealed for simplification of the coordination rules: in its 1997 Communication: "An Action Plan for Free Movement of Workers"², the Commission recognised that modernisation and simplification of the rules on the coordination of social security schemes were essential to make them "more efficient and user-friendly." That Communication undertook to present before the end of 1998 a proposal to reform and simplify Regulation No 1408/71. Finally, the rules on social security coordination were

¹ Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons, and to members of their families moving within the Community.

² COM(97) 586 final.

chosen as part of the second phase of the SLIM (Simpler Legislation for the Single Market) exercise:

This proposal represents, therefore, the fruit of an exercise which has been the subject of long and intense reflection:

Existing Community coordination is in line with the aim of one of the freedoms in the internal market, i.e. free movement of persons. However, national regulations relating to social security still fall under the matters covered when it comes to applying the EC Treaty as a whole including free movement of goods and the freedom to provide services.

SIMPLIFICATION

Before examining the proposal it makes sense to summarise briefly the main differences between it and Regulation No 1408/71.

As was indicated earlier, the main driving force behind revision of the coordination rules, as established under Regulation 1408/71, was a desire to make the legislation less complex and more manageable – in other words the intention was not to completely rewrite a system which had worked relatively well for more than 25 years, but rather to simplify things. Thus, the first thing to be said about the differences between the proposal and Regulation No 1408/71 is that the text of the proposal is considerably shorter – reduced by two-thirds as compared to the Regulation. However, it is not just a question of slimming down. An immense effort has been undertaken to simplify and streamline concepts, rules and procedures. Nevertheless, in terms of its guiding principles and essential elements, the coordination system remains the same.

There are three major changes which will lead to new rights and new obligations, viz.:

- The proposed Regulation will apply to all persons who are covered by the social security legislation of a Member State. The term “person” replaces the current enumeration of “employed and self-employed persons”, “members of their family” and “refugees”. This means that the coordination system will cover persons who are not, as such, part of the “active” population but who, for certain areas, are affiliated to a social security scheme and who may exercise their right to free movement (students). Furthermore, adoption of that term means that the Community provisions will cover third-country nationals who are affiliated to a social security scheme in any Member State. In this latter regard it is to be underlined, on the one hand, that the third-country national will be someone covered under a national social security scheme – the right of such coverage, however, remains the domain and jurisdiction of the national system. On the other hand, the provision would in no way give to a third-country national the right of free movement within the Community; all that is provided for is that should a third-country national move to another Member State, that person would enjoy the rights of the proposed Regulation.

It should be noted that the Commission has already presented proposals on these two matters³. It should also be noted that Article 8a was added as a legal basis to take account of such extensions to the scope of Regulation No 1408/71.

- The proposal extends the list of social security branches subject to the coordination arrangements to include new forms of benefit, such as pre-retirement benefits. Generally speaking, pre-retirement benefits are benefits provided from a specified age to workers made redundant or voluntarily leaving their job, the aim being to encourage them not to return to the job market. This extension has also been the subject of a proposal aimed at amending Regulation No 1408/71⁴.
- The proposal changes a number of provisions regarding unemployment without, however, changing the basic structure of the existing system. At present, an unemployed person going to another Member State to look for a job there is entitled to continued payment of his unemployment benefits by the competent State for a period of three months from the date of his departure. This entitlement is subject to certain conditions. The person involved must have been registered with the employment services of the competent Member State for at least four weeks after becoming unemployed and he must register with the employment services of the State in which he is staying within seven days of the date on which he left the competent State. These obligations are retained in the proposal. However, the duration of entitlement to benefits has been extended to six months.

It is estimated that this period of time is more in keeping with labour market reality. Furthermore, such a period is consistent with the approach adopted in the recent Commission proposal amending Directive 68/360⁵ pursuant to which job-seekers have a right of residence in a Member State for a period of six months. This proposal is, for its part, based on the case law of the Court of Justice.

The other new feature in the proposal is that an unemployed person will have the right to receive - under the same conditions as nationals - benefits other than cash benefits provided by a Member State and whose purpose is to facilitate access to work. Adherence to the conditions stipulated by the Member State providing such benefits is a condition for retention of the cash benefits from the competent State.

THE SCOPE OF COORDINATION

Given that the core objective of the proposed regulation is to protect persons exercising their right to free movement within the Community, the essential elements of the Community provisions are thus intended to:

- ◆ lay down who is covered by the coordination rules – the persons covered;

³ As regards extending the scope of Regulation No 1408/71 to students, see proposal COM(91) 528 final, and as regards nationals of third countries see COM(97) 561.

⁴ COM(95) 735 final.

⁵ Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families: OJ L 257, 19.10.1968; for proposal see COM(1998) 394 final.

- ◆ specify which matters are covered by the rules – the matters covered;
- ◆ clarify what legislation applies – conflict of laws.

Persons covered

As stated earlier, the proposed Regulation will apply to all persons who are or have been covered by the social security legislation of any of the Member States. This is in line with the principle underlying the aim of the legislation, which is to protect the social security rights of people making use of free movement. Since this right is not limited to the active population, it seems appropriate that if a person has an acquired right under a social security scheme in a Member State, the said right should not be lost when that person goes to another Member State.

Matters covered

The proposed Community provisions apply to all the classic branches of social security, as defined by ILO Convention No 102 (sickness and maternity, accidents at work, occupational diseases, invalidity benefits, death grants, unemployment benefits, family benefits). The list, however, is not exhaustive and the Community provisions can be applied to any new forms of benefit that may arise. It should be noted that it does not matter whether or not the benefits are financed by contributions or other means, nor whether they are paid by employers, social insurance institutions or by the public administration.

Conflict of laws

In order to avail of the right to free movement it is essential for the person involved to know in which country he/she will be insured. The proposed Community provisions provide detailed rules which determine in every situation which country's national legislation applies. These detailed rules are based on two simple principles:

- ◆ The insured person is subject to the legislation of only one Member State at a time.
- ◆ The insured person is insured in the Member State where he/she pursues a professional activity (*lex loci laboris*). However, in the case of insured persons who are no longer active or who do not pursue a professional activity, the applicable law is that of the State of residence.

Special rules regarding the applicable legislation have been drawn up for posted workers and for persons working in more than one Member State.

THE PRINCIPLES OF COORDINATION

It has been stressed that the Community provisions, as they already exist and as proposed here, are simply coordination rules, establishing common rules and principles to ensure that the different national systems do not adversely affect those exercising their right to move and stay within the Community. The common rules and principles supply solutions to problems which could arise given the differences in national systems, particularly as regards conditions of entitlement to benefits and residence rules.

The bedrock of coordination is the principle of equality, i.e. that a person residing in the territory of one Member State shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that Member State. That principle is reinforced by three necessary elements so that equality operates in practice:

- ◆ assimilation of the facts;
- ◆ aggregation of periods;
- ◆ retention of rights.

Assimilation of the facts

Assimilation (i.e. equivalence) of the facts basically means that situations which occur in other Member States are to be treated as though they took place in the Member State whose legislation applies.

Aggrégation of periods

Aggregation of periods (a principle specifically mentioned in Article 51 of the Treaty) means that periods of insurance, employment or residence completed under the legislation of one Member State are taken into account, where necessary, for entitlement to benefits under the legislation of another Member State.

Retention of rights

This principle ensures, again in accordance with Article 51 of the Treaty, that benefits can be paid to persons residing in the territory of any Member State; it is sometimes also referred to as the right to export benefits, in that benefits are paid by the relevant Member State independently of the residence of the person affiliated.

JUSTIFICATION OF THE PROPOSAL FROM THE SUBSIDIARITY POINT OF VIEW

The proposal is in line with the two principles underlying subsidiarity as anchored in Article 3b, i.e. necessity and proportionality.

As stressed earlier, Community action in the form of coordination measures is necessary to guarantee that the right to free movement laid down in the Treaty can be exercised effectively and wholly. Without such coordination, freedom of movement would run the risk of being inoperable, since people would be unlikely to make use of this right if it meant, in essence, losing social security rights already acquired in another Member State.

Legislative action is clearly necessary because it is vital, for coordination purposes, that common rules and principles be established to allow those concerned - both administrations and affiliated members - to know their respective rights and obligations. To this end, a regulation is the most appropriate form of legislative instrument since it accords rights to individuals directly. However, it should be stressed that the proposed Regulation is not a harmonisation measure and does not go beyond what is necessary to make for effective coordination. The proposal is basically aimed at simplifying the existing arrangements.

APPLICATION IN THE EUROPEAN ECONOMIC AREA COUNTRIES

The free movement of persons is one of the aims and principles of the Agreement on the European Economic Area (EEA) which came into force on 1 January 1994. In Chapter 1 of Section Three - regarding freedom of movement of persons, services and capital - Articles 28, 29 and 30 are devoted to free movement for employed persons and self-employed persons. More particularly, Article 29 is based on the principles set out in Article 51 of the Treaty concerning social security for people moving within the Community. Consequently, this proposal for a regulation must - if adopted - be applied in the EEA member countries.

SPECIFIC COMMENTS ON THE ARTICLES

General Provisions

Article 1

Article 1 deals with the persons covered by the proposed legislation. The basis of its coverage is anyone who is insured in accordance with the legislation of a Member State. Thus, a third-country national will be covered by this legislation provided he is insured under the relevant scheme of a Member State.

Article 2

This article deals with the matters covered by the proposed Regulation: all the classic branches of social security as defined under ILO Convention No 102 are covered. However, the list is not exhaustive and is intended to be flexible enough to cover new forms of social security schemes as they arise. The list, for example, now covers one new form of social security - pre-retirement benefits.

Article 3

Article 3 sets out one of the fundamental principles underpinning the proposed legislation - equality of treatment. This has a twofold meaning in this context: (i) a person residing in one Member State shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as a national of that State, and (ii) assimilation of the facts is guaranteed.

Article 4

Article 4 sets out the other fundamental principle - what is known as "aggregation of periods", i.e. that periods of insurance, employment or residence completed under the legislation of one Member State are taken into account in all other Member States.

Article 5

This article sets out the general principle of the retention of a right even when residing in another Member State.

Article 6

This article governs the relationship between the proposed Regulation and any bilateral or multilateral conventions between Member States concerning social security – the proposed legislation replaces any such conventions.

Article 7

This article defines certain major terms used in the proposed Regulation. Of special note are the following definitions:

- ◆ The term 'insured person' designates any person who fulfils the conditions for benefits as required under the legislation of a Member State.
- ◆ The term 'member of the family' under this proposal means the persons who possess rights derived from the person covered by a social security system.
- ◆ The term 'pre-retirement benefits', which covers benefits awarded to workers ceasing or reducing a professional activity at a specified age and before receipt of an old-age pension.

Article 8

Article 8 sets out the rules determining the applicable legislation. Essentially, the general rules are, firstly, that persons are subject to the legislation of one Member State only; secondly, that a person pursuing a professional activity in a Member State is subject to the legislation of that State (*lex loci laboris*); and, lastly, that persons not pursuing a professional activity are subject to the legislation of the Member State where they reside. It is to be noted that persons who have the right to a social security benefit by virtue of pursuit of a professional activity (sickness/unemployment benefits) and who no longer pursue such activity, are nevertheless considered to be continuing to pursue it. This is to distinguish the temporarily inactive from those who are not active or who have ceased all activity.

Article 9

This article deals with the case of a person employed in one Member State but posted to another Member State; in such a case, the posted person remains subject to the legislation of the first Member State provided the anticipated period of posting does not exceed 12 months.

Article 10

Article 10 governs the situation where a person pursues activities in two or more Member States. Here the basic rule is that the person is subject to the legislation of the State of residence provided the activities pursued there are substantial. Otherwise, the applicable legislation is that of the Member State where the employer is situated.

Article 11

This article clarifies the fact that voluntary schemes are not covered by the rules on the applicable legislation set out in the foregoing articles.

Article 12

This article confirms that the rules on the applicable legislation apply equally to diplomatic staff, with the exception that persons having the nationality of the State of posting can opt for the legislation of that State.

Article 13

This article gives Member States the possibility to derogate, in certain specific cases and in the interests of the person involved, from the conflict rules set out by the proposed Regulation.

Special provisions concerning the various categories of benefit

Sickness and maternity

Article 14

This article deals generally with the situation where a person affiliated for sickness or maternity benefits in one Member State resides in another Member State. The basic rules are that the person and the members of his family are entitled to benefits in kind from the Member State of residence on behalf of the competent Member State (the State of affiliation) and to cash benefits from the competent Member State in accordance with its legislation.

Article 15

This article concerns the persons referred to under Article 14 who, for whatever reason, are staying in the competent State; it is proposed that they shall have an automatic right to benefits in kind in the said State.

Article 16

This article governs the situation of an insured person who is staying in a Member State, other than the Member State where he is insured and other than where he resides: in such a situation, the right is to urgent benefits in kind from the Member State where he is staying according to its legislation and at the expense of the competent Member State (where he is affiliated). Cash benefits are paid by the Member State of affiliation.

Article 17

Article 17 provides for extended rights for certain persons staying outside the competent Member State. Thus, those pursuing a professional activity, students, unemployed persons seeking work, and pensioners, as well as their spouses and dependent children are entitled to benefits in kind from the Member State where they are staying as though they were residents. Such benefits are charged to the competent Member State. Cash benefits are provided by the competent Member State (where affiliated).

Article 18

This article provides that persons may go to a Member State other than the competent State for treatment, subject to their having authorisation, but does not affect the

provisions of the EC Treaty regarding the free movement of goods and the freedom to provide services.

Article 19

This article deals with the calculation of cash benefits. Where the applicable legislation provides that cash benefits are to be calculated by reference to average earnings or average contribution or standard earnings, such sums are to be determined exclusively by reference to earnings or contributions under the applicable legislation.

Article 20

Article 20 provides that pensioners receive benefits in kind in accordance with the legislation of the Member State where they reside. The costs of such benefits are divided between all of the Member States paying a pension, proportionally to the periods completed in those Member States and to the extent that the person involved would have had the right to such benefits had he resided in the territory of each of those Member States.

Article 21

This article deals with the rights of a pensioner and the members of his family to cash benefits – these rights are awarded in accordance with the provisions of this proposed regulation concerning invalidity. Thus, each of the Member States in which the pensioner was affiliated contributes to the costs of the cash benefits proportionally to the periods completed.

Article 22

Article 22 provides that a pension claimant and the members of his family are entitled to cash benefits and benefits in kind in accordance with Articles 20 and 21.

Article 23

This article provides that where, in the Member State of residence, members of the family have an independent right to benefits in kind, that right is to be subordinate to the rights derived from the insured person. Thus, the benefits are given by the Member State of residence on behalf of the Member State where the person is insured by virtue of a professional activity.

Article 24

This article deals with the special case of substantial benefits in kind.

Article 25

This article contains special rules for aggregating periods for seasonal workers.

Article 26

Article 26 deals with reimbursement between competent institutions. The basic rule is that benefits in kind are fully refunded. An Implementing Regulation will lay down the modalities. Such reimbursement will be on the basis of actual expenditure.

Invalidity

Article 27

This article states that invalidity benefits are to be paid in accordance with the rules on old-age pensions. This essentially means that where a person has been subject to the legislation of two or more Member States, benefits will be paid in accordance with those legislations proportionally to the periods completed under each legislation.

Article 28

Article 28 provides that, for the purposes of entitlement to invalidity benefits, periods for which the person was entitled to incapacity benefit under the legislation of another Member State shall be taken into account.

Article 29

This article concerns aggravation of an invalidity for which the person involved receives benefits under the legislations of two or more States. In this instance, the benefits corresponding to the new degree of invalidity are provided by the same institutions and in the same proportions if the person has not been subject to the legislation of other States after having been granted the benefits. However, if after having been granted the benefits under two or more legislations, the person was subject to the legislation of other States, the benefits corresponding to the new degree of invalidity will be provided by all the institutions concerned proportionally to the periods completed under each of the said legislations.

Article 30

This article deals with determining which is the responsible institution when invalidity benefits are resumed after suspension or when they are renewed after withdrawal.

Article 31

This article concerns invalidity benefits awarded under legislation which provides for the conversion of such benefits into old-age benefits.

Old-age and survivor's pensions

Article 32

Article 32(1) states the basic rule in relation to old-age pensions, namely that every Member State where a person was insured pays an old-age pension when the insured person reaches pension age. Article 31(2) provides that if a pensioner does not, at any given time, fulfil all the conditions laid down by all the Member States, those Member States where the conditions are fulfilled must take into account the periods completed under all the legislations. Article 31(4) provides for a recalculation to be carried out each time the conditions of a legislation are fulfilled.

Article 33

This article sets out the conditions for taking account of periods of insurance or residence completed under various legislations. Essentially, the competent institution has to take

account of all periods completed under the legislation of another Member State, whether under a general or a special scheme.

Article 34

Article 34 deals with the award of benefits and covers two situations. The first situation is where the entitlement to a benefit is satisfied without having to aggregate periods of insurance from other Member States. In such cases, the competent institution calculates the amount of the pension due (a) under the provisions of its own legislation and then (b) proportionally to the periods completed under other legislations.

The second situation is where the entitlement can only be satisfied by the aggregation of periods of insurance. In this situation, the competent institution has to do two calculations – it calculates the theoretical amount of the benefit to which a person would be entitled if all periods had been completed under the national legislation, and then it calculates the actual amount by reducing the theoretical amount proportionally to the periods completed under other legislations.

In both situations it is provided that once the double calculation has been done, the competent institution should then pay the higher sum.

Article 35

This article sets out the general provisions applicable in the case of overlapping of benefits of the same or different kind. The basic principle is that anti-overlapping rules under the legislation of one Member State may be invoked even where the relevant benefits were acquired in another Member State.

Article 36

Article 36 lays down special provisions applicable in the case of overlapping of benefits of the same kind acquired under the legislation of two or more Member States. Here the basic rule is that such rules are not applicable to a pro-rata calculation but can be applied to a benefit wholly acquired under national legislation if it is a benefit acquired independently of periods of insurance or residence or it is a benefit determined on the basis of a credited period.

Article 37

This article deals with special provisions in the case of overlapping of one or more national benefits with one or more benefits of a different kind when two or more Member States are concerned. The basic rule is to avoid a negative impact on the insured person. Thus, in the case of a wholly “national” calculation, the overall reduction is divided by the number of relevant benefits. In the case of a pro-rata calculation, the benefits subject to the overlapping rules shall be taken into account in line with the relative proportion(s) of the periods of insurance/residence completed under the various legislations.

Article 38

Article 38 lays down additional provisions for calculating benefits. Thus, when calculating the relevant period, the rule is that where the total duration of the periods completed in all Member States exceeds a maximum period required under the legislation of the competent

State, that State takes into account only the maximum period. As for calculating the amount, the competent Member State uses its own basis of calculation in respect of the periods completed under the legislation of the Member States.

Article 39

This article deals with the award of a supplement where the total of benefits due under the legislations of the various Member States does not amount to the minimum laid down by the legislation of the Member State where the insured person resides.

Article 40

Article 40 provides that any increase in benefits due to the cost of living must be applied directly to the benefit without any recalculation. On the other hand, any change in the method of calculating benefits does require recalculation.

Accidents at work/occupational diseases

Article 41

Article 41 provides that the rules on sickness and maternity benefits apply *mutatis mutandis* to benefits for accidents at work or occupational diseases. A special provision is made as regards an insured person staying in a Member State other than the competent Member State – such a person is entitled to benefits in kind from the Member State where he is staying in accordance with the legislation and at the expense of the competent Member State.

Article 42

This article deals with the situation where the insured person has been exposed to the same risk in several Member States: in such a situation, the principle is that the benefits are awarded in accordance with the legislation of the last State where he pursued the relevant activity.

Article 43

Article 43 deals with the calculation of cash benefits: when a legislation provides that the calculation of cash benefits is based on average earnings or on standard earnings, it shall exclusively take account of the average earnings or standard earnings for periods completed under its legislation.

Article 44

This article deals with the cost of transporting the victim of an accident at work or occupational disease to his place of residence.

Article 45

Article 45 covers aggravation of an occupational disease. If, since the initial award, the person involved has not undertaken in another Member State an activity likely to cause such a disease, then the competent Member State must cover the aggravation. If, on the other hand, the person had undertaken such activity in another Member State, then the first Member State meets the costs of the benefit without taking into account the

aggravation and the second Member State pays a supplement equal to the difference between the benefits due after the aggravation and those due prior thereto.

Articles 46 and 47

These articles lay down a number of special rules to deal with the particular features of certain legislations.

Unemployment benefits

Article 48

This article contains specific rules on aggregation regarding unemployment. Basically, it provides for mixed aggregation, i.e. it allows periods of unemployment completed in one Member State to be aggregated with periods of residence or insurance completed in another Member State.

Article 49

This article lays down the rules for calculating unemployment benefits. It states that if calculation of benefits is based on the previous wage or salary, this must be the last wage or salary received by the person involved in the competent Member State. However, if the person worked in the said Member State for less than four weeks before becoming unemployed, the earnings are calculated - for the purposes of paying benefits - on the basis of the usual earnings in that Member State for an equivalent job last performed in another Member State.

Article 50

This article concerns unemployed persons going to a Member State other than the competent one, and it lays down in particular the conditions and limits for retention of unemployment benefits. There are (i) that the person involved remains available to the competent Member State's employment services for at least four weeks after becoming unemployed, and (ii) that within seven days of his departure he registers with the employment services in the country in which he is looking for a job. The payment of unemployment benefits is limited to a period of six months starting from the date on which the person ceased to be available to the competent State's employment services.

The new element in the proposal is that an unemployed person will have the right, in the State to which he has gone in order to seek work, to receive - under the same conditions as its own nationals - benefits other than cash benefits whose purpose is to facilitate access to work.

Article 51

This article mainly deals with unemployed frontier workers; they have the right to choose between making themselves available to the employment services of the State of last employment or the employment services of the State of residence. However, in keeping with the general rule, the applicable legislation is that of the State of last employment.

Pre-retirement benefits

Article 52

This article sets out the aggregation rules in respect of pre-retirement benefits which are the normal ones - that periods completed under the legislation of other Member States are taken into account by the competent Member State.

Family benefits, benefits for dependent children and for orphans

Article 53

This article sets out the rules in relation to overlapping of rights to the relevant benefits. Where concurrent rights to family benefits exist in several Member States for the same child (for example, there is a right in Member State A because one of the parents pursues a professional activity there and a right in Member State B by reason of the residence of the other parent), it is the Member State whose legislation gives the highest amount that pays. The costs are then divided by the number of States concerned, limited to the amount defined by each State's legislation.

Article 54

Article 54 provides that family benefits are paid to the person actually maintaining the family members.

Special Benefits

Article 55

This article deals with certain special benefits which often simultaneously form part of the social security system and the social assistance scheme because of their special nature (non-contributory, in kind and either linked to a particular economic and social context or to special protection for disabled persons). These benefits are an exception to the residence rule - they cannot be exported, but periods of residence in another Member State must be taken into account.

Administrative Commission for the Coordination of Social Security Systems

Articles 56 and 57

These two articles deal with the composition and tasks of the Administrative Commission for the Coordination of Social Security Systems. The Commission, composed of Member State representatives, will (i) deal principally with all administrative questions and questions of interpretation arising from this proposed legislation and (ii) develop coordination between Member States in the social security field.

Article 58

This article deals with the tasks of the Technical Commission on Data-Processing, a sub-committee of the Administrative Commission.

Miscellaneous provisions

Articles 59 to 69

These articles are all of a technical or formal nature, viz.:

- ◆ Article 59 deals with cooperation between the competent authorities.
- ◆ Article 60 deals with the protection of personal data.
- ◆ Article 61 deals with electronic data-processing.
- ◆ Article 62 concerns the funding of certain activities, in particular those aimed at improving the flow of information to citizens and to players in the social security field.
- ◆ Article 63 extends tax exemptions or reductions accorded by one Member State to similar documents required to be produced from another Member State.
- ◆ Article 64 deals with the admissibility of claims, declarations or appeals submitted in a Member State other than the competent State.
- ◆ Article 65 provides that medical examinations required under the legislation of one Member State may be carried out in another Member State.
- ◆ Article 66 deals with the transfers from one Member State to another of sums of money due in accordance with the proposed regulation.
- ◆ Article 67 – no comment.
- ◆ Article 68 deals with collection of contributions and recovery of benefits provided but not due.
- ◆ Article 69 deals with the rights of institutions against liable third parties.

Transitional and final provisions

Article 70

This article concerns transitional provisions governing application of the Regulation. It does not establish any rights in respect of periods prior to its date of application; however, rights being acquired - periods of insurance, employment or residence completed under the legislation of a Member State prior to its application - are taken into consideration to determine the rights acquired pursuant to the Regulation.

It should be noted that pursuant to the Regulation it is possible that a person may be subject to the legislation of a Member State other than the one to whose legislation he is

subject pursuant to Regulation No 1408/71. This would be the case, for example, for unemployed frontier workers who, pursuant to Regulation 1408/71, are subject to the legislation of the State of residence, whereas pursuant to this proposal they are subject to the legislation of the State of last employment. The rule is that such persons will not be subject to the legislation of such other Member State unless they make a corresponding request to the competent institution pursuant to Regulation No 1408/71.

Article 71

This article announces an Implementing Regulation which will enter into force at the same time as this Regulation. It should be noted that this approach is comparable to that of Regulation No 1408/71, which was also accompanied by an Implementing Regulation⁶ dealing with the administrative procedures and other practical arrangements under the coordination system set up by Regulation No 1408/71.

Articles 72 and 73

Article 72 concerns the date on which the Regulation enters into force, while Article 73 declares Regulations Nos 1408/71 and 574/72 to be repealed.

⁶ 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, to self-employed persons and to members of their families moving within the Community.

**PROPOSAL FOR A
COUNCIL REGULATION (EC)
on coordination of social security systems**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 8a, 51 and 235 thereof;

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

Having regard to the assent of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

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

Whereas, due to the large differences existing between national legislations in terms of the persons covered, it is preferable to lay down the principle that the Regulation applies to all persons who are or have been subject to the social security legislation of a Member State;

Whereas it is necessary to respect the special characteristics of national social security legislations and to draw up only a system of coordination;

Whereas it is necessary, within the framework of such coordination, to guarantee within the Community equality of treatment under the various national legislations to the persons involved;

Whereas the coordination rules must guarantee that persons moving within the Community and their dependants and their survivors retain the rights and the advantages acquired and in the course of being acquired;

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

Whereas, within the Community, it is not in principle justified to make social security rights dependent on the place of residence of the person involved, nevertheless, in specific cases, in particular as regards special benefits linked to the economic and social context of the person involved, the place of residence could be taken into account;

Whereas it is necessary to subject persons moving within the Community to the social security scheme of only one single Member State in order to avoid overlapping of national legislations applicable and the complications which could result therefrom;

Whereas, with a view to guaranteeing the equality of treatment of all persons occupied in the territory of a Member State as effectively as possible, it is appropriate to determine as the legislation applicable, as a general rule, that of the Member State in which the person involved pursues his activity as an employed or self-employed person;

Whereas, in specific situations which justify other criteria of applicability, it is necessary to derogate from this general rule;

Whereas, in the field of sickness and maternity benefits, persons living or staying in a Member State other than the competent Member State should be afforded protection;

Whereas the specific position of pension claimants and pensioners and the members of their families makes it necessary to have provisions governing sickness insurance adapted to this situation;

Whereas for invalidity benefits a system of coordination should be drawn up which respects the specific characteristics of national legislations, in particular as regards recognition of invalidity and aggravation thereof;

Whereas it is necessary to devise a system for the award of old-age benefits and survivors' benefits where the person involved has been subject to the legislation of one or more Member States;

Whereas there is a need to determine the amount of a pension calculated in accordance with the method used for aggregation and pro-rata calculation and guaranteed by Community law where the application of national legislation, including rules concerning reduction, suspension or withdrawal, is less favourable than the aforementioned method;

Whereas, to protect migrant workers and their survivors against excessively stringent application of the national rules concerning reduction, suspension or withdrawal, it is necessary to include provisions strictly governing the application of such rules;

Whereas, in respect of benefits for accidents at work and occupational diseases, rules should be laid down, for the purpose of affording protection, covering the situation of persons residing or staying in a Member State other than the competent Member State;

Whereas it is necessary to include death grants in sickness benefits in kind;

Whereas, in order to permit mobility of persons under improved conditions, it is necessary to ensure closer coordination between the unemployment insurance schemes and the unemployment assistance schemes of all the Member States;

Whereas it is therefore particularly appropriate, in order to facilitate search for employment in the various Member States, to grant to an unemployed worker, within precise limits, the unemployment benefits provided for by the legislation of the Member State to which he was last subject;

Whereas, in order to avoid unwarranted loss of benefits, there is a need to lay down specific coordination rules for pre-retirement benefits;

Whereas, in order to avoid unwarranted overlapping of benefits, there is a need to lay down rules of priority in the case of overlapping of rights to family benefits pursuant to the legislation of the competent State and pursuant to the legislation of the country of residence of the members of the family;

Whereas it is necessary to establish an Administrative Commission consisting of a government representative from each of the Member States, charged in particular with dealing with all administrative questions or questions of interpretation arising from the provisions of this Regulation, and with promoting further cooperation between the Member States;

Whereas the development and use of telematic services for the exchange of information has been found to require the creation of a Technical Commission, under the aegis of the Administrative Commission on Social Security for Migrant Workers, with specific responsibilities in the field of data-processing;

Whereas the use of telematic services for exchanging data between institutions requires provisions guaranteeing that the documents exchanged by electronic means are accepted as equivalent to paper documents;

Whereas such exchanges are to be carried out in accordance with the Community provisions on the protection of natural persons with regard to the processing of personal data;

Whereas it is necessary to lay down special provisions which correspond to the special characteristics of the national legislations in order to facilitate the application of the rules of coordination;

Whereas, in accordance with the call for simplification made at the Edinburgh Council of December 1992 and in the interests of transparency and readability, it is appropriate to simplify the coordination rules;

Whereas it is necessary to repeal Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community⁷ by introducing a new Regulation;

⁷ OJ L 149, 5.7.1971, p. 2.

Whereas this is in accordance with the provisions of the third paragraph of Article 3b of the Treaty;

HAS ADOPTED THIS REGULATION:

TITLE 1
GENERAL PROVISIONS

Article 1

Persons covered

This Regulation shall apply to persons who are or have been subject to the social security legislation of one or more Member States, as well as to the members of their family and to their survivors.

Article 2

Matters covered

1. This Regulation shall apply to all social security legislations concerning the following in particular:

- (a) sickness;
- (b) maternity;
- (c) invalidity;
- (d) old age;
- (e) accidents at work and occupational diseases;
- (f) survival;
- (g) death;
- (h) unemployment;
- (i) pre-retirement;
- (j) the family.

2. This Regulation shall apply to general and special social security schemes, whether contributory or non-contributory, and to schemes relating to the obligations of an employer or shipowner.

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

4. This Regulation shall not apply to social assistance.

Article 3

Equality of treatment

1. Subject to the special provisions contained in this Regulation, persons residing in the territory of one of the Member States and to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals thereof.
2. Any Member State whose laws, regulations or administrative provisions attribute legal effects to the occurrence of certain facts or events shall, to the extent necessary, take account of the same facts or events occurring in any other Member State as though they had taken place in national territory.
3. A benefit accorded under the legislation of a Member State shall, for application of the legislation of another Member State, be considered to be a benefit accorded under the legislation of that latter Member State.

Article 4

Aggregation of periods

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

Article 5

Waiving of residence rules

Subject to the special provisions contained in this Regulation, a benefit due under the legislation of one or more Member States or under this Regulation may not be refused or subjected to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary resides in the territory of a Member State other than that in which the institution responsible for providing benefits is located.

Article 6

Relations between this Regulation and other coordination instruments

This Regulation shall replace any social security convention falling under its scope.

Article 7

Definitions

For the purposes of applying of this Regulation:

(a) "activity as an employed person" means any activity considered to be such for application of the social security legislation of the Member State in whose territory such activity is pursued;

(b) "activity as a self-employed person" means any activity considered to be such for application of the social security legislation of the Member State in whose territory such activity is pursued;

(c) "seasonal worker" means any person who goes to the territory of a Member State other than the one in which he resides to do work there of a seasonal nature on behalf of an undertaking or an employer of that State for a period which may on no account exceed eight months if he stays in the territory of the said State for the duration of his work; work of a seasonal nature shall be taken to mean work which is dependent on the succession of the seasons and automatically recurs each year;

(d) "insured person" means any person satisfying the conditions required under the legislation of the competent State to have the right to benefits, taking account of the provisions of this Regulation;

(e) "member of the family" means:

1. for application of this Regulation, except Chapter 1 of Title III:

any person with derived rights and defined or recognised as a member of the family or designated as a member of the household by the legislation under which the benefits are provided;

2. for application of Chapter 1, Title III (sickness and maternity);

"member of the family" means any person with derived rights and defined or recognised as a member of the family or designated as a member of the household by the legislation of the Member State in which such persons reside. If any such person is not recognised as such pursuant to the legislation of their residence, this term also covers any person who is defined or recognised as a member of the family or designated as a member of the household by the legislation of the State competent for the person entitled to benefits. Where, however, the said legislations regard as a member of the family or a member of the household only a person living under the same roof as the insured person, this condition shall be considered satisfied if the person in question is mainly dependent on that person.

(f) "residence" means the place where a person habitually resides and where the habitual centre of his interests is also located;

(g) "stay" means temporary residence;

(h) "legislation" means, in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 2(1).

This term includes contractual provisions which have been the subject of a decision by the public authorities rendering them compulsory or extending their scope.

This term also includes the social security conventions concluded between two or more Member States or between one or more Member States and one or more States not belonging to the European Union.

(i) "competent authority" means, in respect of each Member State, the Minister, Ministers or other equivalent authority responsible for social security schemes throughout or in any part of the territory of the State in question;

(j) "Administrative Commission" means the commission referred to in Article 56;

(k) "institution" means, in respect of each Member State, the body or authority responsible for administering all or part of the legislation;

(l) "competent institution" means:

(i) the institution with which the person involved is insured at the time of the application for benefit;

or

(ii) the institution from which the person involved is entitled or would be entitled to benefits if he or a member or members of his family resided in the territory of the Member State in which the institution is situated;

or

(iii) the institution designated by the competent authority of the Member State concerned;

or

(iv) in the case of a scheme relating to an employer's obligations in respect of the benefits set out in Article 2(1), either the employer or the insurer involved or, in default thereof, the body or authority designated by the competent authority of the Member State concerned;

(m) "institutions of the place of residence" and "institutions of the place of stay" mean respectively the institution which is competent to provide benefits in the place where the person involved resides and the institution which is competent to provide benefits in the place where the person involved is staying, in accordance with the legislation administered by that institution or, where no such institution exists, the institution designated by the competent authority of the Member State concerned;

(n) "competent State" means the Member State in whose territory the competent institution is situated;

(o) "period of insurance" means periods of contribution, employment or activity as a self-employed person as defined or recognised as periods of insurance by the legislation

under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance;

(p) "period of employment" or "period of activity as a self-employed person" mean periods so defined or recognised by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or to periods of activity as a self-employed person;

(q) "periods of residence" mean periods so defined or recognised by the legislation under which they were completed or considered as completed;

(r) "pension" covers not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement of contributions and, subject to the provisions of Title III, revaluation increases or supplementary allowances;

(s) "pre-retirement benefits" mean:

all cash benefits, other than an early old-age benefit, provided to wholly unemployed workers from a specified age until the age at which they qualify for an old-age pension or a non-reduced early retirement pension, the receipt of which is not conditional upon the person involved being available to the employment services of the competent State; early old-age benefit means a benefit provided before normal pension age is reached and which either continues to be provided once the said age is reached or is replaced by another old-age benefit;

(t) "death grants" mean any one-off payment in the event of death exclusive of the lump-sum benefits referred to in subparagraph (r).

TITLE II

DETERMINATION OF THE LEGISLATION TO WHICH A PERSON IS SUBJECT

Article 8

General rules

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

2. For application of this Title, persons entitled to a benefit, other than an invalidity or old-age benefit, by virtue of pursuing an activity as an employed or self-employed person, shall be deemed to be pursuing the said activity.

3. For application of this Title, work done on board a vessel flying the flag of a Member State shall be deemed to be work done in the territory of the said Member State.

4. Subject to Articles 9 to 13:

(a) a person pursuing an activity as an employed or self-employed person in the territory of a Member State shall be subject to the legislation of that State;

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

(c) a person called up or recalled for service in the armed forces or for civilian service of a Member State shall be subject to the legislation of that State;

(d) any person other than those mentioned in sub-paragraphs (a) to (c) shall be subject to the legislation of the Member State in whose territory they reside, without prejudice to other provisions of this Regulation guaranteeing them benefits pursuant to the legislation of one or more other Member States.

Article 9

Special rules in the event of posting

1. A person pursuing an activity as an employed person in the territory of a Member State and who goes to the territory of another Member State to perform work on behalf of his employer who habitually employs personnel in the territory of the first Member State shall continue to be subject to the legislation of that Member State, provided that the anticipated duration of that work does not exceed twelve months and that he is not sent to replace another person who has completed his term of posting.

2. A person normally pursuing an activity as a self-employed person in the territory of a Member State and who goes to perform the same activity in the territory of another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 12 months.

Article 10

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

1. A person normally pursuing an activity as an employed person in the territory of two or more Member States shall be subject:

(a) to the legislation of the Member State in whose territory he resides if he pursues a substantial activity in that territory;

(b) to the legislation of the Member State in whose territory the registered office or place of business of the undertaking or employer employing him is situated, if he does not pursue substantial activities in the territory of the Member State where he resides.

2. A person normally pursuing an activity as a self-employed person in the territory of two or more Member States shall be subject:

(a) to the legislation of the Member State in whose territory he resides if he pursues a substantial activity in that territory;

(b) to the legislation of the Member State in the territory where the centre of interest of his activities is located, if he does not pursue a substantial activity in the territory of the Member State where he resides.

3. A person who normally pursues an activity as an employed person and an activity as a self-employed person in the territory of different Member States shall be subject to the legislation of the Member State in whose territory he pursues an activity as an employed person or, if he pursues such an activity in the territory of two or more Member States, to the legislation determined in accordance with paragraph 1.

4. A person who is employed as a civil servant or personnel treated as such and insured in a special scheme for civil servants in one Member State and who simultaneously pursues an activity as an employed person and/or as a self-employed person in the territory of one or more other Member States shall be subject to the legislation of the Member State in which he is insured as a civil servant or personnel treated as such.

5. A person referred to in the preceding paragraphs shall be treated, for the purposes of applying the legislations determined in accordance with these provisions, as though he were pursuing all his activities as an employed or self-employed person in the territory of the Member State concerned.

Article 11

Rules concerning voluntary insurance or optional continued insurance

1. Articles 8 to 10 shall not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches referred to in Article 2(1), only a voluntary scheme of insurance exists in a Member State.

2. However, in respect of invalidity, old age and death (pensions), the person involved may join the voluntary or optional continued insurance scheme of a Member State, even if he is compulsorily subject to the legislation of another Member State, insofar as such overlapping is explicitly or implicitly allowed pursuant to the legislation of the first Member State.

Article 12

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

1. The provisions of Article 8(4)(a) shall apply to personnel employed by diplomatic missions and consular posts and to the private domestic staff of agents of such missions or posts.

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

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

Article 13

Exceptions to the provisions of Articles 8 to 12

1. Two or more Member States, the competent authorities of these States or the bodies designated by these authorities may by common agreement provide for exceptions to the provisions of Articles 8 to 12 in the interest of certain categories of persons or of certain persons.

2. The recipient of a pension due under the legislation of a Member State or of pensions due under the legislation of several Member States who resides in the territory of another Member State may at his request be exempted from application of the legislation of the latter State provided that he is not subject to that legislation on account of pursuing an activity as an employed or self-employed person.

TITLE III

SPECIAL PROVISIONS RELATING TO THE VARIOUS CATEGORIES OF BENEFIT

CHAPTER 1

SICKNESS AND MATERNITY

Article 14

Residence in a Member State other than the competent State

A person insured against the risk of sickness or maternity, or the members of his family who reside in the territory of a Member State other than the competent State, shall receive in the State of residence benefits in kind, including death grants, provided, on behalf of the competent institution, by the institution of the place of residence, in accordance with the provisions of the legislation administered by that institution as though they were insured pursuant to the said legislation. They shall also receive in the State of residence the cash

benefits provided by the competent institution in accordance with the provisions of the legislation which it administers.

Article 15

Stay in the competent State although residence is situated in a Member State other than the competent State

The persons referred to in Article 14 may also obtain benefits in the territory of the competent State. Such benefits shall be provided by the competent institution and at its own expense, in accordance with the provisions of the legislation of that State, as though the person involved resided in it.

Article 16

Stay outside the competent State - General rules

Without prejudice to the more favourable provisions contained in Article 17, a person insured against the risk of sickness or maternity, and the members of his family staying in a Member State other than the competent State, shall receive immediately necessary benefits in kind, including death grants, provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the provisions of the legislation which it administers, as though they were insured pursuant to the said legislation. Such persons shall also receive the cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers.

Article 17

Stay outside the competent State - Special rules

1. A person pursuing an activity as an employed or self-employed person in a Member State other than the competent State, as well as his spouse and his dependent children accompanying him, shall be covered by the provisions of Article 14 as though they resided in the territory of the State where the activity as an employed or self-employed person is pursued or whose flag is flown by the vessel on board which the worker pursues his activity as an employed or self-employed person.
2. A person who stays in a Member State other than the competent State to study there or receive vocational training leading to a qualification officially recognised by the authorities of a Member State, and his spouse and dependent children accompanying him during his stay, shall be covered by the provisions of Article 14 during the stay in the territory of the

Member State where such person is studying or in training as though they resided in the territory of that latter Member State.

3. A person to whom the provisions of Article 50 apply, and his spouse and dependent children accompanying him, shall be covered by the provisions of Article 14 as though they resided in the territory of the Member State in which the said person is seeking a job.

4. A person who, before becoming the recipient of a pension, made use of the possibilities provided for under Articles 14 and 15, and the members of his family, shall retain such rights after retirement.

Article 18

Authorisation to receive appropriate treatment outside the competent State

A person who is authorised by the competent institution to go to the territory of another Member State to receive there the treatment appropriate to his condition shall receive the benefits in kind provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the provisions of the legislation it administers, as though he were insured pursuant to the said legislation. The authorisation must be accorded where the treatment in question is among the benefits provided for by the legislation of the competent State or in whose territory the person involved resides and if he cannot, taking account of his current state of health and the probable course of the illness, be given such treatment within the necessary time.

Article 19

Calculation of cash benefits

1. The competent institution of a Member State, whose legislation stipulates that the calculation of cash benefits shall be founded on average income or on an average contribution basis, shall determine such average income or average contribution basis exclusively by reference to the incomes confirmed as having been paid or contribution bases applied during the periods completed under the said legislation.

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

Article 20

Pension recipients - benefits in kind

1. A recipient of one or more pensions and the members of his family shall receive in the State of residence benefits in kind, including death grants, provided, on behalf of all the States paying a pension, by the institution of the place of residence, in accordance with the provisions of the legislation it administers as though he were the recipient of one or more pensions due under the said legislation alone.
2. The cost of the benefits shall be divided among the Member States paying a pension proportional to the periods completed in each Member State, to the extent that the person involved would have been entitled to benefits pursuant to the legislation of each Member State concerned if he resided in their territory.
3. Where the other pensioners insured in the State of residence are subject to contributions, the pension recipient in question shall likewise be subject thereto. The yield from such contributions shall be divided among the States paying a pension proportional to the periods completed in each Member State.
4. Two or more Member States, or the competent authorities of those States, may provide for other methods of reimbursement or waive all reimbursement between the institutions coming under their jurisdiction.

Article 21

Pension recipients and members of their families - cash benefits

A pension recipient or claimant and the members of his family shall receive cash benefits in accordance with the provisions contained in the Chapter on invalidity.

Article 22

Pension claimants and members of their families

Articles 20 and 21 shall apply *mutatis mutandis* to a person who, during the investigation of a claim for a pension, ceases to be entitled to sickness benefits, including death grants, under the legislation of the Member State which was last competent.

Article 23

Right to benefits existing in the country of residence

Where the members of the family reside in the territory of a Member State under whose legislation the right to benefits in kind, including death grants, is not subject to conditions of insurance or employment, the benefits in kind provided to them shall be considered as being on behalf of the institution which administers the legislation pursuant to which the person is insured, unless the spouse or the person looking after the children pursues an activity as an employed or self-employed person in the territory of the said Member State.

Article 24

Substantial benefits in kind

1. A person or a member of his family who has had a right to a prosthesis, a major appliance or other substantial benefits in kind recognised by the institution of a Member State before he becomes insured pursuant to the legislation administered by the institution of another Member State, shall receive such benefits at the expense of the first institution, even if they are accorded after the said person has already become insured pursuant to the legislation administered by the second institution.

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

Article 25

Aggregation of periods for seasonal workers

Article 4 shall apply to seasonal workers, even in respect of periods prior to any break in insurance exceeding the period allowed by the legislation of the competent State, provided, however, that the person involved has not ceased to be insured for a period exceeding four months.

Article 26

Reimbursements between institutions

1. The benefits in kind, including death grants, provided by the institution of a Member State on behalf of the institution of another Member State pursuant to the provisions of this Chapter shall give rise to full reimbursement, as determined and effected in

accordance with the arrangements set out in the Implementing Regulation referred to in Article 71, on production of proof of actual expenditure.

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

CHAPTER 2 INVALIDITY

Article 27

General provision

Persons who have been subject to the legislations of two or more Member States shall receive benefits in accordance with the provisions of Chapter 3 which shall apply *mutatis mutandis*.

Article 28

Consideration by a Member State of periods of compensation for incapacity to work provided by another Member State

The competent institution of a Member State whose legislation makes the granting of invalidity benefits conditional on the fact that, for a specified period, the person involved received cash benefits for sickness or was incapable of working, shall take into account any period during which he received, under the legislation of another Member State, in respect of incapacity to work cash benefits for sickness or maintenance of his income or invalidity benefits, as though it were a period during which he had been provided with cash benefits for sickness pursuant to the legislation it administers or during which he had been incapable of working within the meaning of the said legislation.

Article 29

Aggravation of invalidity

In the case of aggravation of an invalidity for which a person is receiving benefits under the legislation of two or more Member States, the benefits shall be accorded to him, taking the aggravation into account, in accordance with this Chapter.

Article 30

Determination of the institution responsible for providing benefits when provision of invalidity benefits is resumed

1. If provision of benefits is to be resumed after suspension, such provision shall, without prejudice to Article 31, be the responsibility of the institution or institutions which were responsible for provision of the benefits at the time of their suspension.
2. If, after withdrawal of benefits, the condition of the person involved warrants the granting of further benefits, they shall be accorded in keeping with this Chapter.

Article 31

Conversion of invalidity benefits into old-age benefits

1. Invalidity benefits shall be converted into old-age benefits, where appropriate, under the conditions laid down by the legislation or legislations under which they were accorded and in keeping with the provisions of Chapter 3.
2. Where a person receiving invalidity benefits can establish a claim to old-age benefits under the legislation of one or more Member States, in accordance with Article 32, any institution which is responsible for providing invalidity benefits under the legislation of a Member State shall continue to provide such a person with the invalidity benefits to which he is entitled under the legislation which it administers until the provisions of paragraph 1 become applicable in respect of that institution or, if not, as long as the person involved fulfils the conditions for such benefits.

CHAPTER 3

OLD-AGE AND SURVIVORS' PENSIONS

Article 32

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

1. All the competent institutions must proceed to award benefits, in respect of all the legislations concerned, as soon as a request for award has been submitted, unless the person involved expressly requests deferment of the award of the old-age benefits of one or more Member States or if he does not simultaneously fulfil the conditions required under all the legislations of the Member States to which he has been subject, taking into account aggregation of periods of insurance or of residence.
2. If the person involved does not fulfil, at a given moment, the conditions required under all the legislations of the Member States, the institutions administering a legislation whose conditions have been fulfilled must take into consideration, when performing the calculation in accordance with Article 34(1)(a) or (2), the periods completed under the

legislations whose conditions have not been fulfilled only if this gives rise to a higher amount of benefit.

3. The provisions of this paragraph shall apply *mutatis mutandis* when the person involved has expressly requested deferment of the award of the old-age benefit.

4. A new calculation shall be performed automatically as and when the conditions required under the other legislations are fulfilled or when a person requests the award of an old-age benefit deferred in accordance with paragraph 1.

5. The increases in or supplements to pensions in respect of children or orphans shall be accorded in keeping with the provisions of this Chapter.

Article 33

Consideration of periods of insurance or residence for the acquisition, retention or recovery of the right to benefits

1. The competent institution of a Member State shall take into account all periods of insurance and/or residence completed under the legislation of any other Member State, whether under a general scheme or a special scheme.

2. For granting benefits under a special scheme, if the applicable legislation so requires, the periods completed in the other Member States shall be taken into account only if they have been completed under a corresponding scheme or, in default thereof, in the same occupation or, where appropriate, in the same employment.

3. If the insured person does not fulfil the conditions required to receive the benefits of a special scheme, the periods shall be taken into account, in the State concerned, for granting the benefits of the general scheme or, in default thereof, of the scheme applicable to manual or clerical workers, as the case may be.

4. The periods which have given rise to benefits under a special scheme of a Member State shall likewise be taken into account for granting the benefits of the general scheme or, in default thereof, of the scheme applicable to manual or clerical workers, as the case may be.

Article 34

Award of benefits

1. If the conditions required under the legislation of a Member State for entitlement to benefits are satisfied without recourse to aggregation of periods, the competent institution shall calculate the amount of benefit which will be due:

(a) on the one hand, only pursuant to the provisions of the legislation which it administers (national pension);

(b) on the other, in accordance with the provisions of paragraph 2 (pro-rata pension).

2. If the conditions required under the legislation of a Member State for entitlement to benefits are satisfied only through aggregation of periods:

(a) The competent institution shall calculate the theoretical amount of the benefit to which the person involved could lay claim if all the periods of insurance and/or of residence which he has completed under the legislations of the other Member States had been completed under the legislation which it administers, on the date of the award of the benefit. If, under this legislation, the amount does not depend on the duration of the periods completed, the amount shall be regarded as being the theoretical amount.

(b) The competent institution shall then establish the actual amount of the benefit (pro rata) by applying to the theoretical amount the ratio between (i) the duration of only the periods completed prior to materialisation of the risk under the legislation which the institution administers and (ii) the total duration of the periods completed prior to materialisation of the risk under the legislation of all the Member States concerned.

3. Where appropriate, the competent institution shall apply to the amount calculated in accordance with paragraphs 1 and 2 above all the rules relating to reduction, suspension or withdrawal under the legislation pursuant to which the benefit is due, within the limits provided for by the provisions of Articles 35 to 37 of this Chapter.

4. The insured person shall be entitled to receive from the competent institution of each country whichever of the amounts - that due through application of national law or that which would be due through application of Community law - is higher.

Article 35

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

1. Save as otherwise provided for in this Chapter, the rules relating to reduction, suspension or withdrawal under the legislation of a Member State in cases of a benefit overlapping with other social security benefits pertaining to the same period of compulsory insurance or with any other forms of income may be invoked against the beneficiary even where such benefits were acquired under the legislation of another Member State or where such incomes were acquired in the territory of another Member State.

2. The rules to prevent overlapping contained in the legislation of a Member State in the case of a person in receipt of invalidity benefits or early old-age benefits pursuing an activity as an employed or self-employed person may be invoked against such a person even though he is pursuing his activity in the territory of another Member State.

3. Any overlapping of invalidity, old-age and survivors' benefits calculated or provided on the basis of insurance and/or residence periods completed by the same person shall be considered to be overlapping of benefits of the same kind.

4. Overlapping of benefits which cannot be considered to be of the same kind within the meaning of paragraph 3 shall be considered to be overlapping of benefits of a different kind.

5. The competent institution must take into consideration the benefits or incomes acquired abroad only if the legislation which it administers makes explicit provision therefor.

6. The competent institution must take into account the amount of benefits to be paid by another Member State before deduction of tax, social security contributions and other individual deductions.

7. The competent institution must not take account of the amount of benefits acquired under the legislation of another Member State on the basis of voluntary insurance or continued optional insurance.

8. If a single Member State applies rules to prevent overlapping because the person involved receives benefits of the same kind or of a different kind pursuant to the legislation of other Member States or incomes acquired in the territory of other Member States, the benefit due may be reduced solely by the total amount of benefits due pursuant to the legislation of the other Member States or by the incomes acquired in their territory.

Article 36

Overlapping of benefits of the same kind due under the legislation of two or more Member States - Special provisions

1. The rules to prevent overlapping provided for under the legislation of a Member State shall not apply to a benefit calculated in accordance with Article 34(2) - pro rata.

2. A benefit calculated in accordance with Article 34(1)(a) - national benefit - may be reduced, suspended or withdrawn by application of the rules to prevent overlapping provided for under the legislation of a Member State only if it is:

(a) a benefit, the amount of which does not depend on the duration of insurance or residence periods,

or

(b) a benefit, the amount of which is determined on the basis of a credited period between the materialisation of the risk and a later date, overlapping with either:

(i) a benefit of the same kind, except where an agreement has been concluded between two or more Member States to avoid the same credited period being taken into account two or more times;

or

(ii) a benefit, the amount of which does not depend on the duration of insurance or residence periods.

Article 37

Overlapping of one or more national benefits with one or more benefits of a different kind or with other incomes where two or more Member States are concerned - Special provisions

1. If the receipt of benefits of a different kind or other incomes engenders application of the rules to prevent overlapping as regards:

(a) two or more benefits calculated in accordance with national legislation, the competent institutions must divide the amounts, which would not be paid in the event of strict application of the rules to prevent overlapping, by the number of benefits subject to the said rules;

(b) two or more benefits calculated in accordance with the pro-rata method, the competent institutions shall take into account the benefit or benefits of the other Member States or the other incomes and all the elements stipulated for applying the rules to prevent overlapping as a function of the ratio between the periods of insurance and/or residence established for the calculation referred to in Article 34(2)(b) (pro rata) of such benefits;

(c) one or more benefits calculated in accordance with national legislation and one or more pro-rata benefits, the competent institutions shall apply the rules to prevent overlapping:

(i) in accordance with subparagraph (a) as regards national benefits;

(ii) in accordance with subparagraph (b) as regards pro-rata benefits.

2. The competent institution shall not apply the stipulated division in respect of national benefits if the legislation which it administers provides for account to be taken of benefits of a different kind and/or of other incomes and all the elements for calculating part of their amount determined as a function of the ratio between the periods of insurance referred to in Article 34(2)(b).

3. All the abovementioned provisions shall apply *mutatis mutandis* where the legislation of one or more Member States provides that a benefit cannot be granted in the case where a person receives a benefit of a different kind pursuant to the legislation of another Member State or other incomes.

Article 38

Additional provisions for the calculation of benefits

1. For the calculation of the theoretical and pro rata amounts referred to in Article 34(2), the following rules shall apply:

(a) the competent institution shall take into consideration the maximum duration required under the legislation which it administers if the total duration of the periods of insurance and/or residence completed prior to materialisation of the risk under the

legislations of all the Member States concerned exceeds the said maximum duration. This provision shall not apply to benefits whose amount does not depend on the duration of the periods of insurance;

(b) the competent institution shall take into account overlapping periods in accordance with the procedure laid down in the Implementing Regulation referred to in Article 71;

(c) if the legislation of a Member State provides that the benefits shall be calculated on the basis of incomes, contributions, increases or amounts (average, proportional, fixed or credited), the competent institution shall:

(i) determine the basis, average or proportional, for calculation of the benefits in accordance with only periods of insurance completed pursuant to the legislation which it administers;

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

2. The theoretical amount of a benefit calculated on the basis of the elements referred to in the preceding paragraph must be duly revalued and increased as though the person involved had continued to pursue his activity under the same conditions in the Member State concerned.

Article 39

Award of a supplement where the total of benefits due under the legislations of the various Member States does not amount to the minimum laid down by the legislation of the recipient's State of residence

A recipient of benefits to whom this Chapter has been applied may not be awarded a benefit which is less than the minimum benefit fixed, for a period of insurance or residence equal to all the periods taken into account for the award in accordance with the provisions of this Chapter, by the legislation of the State where he resides and under which a benefit is due to him.

The competent institution of that State shall pay him throughout the period of his residence in its territory a supplement equal to the difference between the total of the benefits due pursuant to this Chapter and the amount of the minimum benefit.

Article 40

Revaluation and recalculation of benefits

1. If, by reason of an increase in the cost of living or changes in the level of incomes or other reasons for adjustment, the benefits of the States concerned are altered by a certain

percentage or amount, such percentage or amount must be applied directly to the benefits determined in accordance with Article 34, without the need for a recalculation in accordance with that Article.

2. On the other hand, if the method of determining benefits or the rules for calculating benefits should be altered, a recalculation shall be carried out in accordance with Article 34.

CHAPTER 4

ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES

Article 41

Right to benefits in kind and in cash

1. Without prejudice to the more favourable provisions of paragraph 2, Articles 14, 15, 16, 18, 19 and 26 shall apply *mutatis mutandis* to the benefits relating to accidents at work and occupational diseases.

2. The victim of an accident at work or occupational disease staying in a Member State other than the competent State shall receive the special benefits in kind of the scheme covering accidents at work and occupational diseases provided, on behalf of the competent institution, by the institution of the place of stay in accordance with the provisions of the legislation which it administers as though he were insured pursuant to the said legislation.

Article 42

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

1. When the victim of an occupational disease has, under the legislation of two or more Member States, pursued an activity which by its nature is likely to cause the said disease, the benefits that he or his survivors may claim shall be awarded exclusively under the legislation of the last of those States whose conditions are satisfied, taking into account, where appropriate, paragraphs 2 to 4.

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

3. If, under the legislation of a Member State, the granting of benefits in respect of an occupational disease is subject to the condition that the disease in question was diagnosed within a specific time limit following cessation of the last activity which was likely to cause such a disease, the competent institution of that State, when checking the time at

which such last activity was pursued, shall take into account, to the extent necessary, similar activities pursued under the legislation of any other Member State as though they had been pursued under the legislation of the first State.

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

Article 43

Calculation of cash benefits

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

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

Article 44

Costs of transporting a victim

1. The competent institution of a Member State whose legislation provides for meeting the costs of transporting a victim, either to his place of residence or to a hospital, shall meet such costs to the corresponding place in the territory of another Member State where the victim resides.

2. The competent institution of a Member State whose legislation provides for the costs of transporting the body of a victim to the place of burial shall, in accordance with the provisions of the legislation which it administers, meet such costs to the corresponding place in the territory of another Member State where the victim was residing at the time of the accident.

Article 45

Aggravation of an occupational disease for which compensation has been awarded

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

(a) if the person involved has not, while in receipt of benefits, pursued an activity as an employed or self-employed person under the legislation of another Member State likely to cause or aggravate the disease in question, the competent institution of the first Member State shall be bound to meet the cost of the benefits under the provisions of the legislation which it administers, taking into account the aggravation;

(b) if the person involved, while in receipt of benefits, has pursued such an activity under the legislation of another Member State, the competent institution of the first Member State shall be bound to meet the cost of the benefits under the legislation which it administers without taking the aggravation into account. The competent institution of the second Member State shall grant a supplement to the person involved, the amount of which shall be equal to the difference between the amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the legislation which it administers if the disease in question had occurred under the legislation of that Member State;

(c) the rules concerning reduction, suspension or withdrawal laid down by the legislation of a Member State shall not be invoked against persons receiving benefits awarded by institutions of two Member States in accordance with subparagraph (b).

Article 46

Rules for taking into account the special features of certain legislations

1. If there is no insurance against accidents at work or occupational diseases in the territory of the Member State in which the person involved finds himself, or if such insurance exists but there is no institution responsible for providing benefits in kind, those benefits shall be provided by the institution of the place of stay or residence responsible for providing benefit in kind in the event of sickness.

2. Where the legislation of the competent State makes wholly cost-free benefits in kind conditional upon use of the medical service organised by the employer, benefits in kind provided in another Member State shall be deemed to have been provided by such a medical service.

3. Where the legislation of the competent State includes a scheme relating to the obligations of the employer, the benefits in kind provided in another Member State shall be deemed to have been provided at the request of the competent institution.

4. Where the nature of the scheme of the competent State relating to compensation for accidents at work is not that of compulsory insurance, the provision of benefits in kind shall be made directly by the employer or by the insurer involved.

5. Where the legislation of a Member State provides explicitly or implicitly that accidents at work or occupational diseases which have occurred or have been confirmed previously shall be taken into consideration in order to assess the degree of incapacity so as to acquire a right to benefits, or to determine the amount thereof, the competent institution of that Member State shall also take into consideration accidents at work or occupational diseases which have occurred or have been confirmed previously under the legislation of

another Member State as though they had occurred or had been confirmed under the legislation which it administers:

6. Where the legislation of a Member State provides explicitly or implicitly that accidents at work or occupational diseases which have occurred or have been confirmed subsequently shall be taken into consideration in order to assess the degree of incapacity so as to acquire the right to benefits, or to determine the amount thereof, the competent institution of that Member State shall also take into consideration accidents at work or occupational diseases which have occurred or have been confirmed subsequently under the legislation of another Member State, as though they had occurred or had been confirmed under the legislation which it administers, but only where:

(a) no compensation is due in respect of the accident at work or the occupational disease which had occurred or had been confirmed previously under the legislation which it administers;

and

(b) no compensation is due under the legislation of the other Member State in respect of the accident at work or the occupational disease which had occurred or had been confirmed subsequently, notwithstanding the provisions of paragraph 5.

Article 47

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

1. If the legislation of the country of stay or residence has several insurance schemes, the provisions applicable to victims of an accident at work staying or residing in a Member State other than the competent State shall be those of the scheme for manual workers in the steel industry. However, if that legislation includes a special scheme for workers in mines and undertakings treated as such, the provisions of that scheme shall apply to the said category of workers where the institution of the place of stay or residence to which they submit their claim is competent to administer that scheme.

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

CHAPTER 5

UNEMPLOYMENT

Article 48

Special rule on aggregation of periods of insurance, employment or activity as a self-employed person

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

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

2. Application of the provisions of the preceding paragraph shall be conditional on the person involved having completed ultimately:

- either periods of insurance;
- or periods of employment;
- or periods of activity as a self-employed person;

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

3. Where the length of the period during which benefits may be granted depends on the duration of periods of insurance, employment or activity as a self-employed person, the provisions of paragraph 1 shall apply.

Article 49

Calculation of benefits

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

Article 50

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

1. A person insured against unemployment going to another Member State in order to seek work there shall retain his entitlement to unemployment benefits in cash under the following conditions and within the following limits:

(a) Before his departure he must have been registered as a person seeking work and have remained available to the employment services of the competent State for at least four weeks after becoming unemployed. However, the competent services or institutions may authorise his departure before such time has expired.

(b) Within seven days of the date on which the person involved ceased to be available to the employment services of the State which he left, he must register as a person seeking work with the employment services of the Member State to which he has gone, be subject to the control procedure organised there and adhere to the conditions laid down under the legislation of the said State. In exceptional cases, this period may be extended by the competent services or institutions.

(c) The person involved shall adhere to the conditions governing receipt of unemployment benefits other than the benefits in kind referred to in paragraph 2 as laid down by the legislation of the State to which he has gone in order to seek work.

(d) Entitlement to benefits shall be retained for a maximum period of six months from the date when the unemployed person ceased to be available to the employment services of the State which he left, provided that the total duration for which the benefits are granted does not exceed the duration of the period of benefits he was entitled to pursuant to the legislation of that State. The benefits shall be provided by the competent institution in accordance with the legislation which it administers and at its own expense.

2. A person referred to in paragraph 1 shall, in the territory of the State to which he had gone in order to seek work, receive unemployment benefits, other than cash benefits, whose aim is to facilitate access to work under the same conditions as its own nationals receiving an unemployment benefit within the meaning of this Regulation. Receipt of benefits shall be conditional on adherence to the conditions laid down by the legislation of the State in which the unemployed person is seeking work and the benefits shall be provided by the said State and at its own expense.

3. If the person involved returns to the competent State before the expiry of the period during which he is entitled to benefits pursuant to the provisions of paragraph 1(d), he shall continue to be entitled to benefits under the legislation of that State; he shall lose all entitlement to benefits pursuant to the legislation of the competent State if he does not return there before the expiry of the said period. In exceptional cases, this period may be extended by the competent services or institutions.

4. The arrangements for cooperation and mutual assistance between the institutions and services of the competent State and the State to which the person goes in order to seek work shall be laid down in the Implementing Regulation referred to in Article 71.

Article 51

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

A person insured against unemployment who, during his last activity as an employed or self-employed person, resided in the territory of a Member State other than the competent State and who makes himself available to the employment services in the territory of the State in which he resides, shall receive the benefits provided by the competent institution in accordance with the provisions of the legislation of the competent State as though he were available to the employment services of the said State.

CHAPTER 6

PRE-RETIREMENT

Article 52

Specific rule on aggregation of periods of insurance or employment

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

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

2. Application of the provisions of the preceding paragraph shall be conditional on the person involved having completed ultimately:

- either periods of insurance;
- or periods of employment;

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

CHAPTER 7

FAMILY BENEFITS, BENEFITS FOR DEPENDENT CHILDREN OF PENSIONERS AND FOR ORPHANS

Article 53

Priority rules in the event of overlapping of benefit entitlements

Where, during the same period and for the same family member, family benefits, benefits for orphans or for dependent children of pensioners are due from several Member States pursuant to their legislation or this Regulation, the competent institution of the Member State whose legislation lays down the highest amount of benefits shall grant all of the said amount. The cost shall be divided equally among the Member States concerned, by reimbursement among competent institutions to the limit of the amount laid down by the legislations which they administer.

Article 54

Provision of benefits - person actually maintaining the members of the family

If the family benefits, benefits for orphans or for dependent children of pensioners are not used for the maintenance of the members of the family by the person to whom they should be provided, the competent institution shall discharge its legal obligations by providing the said benefits to the natural or legal person actually maintaining the members of the family.

CHAPTER 8

SPECIAL BENEFITS

Article 55

1. This chapter concerns non-contributory cash benefits whose granting procedures are closely linked to a particular economic and social context and which:

(a) are granted after means-testing

or

(b) are intended solely to afford specific protection for the disabled

insofar as such benefits are mentioned in Annex I.

2. Notwithstanding the other provisions of this Regulation, the persons to which this Regulation applies shall receive the special benefits referred to in paragraph 1 exclusively in the territory of the Member State in which they reside and under the legislation of the said State. The benefits shall be provided by the institution of the place of residence and at its own expense.

3. The competent institution of a Member State whose legislation makes entitlement to the benefits covered by paragraph 1 conditional on completion of periods of residence shall, to the extent necessary, take account of periods of residence completed in the territory of any other Member State as though they were completed in the territory of the first Member State.

4. Where the legislation of a Member State makes the granting of the benefits intended for invalid and disabled persons and covered by paragraph 1 conditional on the invalidity or disability having been diagnosed for the first time in the territory of that Member State, this condition shall be deemed to be fulfilled where such diagnosis was made for the first time in the territory of another Member State.

TITLE IV

ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS

Article 56

Composition and working methods

1. The Administrative Commission for the Coordination of Social Security Systems (hereinafter called 'the Administrative Commission') attached to the Commission shall be made up of a representative of each of the Member States, assisted, where necessary, by expert advisers. A representative of the Commission shall attend the meetings of the Administrative Commission in an advisory capacity.
2. The rules of the Administrative Commission shall be drawn up by mutual agreement among its members.
3. The secretarial services of the Administrative Commission shall be provided by the Commission.

Article 57

Tasks of the Administrative Commission

The Administrative Commission shall have the following duties:

- (a) to deal with all administrative questions and questions of interpretation arising from the provisions of this Regulation and subsequent Regulations, or from any agreement or arrangement concluded thereunder, without prejudice to the right of the authorities, institutions and persons involved to have recourse to the procedures and tribunals provided for by the legislations of Member States, by this Regulation or by the Treaty;
- (b) to foster and develop cooperation between Member States in social security matters;
- (c) to modernise procedures for exchanging information, in particular by adapting the information flow between institutions for the purposes of telematic exchange, taking account of the development of data-processing in each Member State; the Administrative Commission shall adopt the common architecture rules for the telematic services, in particular on security and the use of standards; it shall lay down provisions for the operation of the common part of the telematic services;
- (d) to undertake any other function coming within its competence under the provisions of this Regulation and the Implementing Regulation or any agreement or arrangement made thereunder;
- (e) to make any proposals of use to the Commission for working out subsequent Regulations and for the revision of this and subsequent Regulations.

Article 58

Technical Commission for Data-Processing

1. A Technical Commission for Data-Processing (hereinafter called the 'Technical Commission') shall be attached to the Administrative Commission. The Technical Commission shall deliver reports and a reasoned opinion before decisions are taken by Administrative Commission pursuant to Article 57(c). The working methods and the composition of the Technical Commission shall be determined by the Administrative Commission.
2. The Technical Commission shall:
 - (a) gather together the relevant technical documents and undertake the studies and work required to accomplish its tasks;
 - (b) submit to the Administrative Commission the reports and reasoned opinions referred to in paragraph 1;
 - (c) carry out all other tasks and studies on matters referred to it by the Administrative Commission.

TITLE V

MISCELLANEOUS PROVISIONS

Article 59

Cooperation between competent authorities

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

(a) measures taken to implement this Regulation;

(b) changes in their legislation which are likely to affect the implementation of this Regulation.

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

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

4. The authorities, institutions and tribunals of one Member State may not reject applications or other documents submitted to them on the grounds that they are written in an official language of another Member State.

Article 60

Protection of personal data

1. Where, under this Regulation or under the Implementing Regulation referred to in Article 71, the authorities or institutions of a Member State communicate personal data to the authorities or institutions of another Member State, such communication shall be subject to the legal provisions governing protection of data laid down by the Member State transmitting the data. Any subsequent communication as well as the storage, alteration and destruction of the data shall be subject to the provisions of the legislation on data protection of the receiving Member State.

2. Transmission of data required to apply this Regulation and its Implementing Regulation by one Member State to another Member State must be effected in conformity with Community provisions governing protection of natural persons with regard to the processing of personal data.

Article 61

Data-processing

1. The Member States shall progressively use telematic services for the electronic exchange between institutions of the data required to apply the Regulation and its Implementing Regulation. The purpose in utilising telematic services is to allow effective application of the Regulation and its Implementing Regulation, and to expedite the granting and payment of benefits. The Commission shall lend its support to activities of common interest as soon as the Member States have established such telematic services.

2. Each Member State shall be responsible for managing its own part of the telematic services in accordance with the Community provisions on the protection of natural persons with regard to the processing of personal data.

3. An electronic message sent by an institution in conformity with the provisions of this Regulation and the Implementing Regulation may not be rejected by any authority or institution of another Member State on the grounds that it was received by electronic means, once the receiving institution has declared its ability to receive electronic messages. Reproduction and recording of such messages shall be presumed to be a correct and accurate reproduction of the original document or representation of the information it relates to, unless there is proof to the contrary.

An electronic message shall be considered valid if the computer system on which the message is recorded contains the safeguards necessary in order to avoid any alteration, disclosure or access to the recording. It shall at any time be possible to reproduce the recorded information in an immediately readable form. When an electronic message is transferred from one social security institution to another, appropriate security measures shall be taken in accordance with the Community provisions governing protection of natural persons with regard to the processing of personal data.

Article 62

Funding of activities in the social security field

- In connection with this Regulation, the Commission may fund:
 - activities aimed at improving exchanges of information between the social security authorities and institutions of the Member States, including the electronic exchange of data;
 - any other activity such as studies and meetings of experts as well as activities aimed at informing the citizens and professional groups concerned about the rights deriving from this Regulation, in particular by means of publications and organising conferences and seminars.

Article 63

Exemptions from or reductions of taxes - Exemption from authentication

1. Any exemption from or reduction of taxes, stamp duty, notarial or registration fees provided for in the legislation of one Member State in respect of certificates or documents required to be produced in application of the legislation of that State shall be extended to similar certificates or documents required to be produced in application of the legislation of another Member State or of this Regulation.
2. All statements, documents and certificates of any kind whatsoever required to be produced in application of this Regulation shall be exempt from authentication by diplomatic or consular authorities.

Article 64

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

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

Article 65

Medical examinations

1. Medical examinations provided for by the legislation of one Member State may be carried out at the request of the competent institution, in the territory of another Member State, by the institution of the place of stay or residence of the person entitled to benefits, under the conditions laid down in the Implementing Regulation referred to in Article 71 or, in default thereof, under the conditions agreed between the competent authorities of the Member States concerned.
2. Medical examinations carried out under the conditions laid down in paragraph 1 shall be considered to have been carried out in the territory of the competent State.

Article 66

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

Where appropriate, money transfers effected in application of this Regulation shall be made in accordance with the relevant agreements in force between the Member States concerned at the time of transfer. Where no such agreements are in force between two Member States, the competent authorities of the said States or the authorities responsible for international payments shall, by mutual agreement, determine the measures necessary for effecting such transfers.

Article 67

Special provisions for implementing the legislations of certain Member States

Special provisions for implementing the legislations of certain Member States necessary to guarantee the rights deriving from this Regulation or which lay down more favourable rules for those concerned are referred to in Annex II.

Article 68

Collection of contributions and recovery of benefits provided but not due

1. Collection of contributions due to an institution of one Member State and recovery of benefits provided by the institution of one Member State but not due may be effected in the territory of another Member State in accordance with the administrative procedure and with the guarantees and privileges applicable to the collection of contributions due to the corresponding institution of the latter State and the recovery of benefits provided by it but not due.
2. Enforceable decisions of the judicial and administrative authorities relating to the collection of contributions, interest and fixed charges or to the recovery of benefits provided but not due pursuant to the legislation of a Member State against which there is no further appeal shall be enforced at the request of the competent institution in the territory of another Member State in accordance with the procedures laid down by the legislation of that latter State. Such decisions shall be declared enforceable in the territory of the Member State in which the institution addressed by the competent institution is situated insofar as the legislation of that Member State so requires.
3. Claims of an institution of a Member State shall in enforcement, bankruptcy or settlement proceedings in the territory of another Member State enjoy the same privileges as the legislation of that latter Member State accords to claims of the same kind.
4. The procedure for implementing the provisions of this Article shall be governed, where necessary, by the Implementing Regulation referred to in Article 71 or by means of agreements between Member States.

Article 69

Rights of institutions responsible for providing benefits against liable third parties

1. If a person receives benefits pursuant to the legislation of one Member State in respect of an injury resulting from events occurring in the territory of another State, any rights of the institution responsible for providing benefits against a third party liable to provide compensation for the injury shall be governed by the following rules:

(a) where the institution responsible for providing benefits is, pursuant to the legislation which it administers, subrogated to the rights which the beneficiary has against the third party, such subrogation shall be recognised by each Member State;

(b) where the institution responsible for providing benefits has a direct right against the third party, each Member State shall recognise such rights.

2. If a person receives benefits pursuant to the legislation of one Member State in respect of an injury resulting from events occurring in the territory of another Member State, the provisions of the said legislation which determine in which cases the civil liability of employers or of the persons employed by them is to be excluded shall apply with regard to the said person or to the competent institution.

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

3. Where, in accordance with the provisions of Article 26(2), two or more Member States or the competent authorities of those States have concluded an agreement to waive reimbursement between institutions under their jurisdiction, any rights arising against a liable third party shall be governed by the following rules:

(a) Where the institution of the Member State of stay or residence accords benefits to a person in respect of an injury sustained in its territory, that institution, in accordance with the provisions of the legislation which it administers, shall exercise the right to subrogation or direct action against the third party liable to provide compensation for the injury.

(b) For application of (a):

(i) the person receiving benefits shall be deemed to be insured with the institution of the place of stay or residence, and

(ii) that institution shall be deemed to be the institution responsible for providing benefits.

(c) The provisions of paragraphs 1 and 2 shall remain applicable in respect of any benefits not covered by the waiver agreement referred to in this paragraph.

TITLE VI

TRANSITIONAL AND FINAL PROVISIONS

Article 70

Transitional provisions

1. No rights shall be acquired under this Regulation for any period prior to its date of application in the territory of the Member State concerned.
2. Any period of insurance and, where appropriate, any period of employment or residence completed under the legislation of a Member State prior to the date of application of this Regulation in the territory of that Member State shall be taken into consideration for determination of rights acquired under the provisions of this Regulation.
3. Subject to the provisions of paragraph 1, a right shall be acquired, under this Regulation, even if it relates to a contingency arising prior to its date of application in the territory of the Member State concerned.
4. Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person involved shall, at the request of the person involved, be awarded or resumed with effect from the date of application of this Regulation in the territory of the Member State concerned, provided that the rights for which benefits were previously awarded have not given rise to a lump-sum payment.
5. The rights of a person to whom a pension was awarded prior to the date of application of this Regulation in the territory of the Member State concerned may, at the request of the person involved, be reviewed, account being taken of the provisions of this Regulation.
6. If a request referred to in paragraph 4 or 5 is submitted within two years from the date of application of this Regulation in the territory of the Member State concerned, the rights acquired pursuant to this Regulation shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or lapse of rights may not be invoked against the persons involved.
7. If a request referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period following the date of application of this Regulation in the territory of the Member State concerned, rights not forfeited or not lapsed shall have effect from the date on which the request was submitted, subject to any more favourable provisions under the legislation of any Member State.
8. If, through application of this Regulation, a person was subject to the legislation of a Member State other than the one to whose legislation he is subject pursuant to the provisions of Regulation (EEC) 1408/71, such person shall not be subject to the legislation of that other Member State unless he so requests. Such request must be submitted to the competent institution of the Member State whose legislation is applicable pursuant to Regulation (EEC) 1408/71 within two years from the date of application of this Regulation.

Article 71

Implementing Regulation

A subsequent Regulation shall lay down the procedure for implementing this Regulation. The said Implementing Regulation must be adopted no later than one year after adoption of this Regulation.

Article 72

Entry into force

This Regulation shall enter into force on the twentieth day after its publication in the *Official Journal of the European Communities*. It shall apply from the date of entry into force of the Implementing Regulation mentioned in Article 71.

Article 73

Repeal

Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons, and to members of their families moving within the Community⁸, and 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, to self-employed persons and to members of their families moving within the Community⁹ are herewith repealed.

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

⁸ OJ L 149, 05.07.1971, p. 2. R. last amended by

⁹ OJ L 74, 27.03.1972, p. 1. R. last amended by

ANNEX I

(Article 55)

Special benefits

A. Belgium

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B. Denmark

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C. Germany

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D. Spain

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E. France

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F. Greece

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G. Ireland

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H. Italy

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I. Luxembourg

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J. Netherlands

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K. Austria

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L. Portugal

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M. Finland

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N. Sweden

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O. United Kingdom

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ANNEX II

(Article 67)

Special provisions for implementing the legislations of certain Member States

A. Belgium

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B. Denmark

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C. Germany

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D. Spain

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E. France

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F. Greece

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G. Ireland

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H. Italy

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I. Luxembourg

.....

J. Netherlands

.....

K. Austria

.....

L. Portugal

.....
M. Finland

.....
N. Sweden

.....
O. United Kingdom

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal to simplify the Community rules on coordination of social security schemes (simplification of Regulations 1408/71 and 574/72, as last amended by Regulation 1606/98 of 29 June 1998, OJ L 209, p. 1), and in particular Article 62.

2. BUDGET HEADING(S) INVOLVED

B3-4110 (as regards Regulations 1408/71 and 574/72, V/E/3), Part A (Title A1, A2, A4, A5, A7: expenditure on staff), A-7031 (Commission meetings pursuant to Articles 56-58 of the proposal).

3. LEGAL BASIS

Articles 8a, 48, 51 and 235 of the Treaty.

4. DESCRIPTION OF OPERATION

4.1 General objective

This proposal aims to simplify the Community rules on coordination of national social security schemes. Administrative monitoring of implementation of the Regulation will be undertaken by the European Commission (Unit V/E/3), and by the Administrative Commission on Social Security for Migrant Workers and the Technical Commission (see Articles 56-58 of the proposal) in respect of national problems. In order to facilitate administrative monitoring of the Regulation and improve the service provided for persons who have exercised their rights pursuant to Articles 8a and 48 of the Treaty, there will be a need to engage in activities aimed at improving exchanges of information between the social security authorities and institutions of the Member States, including the electronic exchange of data, and in any other activity such as meetings of experts and studies and activities to inform the citizens and professional groups concerned about the rights deriving from the Regulation, in particular by means of publications and organising conferences and seminars (see Article 62 of the proposal).

4.2 Period covered and arrangements for renewal

Open-ended operation.

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 ~~Compulsory~~ Non-compulsory expenditure

5.2 Differentiated/~~Non-differentiated~~ appropriations

5.3 Type of revenue involved

None

6. TYPE OF EXPENDITURE OR REVENUE

~~100 % subsidy.~~

~~Subsidy for joint financing with other sources in the public and/or private sector.~~

~~Interest subsidy.~~

~~Other: contracts (in particular regarding publications, organisation of seminars and conferences and studies)~~

~~Should the operation prove an economic success, is there provision for all or part of the Community contribution to be reimbursed? No~~

~~Will the proposed operation cause any change in the level of revenue? If so, what sort of change and what type of revenue is involved? No~~

7. FINANCIAL IMPACT

7.1 Method of calculating total cost of operation (relation between individual costs and total cost)

Estimate based on expenditure in previous years.

7.2 Itemised breakdown of cost

CA in ECU million (current prices)

Breakdown	Budget year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. yrs	TOTAL
Subsidy - conferences	0.3	0.35	0.35	0.35	0.35	0.35	2.05
Subsidy - exchanges	0.1	0.15	0.15	0.15	0.15	0.15	0.85
Subsidy - TC projects	0.2	0.2	0.2	0.2	0.2	0.2	1.2
Network	0.2	0.2	0.2	0.2	0.2	0.2	1.2
Publication	0.1	0.1	0.1	0.1	0.1	0.1	0.6
Technical assistance	0.2	0.2	0.2	0.2	0.2	0.2	1.2
TOTAL	1.1	1.2	1.2	1.2	1.2	1.2	7.1

7.3 Operating expenditure on studies, experts, etc. included in Part B of the budget

CA in ECU million (current prices)

	Budget year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. yrs	TOTAL
- Studies - Experts' meetings - Conference and congress - Information and publications	0.1	0.1	0.1	0.1	0.1	0.1	0.6
TOTAL	0.1	0.1	0.1	0.1	0.1	0.1	0.6

7.4 Schedule of commitment/payment appropriations

CA in ECU million

	Budget year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. yrs	TOTAL
Commitment appropriations	1.1	1.2	1.2	1.2	1.2	1.2	7.1
Payment appropriations							
Budget year n	0.8						
n + 1		1.2					
n + 2			1.2				
n + 3				1.2			
n + 4					1.2		
n + 5 and subs. yrs						1.5	
TOTAL	0.8	1.2	1.2	1.2	1.2	1.5	7.1

8. FRAUD-PREVENTION MEASURES

- Specific control measures envisaged: the provisions of the Financial Regulation will apply. The activities planned will not call for any special fraud-prevention measures. The activities will be monitored in close cooperation with the Member States represented on the Administrative Commission and the Technical Commission.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantifiable objectives; target population.

- Specific objectives: links with general objective: informing the general public about the Community provisions concerning coordination of social security schemes; support for the competent institutions in the Member States so as to

improve electronic exchanges of data between the competent institutions and thus expedite the granting of social benefits to migrant workers; exchanges of officials between competent institutions are also included.

- *Target population: distinguish as applicable for each objective; indicate the end-beneficiaries of the Community's financial contribution and the intermediaries involved: European populace; rapid granting of social benefits to people making use of their right to free movement for workers. Competent institutions: reduction of operating expenses and better application of Community law; also a means of combating cross-border fraud.*

9.2 Grounds for the operation

- *Need for Community financial aid, especially in the light of the subsidiarity principle: coordination of social security schemes is feasible only at Community level*
- *Choice of ways and means*
 - *advantages over possible alternatives (comparative advantages)*
 - *explanatory reference to similar Community or national operations*
 - *spin-off and multiplier effects expected*
- *Main factors of uncertainty which could affect the specific results of the operation.*

9.3 Monitoring and evaluation of the operation

- *Performance indicators*
 - *output indicators (measuring activities undertaken)*
 - *impact indicators (measuring performance against objectives)*
- *Details and frequency of planned evaluations*
- *Assessment of the results obtained (where an existing operation is being continued or renewed). The operations will be monitored in close cooperation with the members of the Administrative Commission and the Technical Commission.*

Each operation will state the objectives to be attained, and the description of the means will make it possible to verify whether the objective has been attained.

10. ADMINISTRATIVE EXPENDITURE (PART A OF SECTION III OF THE GENERAL BUDGET)

This section of the financial statement must be sent simultaneously to DGs IX and XIX; DG IX will then forward it to DG XIX with its opinion.

Actual assembly of the administrative resources necessary will be determined in the Commission's annual decision on resource allocation, taking particular account of the additional amounts and staff which will have been accorded by the budgetary authority.

10.1 Impact on the number of posts

Type of post		Staff given the task of administering the operation		of which		duration
		<u>Permanent posts</u>	<u>Temporary posts</u>	through use of existing resources within the DG or department involved	through recourse to additional resources	open-ended
Officials or temporary staff	A	7	1	8		
	B	2		2		
	C	5	1	6		
Other resources			2 (SNE ¹)	2		
Total		14	4	14		

As regards the additional resources, indicate the rate at which they will need to be made available.

[¹ Seconded National Expert]

10.2 Overall financial impact of the additional human resources

(ECU)

	Amounts	Method of calculation
Officials	1 728 000	$16 * 108\ 000 = 1\ 728\ 000$
Temporary staff		
Other resources (indicate budget heading)	74 000	$2 * 37\ 000 = 74\ 000$ under heading A-7003 (SNE)
Total	1 802 000	

10.3 Increase in other administrative expenditure due to the operation

(ECU)

Budget heading (N° and description)	Amounts	Method of calculation
A-7031, meetings of the Administrative Commission on Social Security for Migrant Workers (CA.SS.TM.), Article 56	48 750	ECU 650/person * 15 experts per meeting * 5 meetings per year = 650 * 15 * 5 = 48 750
A-7031, Meetings of the Technical Commission on Data Processing, Article 58	39 000	ECU 650/person * 15 experts per meeting * 5 meetings per year = 650 * 15 * 5 = 39 000
Total	87 750	

Expenditure covered by the existing resources within the DG concerned.

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