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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL
CONCERNING THE IMPLEMENTATION OF THE PROVISIONS ON
COOPERATION IN THE FIELD OF SOCIAL SECURITY CONTAINED
IN THE COOPERATION AGREEMENTS CONCLUDED WITH
THE MAGHREB COUNTRIES AND IN THE ADDITIONAL PROTOCOL TO THE
AGREEMENT CONCLUDED WITH THE PORTUGUESE REPUBLIC

INTRODUCTION

This communication relates to the implementation of provisions on cooperation in the field of social security contained in the Cooperation Agreements between the Community and Tunisia¹, Morocco² and Algeria³, and in the Additional Protocol to the Agreement between the Community and Portugal⁴.

These Agreements provide that the Cooperation Councils (Joint Committee in the case of Portugal) shall adopt provisions to adopt the principles set out in the relevant Articles before the end of the first year after the entry into force of the Agreements.

As the Agreements entered into force on 1 November 1978, these provisions must be adopted before 1 November 1979. Annex to this communication contains a draft decision of the Cooperation Councils/Joint Committee.

As the provisions on social security of these Agreements are identical, this draft consists of one text which is common to the four decisions.

¹OJ EC L 265, 27 September 1978

²OJ EC L 264, 27 September 1978

³OJ EC L 263, 27 September 1978

⁴OJ EC L 274, 29 September 1978

I. LEGAL BASIS

The draft decisions of the EEC-Algeria, EEC-Morocco and EEC-Tunisia Cooperation Councils and the EEC-Portugal Joint Committee are based on the following provisions respectively:

- Articles 39, 40 and 41 of the EEC-Algeria Agreement (cf text of art. in Annex A)
- Articles 41, 42 and 43 of the EEC-Morocco Agreement (cf text of art. in Annex B)
- Articles 40, 41 and 42 of the EEC-Tunisia Agreement (cf text of art. in Annex C)
- Articles 11, 12 and 13 of the Additional Protocol to the EEC-Portugal Agreement (cf text of art. in Annex D).

II. GENERAL REMARKS

The Community had already previously adopted similar provisions to adopt the above-mentioned Decisions. What is being referred to is Article 39 of the Additional Protocol to the Ankara Agreement¹, which was the subject of a Communication from the Community to the Council², and which was at the origin of the proposal from the Community to the EEC-Turkey Association Council³. That proposal was used as a reference when the draft in Annex was being drawn up.

An examination of the above-mentioned Agreements shows that they can be interpreted in the same way as the Commission's and Council's interpretation of Article 39 of the EEC-Turkey Agreement. As will be made clear below, however, the layout of the EEC-Turkey draft decision could not be adhered to, and a new text had to be drafted to implement the four Agreements dealt with in this Communication.

A. Content of the Agreements

The Agreements provide:

1. In favour of Algerian/Moroccan/Tunisian/Portuguese workers who are employed in the Community:

¹Cf Annex E

²Cf doc. COM(73) 2059 final of 11 December 1973

³Cf the Note of 16 June 1977 from the Secretariat-General of the Council

- (a) as regards social security legislation, no discrimination on the grounds of nationality;
 - (b) taking into account periods of insurance, employment or residence completed under the legislation of a Member State to acquire entitlement to benefits in another Member State. This aggregation is to apply to old-age, survivors' and invalidity pensions, and to medical treatment (for workers and the members of their families residing in the Community);
 - (c) paying family benefits to workers employed in the Community, the members of whose families reside in another Member State;
 - (d) exporting, to the worker's country of origin, old-age and survivors' pensions, pensions for accidents at work and occupational diseases, and invalidity pensions provided following an accident at work or an occupational disease. If these benefits are exported, the amount that may be exported may be fixed by the legislation of the Member State or States providing the benefits.
2. In favour of workers who are nationals of a Member State and who are working in Tunisia/Morocco/Algeria/Portugal:

By analogy, the award of the advantages referred to in 1(a) and (d) above.

B. Article 39 of the Additional Protocol to the Ankara Agreement

As can be seen, the relevant provisions of the Agreements concerned are analogous to Article 39 of the Additional Protocol to the EEC-Turkey Agreement¹. Apart from minor changes in the wording, the only differences between the treatment of Turkish workers and the treatment of workers from the Maghreb countries and Portugal are the following:

¹Cf Annex E.

1. within the limits on the payment of pensions in the Maghreb countries and in Portugal, i.e.,

- limit on the export of invalidity pensions to the country of origin where such pensions are acquired following an accident at work or an occupational disease;
- where the amount of the pension exported is restricted to an amount corresponding to the amount of the pension provided under the legislation of the country to which the benefit is exported.

2. the EEC-Maghreb countries and the EEC-Portugal Agreements provide for the payment of family benefits instead of family allowances to the members of the family who reside in a Member State other than the competent State.

The other differences are minor, necessary because the draft decision of the EEC-Turkey Association Council the Community had forwarded to Turkey included benefits which were not explicitly provided for in the EEC-Turkey Additional Protocol¹, or do not concern the workers from these third States (reciprocal treatment for nationals of Member States).

To conclude, apart from the restriction on the export of pensions, a comparison between these Agreements and the EEC-Turkey Additional Protocol makes it clear that in the field of social security the Commission is willing to grant Algerian/Moroccan/Tunisian/Portuguese workers the same favourable treatment already granted to Turkish workers.

One could, however, point out that unlike the EEC-Turkey Agreement, the Agreements concluded with the Maghreb countries and with Portugal do not include any provision on freedom of movement for workers within the community and that Maghreb and Portuguese workers could therefore be regarded as being less favourably treated than are Turkish workers in the EEC-Turkey draft decision.

This view is not, however, justified. While the attainment of freedom of movement is subject to the implementation of procedures to coordinate social security schemes, the converse is not the case.

¹Provision on equality of treatment in the EEC-Turkey draft decision.

As the Commission has already stressed in its Communication to the Council on the implementation of the Ankara Agreement:

"The nature and importance of the problems raised by social security legislations for workers moving within the Community are not linked to the degree in which freedom of movement has been achieved. These problems arise from movement as such, irrespective of whether it comes under the national policies on entry and stay or whether it is made easier by certain Community measures".¹

The Council also adopted this point of view as the proposal from the Community to the EEC-Turkey Association Council² is based on the same interpretation of Article 39 of the Additional Protocol to the Ankara Agreement, contrary to the opinion that as freedom of movement for Turkish workers was to be granted only in the distant future, Article 39 should have been interpreted much more strictly.

C. Layout of the draft in Annex

The EEC-Turkey draft decision, which has already been referred to, specifies the provisions of Council Regulation (EEC) No 1408/71 of 14 June 1971 which shall apply by analogy to Turkish workers, the members of their families and their survivors. This procedure could be adopted as Regulation No 1408/71 and the EEC-Turkey decision apply to employed persons.

The Regulation is, however, currently being amended to extend it to self-employed persons and to non-employed insured persons. To avoid any confusion which could arise from the provisions of the Regulation being applied to workers from the Maghreb and Portugal, the Commission considers that the Cooperation Agreements should be implemented by a new text without reference to Regulation No 1408/71.

Because of the obligations undertaken by Tunisia, Morocco, Algeria and Portugal, there is a number of provisions common to both Contracting Parties.

¹ Cf Doc. COM(73) 2059 final of 11 December 1973, p. 7, point (b).

² Note of 16 June 1977 from the Secretariat-General of the Council.

III. REMARKS ON THE DRAFT OF DECISION OF THE EEC-ALGERIA, EEC-MOROCCO,
AND EEC-TUNISIA COOPERATION COUNCILS, AND OF THE EEC-PORTUGAL MIXED
COMMITTEE.

For these reasons, the Commission considers that the Decisions to be adopted to implement the provisions on cooperation in the field of social security of the EEC-Maghreb and EEC-Portugal Agreements should include provisions on the obligations devolving upon both Contracting Parties and provisions concerning only the obligations of the Member States vis-à-vis Tunisian/Moroccan/Algerian/Portuguese workers.

The draft in Annex has therefore been drawn up along the following lines:

- Parts I, III and IV concern the Member States and Tunisia/Morocco/
Algeria/Portugal.
- Part II applies only to the Member States.

PART I - GENERAL PROVISIONS

Article 1

The definitions in this Article correspond to the definitions adopted in the EEC-Turkey draft decision.

Articles 2 and 3

Articles 2 and 3 of the EEC-Turkey draft decision were adopted with amendments to apply to Tunisian/Moroccan/Algerian/Portuguese workers who are subject to the legislation of one or more States, and to nationals of Member States who are subject to Tunisian/Moroccan/Algerian/Portuguese legislation.

Article 4

Corresponds to Article 4 of the EEC-Turkey draft decision and therefore to Article 4 of Regulation No 1408/71.

Article 5

Not in the EEC-Turkey draft decision. The Commission does, however, consider it useful for each Contracting Party to take note of the legislation and schemes to which the draft in the Annex applies.

Article 6

There are two versions of this provision. Both are intended to apply to the persons concerned the bilateral agreements concluded between Member States which are applicable to Community workers, i.e. the provisions set out in Part A of Annex II of Regulation No 1408/71 which have not been listed in Part B of that Annex.

As Portugal has ratified the Interim Agreements of the Council of Europe, the EEC-Portugal version is identical to Article 5 of the EEC-Turkey draft decision.

The wording of this Article in the EEC-Tunisia/Morocco/Algeria Agreements is different as those countries have not ratified the Interim Agreements.

Article 7

Corresponds to Article 6(2) of the EEC-Turkey draft decision.

Article 8

Paragraph 1 concerns the waiving of residence clauses on the export to another Member State of benefits acquired under the legislation of one or more Member State.

Paragraph 2 concerns the waiving of residence clauses on the export to Tunisia/Morocco/Algeria/Portugal of benefits acquired under the legislation of one or more Member States, and, conversely, on the export to the Community of benefits acquired under the legislation of a Maghreb country or of Portugal.

The justification for this particular provision may be found in Article 35(5) of the EEC-Algeria Agreement and in the corresponding provisions of the other Cooperation Agreements which are the subject of this Communication.

Account has been taken of the fact that these Agreements do not provide for the export of invalidity benefits other than those provided following an accident at work or an occupational disease.

Article 9

Corresponds to Article 7 of the EEC-Turkey draft decision. Annex V to the annexed draft (cf Article 78 infra) may contain certain restrictions because of distinctive features of the legislation of a Member State, a Maghreb country or Portugal, as provided for in Article 39(4) of the EEC-Algeria Agreement and the corresponding provisions of the other Agreements.

Article 10

The contents of this provision should be examined in conjunction with the Commission's proposals concerning Part II, Title II, Chapter 3 of the preliminary draft annex under which the institutions of the Member States should directly calculate the benefits listed in Annex III, Part B, and the benefits due in pursuance of a social security convention concluded with a Maghreb country or with Portugal (of Articles 44 and 49 below).

Paragraphs 1, 2, 4 and 5 of this provision correspond to paragraphs 1 and 2 of Article 12 of Regulation No 1408/71.

Paragraph 3 was added in view of the fact that Community nationals who are subject to the legislation of a Maghreb country or of Portugal could also, under the cooperation agreements, claim pensions acquired under the legislation of one of these countries.

PART II - PROVISIONS CONCERNING THE APPLICATION OF THE SOCIAL SECURITY SCHEMES OF THE MEMBER STATES TO TUNISIAN/MOROCCAN/ALGERIAN/PORTUGUESE WORKERS

Title I

Determination of the legislation applicable

Articles 11 to 15 of the text attached show the provisions of Articles 13(1) and (2)(a) and (b), 14, 15 and 17 of Regulation No 1408/71 mentioned in Article 9 of the draft EEC-Turkey Decision.

Title II

Special provisions for various categories of benefits

Chapter 1 - Sickness and maternity

This chapter comprises the provisions of Regulation No 1408/71 listed in Articles 10 and 11 of the draft EEC-Turkey Decision :

Articles 15, 16, 17, 18, 19, 20 and 21(1) of the text correspond to Articles 18, 19, 20, 21, 22, 23 and 24(1) of Regulation No 1408/71.

For Article 21(2) it is proposed to use the list of substantial benefits in kind drawn up by the Administrative Commission on Social Security for Migrant Workers for the purposes of Regulation No 1408/71.

Article 22(1) corresponds to Article 11, second subparagraph, of the draft EEC-Turkey Decision.

The text of Article 22(2) is taken from the provisions of Article 25(3) of Regulation No 1408/71.

Articles 23 to 34 of the text attached correspond to the provisions of Articles 26 to 36 of Regulation No 1408/71.

Chapter 2 - Invalidity

The provisions in this Chapter were taken from those of Regulation No 1408/71 referred to in Article 12 of the draft EEC-Turkey Decision.

Chapter 3 - Old age and death (pensions)

In the draft EEC-Turkey Decision (Articles 13 and 14), the system for calculating pensions on a pro rata temporis basis was adopted as applicable in all cases, regardless of whether the worker satisfied the qualifying conditions for benefits with or without aggregation of employment, insurance or residence periods.

Provision is also made for the grant of a supplement where, under the provisions of a social security convention between Turkey and a Member State, the benefit awarded is lower than the one that would result from the application of the Decision.

It appears that this solution no longer satisfies a certain number of countries who would, without having to undertake the double calculation provided for in Article 46(1) of Regulation No 1408/71, prefer to use a direct calculation procedure of the benefits due under the legislation which their institutions administer.

The main reason for this request is the need to simplify administrative work and avert longer delays in awarding pensions, without entailing additional advantages for those concerned.

The Commission considers that this viewpoint is justified and in the preliminary draft attached account is taken of this view in the following manner :

Article 44(1), which corresponds to Article 46 (2) of Regulation No 1408/71, lays down the principle of pro-rata calculation, but Article 44(2) makes it possible to derogate from this principle and calculate the benefits listed in Annex III, Part B, directly.

Article 49 of the preliminary draft concerns the special provisions applicable to Maghreb or Portuguese workers who have been subject to the legislation of two Member States of which at least one is bound by a social security convention with a Maghreb country or with Portugal.

This provision lays down the principle of the award of benefits by each country concerned in accordance with the provisions of the bilateral social security convention applicable and provides for the possible granting of a supplement where the amount due under the convention is lower than the amount of the benefit calculated in accordance with Article 44(1)(pro rata).

Chapter 4 - Accident at work and occupational diseases

This Chapter contains the provisions of the Articles of Regulation No 1408/71 mentioned in Article 15 of the draft EEC-Turkey Decision.

The Commission furthermore proposes that a statement be written into the minutes of the Cooperation Council (or of the Joint Committee) that will adopt the preliminary draft, in which it should be specified that the provisions of Article 55(3) will also extend to occupational diseases determined by the Council of the European Communities in accordance with the provisions of Article 57(4) of Regulation No 1408/71.

Chapter 5 - Death grant

In accordance with Articles 16 and 17 of the draft EEC-Turkey Decision, Articles 62 to 64 of the preliminary draft attached correspond to the provisions of Articles 64 to 66 of Regulation No 1408/71.

Chapter 6 - Family benefits and family allowances
for workers and unemployed persons

Article 39(3) of the Additional Protocol to the Ankara Agreement provides for the payment of family allowances for members of workers' families who reside within the Community. However, Article 40(3) of the EEC-Tunisia Agreement and the corresponding provisions in the other Agreements covered by the present Memorandum provide for the payment of family benefits for these beneficiary categories.

Chapter 6 of the preliminary draft attached, while taking account of this difference, takes over the provisions of Articles 72 to 76 of Regulation No 1408/71 referred to in Articles 18 and 19 of the draft EEC-Turkey Decision.

Chapter 7 - Benefits for dependent children of pensioners
and for orphans

The provisions of Chapter 7 of the preliminary draft attached correspond to those of Article 20 of the draft EEC-Turkey Decision.

However, it has been deemed appropriate to define, in Article 70(1) and Article 71 (1), the family benefits to which the said Chapter applies.

PART III - MISCELLANEOUS PROVISIONS

Articles 73, 74, 75, 76 and 77 of the preliminary draft attached take over the provisions of Articles 21, 22, 23, 24 and 25 of the draft EEC-Turkey Decision, duly amended so as to take account of the fact that the cooperation agreements concluded with the Maghreb countries and Portugal lay down obligations for all of the Contracting Parties and not solely for the Member States.

Article 78 provides that the Member States and the third countries concerned may set out in Annex V the special implementation provisions laid down in their legislation.

Articles 79, 80 and 81 correspond to the provisions of Articles 90, 92 and 93 of Regulation No 1408/71.

PART IV - TRANSITIONAL AND FINAL PROVISIONS

Article 82 of the preliminary draft attached takes over the provisions of Article 94 (1) to (6) of Regulation No 1408/71.

Article 83 deals with the procedure for amending the annexes to the preliminary draft.

Article 84, by analogy with Article 96 of Regulation No 1408/71, sets up a procedure for notifying the declarations mentioned in Article 5 of the preliminary draft.

Contrary to what was agreed within the framework of the draft EEC-Turkey Decision, the Commission takes the view that the competent body should under the cooperation agreements have the power to fix the rules for implementation of the preliminary draft at a later stage. Article 85, corresponding to Article 95 of Regulation No 1408/71, will provide the legal basis for the Decision to be taken for this purpose.

Article 86 corresponds to Article 31 of the draft EEC-Turkey Decision.

Article 87 :

The Commission considers that the implementation of Article 40(3) of the EEC-Tunisia Agreement, as also of the corresponding provisions in the EEC-Morocco,

EEC-Algeria and EEC-Portugal Agreements, should lead to equality of treatment between Community workers and Maghreb and Portuguese workers in respect of the payment of family benefits for members of the family residing within the Community. Hence, the uniform solution for the payment of family benefits that the Council must seek in pursuance of Article 98 of Regulation No 1408/71 must also be applied within the framework of the Cooperation Agreements.

ANNEXES TO THE DRAFT.

Annexes I, III Part A, and IV correspond respectively to Annexes I, III and IV of Regulation No 1408/71.

Annex II should list the provisions of conventions mentioned in Part A of Annex II to Regulation No 1408/71 that have not been listed in Part B of that Annex.

Annex III, Part B, lists the benefits referred to in Article 44(2) of the preliminary draft attached.

Annex V, Part A, sets out the special implementing provisions of the legislation of certain Member States. It corresponds to the provisions of Annex V to Regulation No 1408/71 that apply to Turkish workers in accordance with the Annex to the draft EEC-Turkey Decision.

Annex V, Part B, will be necessary only if special implementing provisions of Tunisian/Moroccan/Algerian/Portuguese legislation have to be mentioned.

Text of articles 39, 40 and 41 of the Cooperation Agreement between the EEC and the People's Democratic Republic of Algeria

Article 39

1. Subject to the provisions of the following paragraphs, workers of Algerian nationality and any members of their families living with them shall enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of the Member States in which they are employed.
2. All periods of insurance, employment or residence completed by such workers in the various Member States shall be added together for the purpose of pensions and annuities in respect of old age, death and invalidity, and also for that of medical care for the workers and for members of their families resident in the Community.
3. The workers in question shall receive family allowances for members of their families who are resident in the Community.
4. The workers in question shall be able to transfer freely to Algeria at the rates applied by virtue of the law of the debtor Member State or States, any pensions or annuities in respect of old age, death, industrial accident or occupational disease, or of invalidity resulting from industrial accident or occupational disease.
5. Algeria shall accord to workers who are nationals of a Member State and employed in its territory, and to the members of their families, treatment similar to that specified in paragraphs 1, 3 and 4.

Article 40

1. Before the end of the first year following the entry into force of this Agreement, the Cooperation Council shall adopt provisions to implement the principles set out in Article 39.
2. The Cooperation Council shall adopt detailed rules for administrative cooperation providing the necessary management and control guarantees for the application of the provisions referred to in paragraph 1.

Article 41

The provisions adopted by the Cooperation Council in accordance with Article 40 shall not affect any rights or obligations arising from bilateral agreements linking Algeria and the Member States where those agreements provide for more favourable treatment of nationals of Algeria or of the Member States.

Text of articles 41, 42 and 43 of the Cooperation Agreement between the EEC and the Kingdom of Morocco

Article 41

1. Subject to the provisions of the following paragraphs, workers of Moroccan nationality and any members of their families living with them shall enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of the Member States in which they are employed.
2. All periods of insurance, employment or residence completed by such workers in the various Member States shall be added together for the purpose of pensions and annuities in respect of old age, invalidity and death and also for that of medical care for the workers and for members of their families resident in the Community.
3. The workers in question shall receive family allowances for members of their families who are resident in the Community.
4. The workers in question shall be able to transfer freely to Morocco, at the rates applied by virtue of the law of the debtor Member State or States, any pensions or annuities in respect of old age, death, industrial accident or occupational disease, or of invalidity resulting from industrial accident or occupational disease.
5. Morocco shall accord to workers who are nationals of a Member State and employed in its territory, and to the members of their families, treatment similar to that specified in paragraphs 1, 3 and 4.

Article 42

1. Before the end of the first year following entry into force of this Agreement, the Cooperation Council shall adopt provisions to implement the principles set out in Article 41.
2. The Cooperation Council shall adopt detailed rules for administrative cooperation providing the necessary management and control guarantees for the application of the provisions referred to in paragraph 1.

Article 43

The provisions adopted by the Cooperation Council in accordance with Article 42 shall not affect any rights or obligations arising from bilateral agreements linking Morocco and the Member States where those agreements provide for more favourable treatment of nationals of Morocco or of the Member States.

Text of articles 40, 41 and 42 of the Cooperation Agreement between the EEC and the Republic of Tunisia

Article 40

1. Subject to the provisions of the following paragraphs, workers of Tunisian nationality and any members of their families living with them shall enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of the Member States in which they are employed.
2. All periods of insurance, employment or residence completed by such workers in the various Member States shall be added together for the purpose of pensions and annuities in respect of old age, death and invalidity, and also for that of medical care for the workers and for members of their families resident in the Community.
3. The workers in question shall receive family allowances for members of their families who are resident in the Community.
4. The workers in question shall be able to transfer freely to Tunisia, at the rates applied by virtue of the law of the debtor Member State or States, any pensions or annuities in respect of industrial accident, occupational disease, old age or death, or of invalidity resulting from industrial accident or occupational disease.
5. Tunisia shall accord to workers who are nationals of a Member State and employed in its territory, and to the members of their families, treatment similar to that specified in paragraphs 1, 3 and 4.

Article 41

1. Before the end of the first year following the entry into force of this Agreement the Cooperation Council shall adopt provisions to implement the principles set out in Article 40.
2. The Cooperation Council shall adopt detailed rules for administrative cooperation providing the necessary management and control guarantees for the application of the provisions referred to in paragraph 1.

Article 42

The provisions adopted by the Cooperation Council in accordance with Article 41 shall not affect any rights or obligations arising from bilateral agreements linking Tunisia and the Member States where those agreements provide for more favourable treatment of nationals of Tunisia or of the Member States.

Text of articles 11, 12, 13 and 14 of the Additional Protocol to the Agreement between the EEC and the Portuguese Republic

Article 11

1. Subject to the provisions of the following paragraphs, workers of Portuguese nationality and any members of their families living with them shall enjoy, in the field of social security, treatment free of any discrimination based on nationality in relation to nationals of the Member States in which they are employed.
2. All periods of insurance, employment or residence completed by such workers in the various Member States shall be added together for the purpose of pensions and annuities in respect of old age, death and invalidity, and also for that of medical care for the workers and for members of their families resident in the Community.
3. The workers in question shall receive family allowances for members of their families who are resident in the Community.
4. The workers in question shall be able to transfer freely to Portugal, at the rates applied by virtue of the law of the debtor Member State or States, any pensions or annuities in respect of industrial accident, occupational disease, old age or death, or of invalidity resulting from industrial accident or occupational disease.

Article 12

Portugal shall accord to workers who are nationals of a Member State and employed in its territory, and to the members of their families, treatment similar to that specified in Article 11(1) and (4).

Article 13

1. Before the end of the first year after entry into force of the Protocol, the Joint Committee shall adopt provisions to implement the principles set out in Articles 11 and 12.
2. The Joint Committee shall adopt detailed rules for administrative cooperation providing the necessary management and control guarantees for the application of the provisions referred to in paragraph 1.

Article 14

The provisions adopted by the Joint Committee in accordance with Article 13 shall not affect any rights or obligations arising from bilateral agreements linking Portugal and the Member States where those agreements provide for more favourable treatment of nationals of Portugal or of the Member States.

Text of article 39 of the EEC-Turkey Additional Protocol

Article 39

1. Before the end of the first year after the entry into force of this Protocol the Council of Association shall adopt social security measures for workers of Turkish nationality moving within the Community and for their families residing in the Community.
2. These provisions must enable workers of Turkish nationality, in accordance with arrangements to be laid down, to aggregate periods of insurance or employment completed in individual Member States in respect of old-age pensions, death benefits and invalidity pensions, and also as regards the provision of health services for workers and their families residing in the Community. These measures shall create no obligation on Member States to take into account periods completed in Turkey.
3. The abovementioned measures must ensure that family allowances are paid if a worker's family resides in the Community.
4. It must be possible to transfer to Turkey old-age pensions, death benefits and invalidity pensions obtained under the measures adopted pursuant to paragraph 2.
5. The measures provided for in this Article shall not affect the rights and obligations arising from bilateral agreements between Turkey and Member States of the Community, in so far as these agreements provide more favourable arrangements for Turkish nationals.

Draft of decision of the EEC-Algeria, EEC-Morocco,
and EEC-Tunisia Cooperation Councils, and of the
EEC-Portugal Mixed Committee

PART I - GENERAL PROVISIONS

Article 1

Definitions

For the purpose of this Decision :

(a) "worker" means :

(i) subject to the restrictions set out in Annex V, any person who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed persons;

(ii) any person who is compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this Decision, under a social security scheme for all residents or for the whole working population if such person :

- can be identified as an employed person by virtue of the manner in which such scheme is administered or financed, or
- failing such criteria, is insured for some other contingency specified in Annex V under a scheme for employed persons, either compulsorily or on an optional continued basis;

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

- (c) "seasonal worker" means any worker who goes to the territory of a Member State other than the one in which he is resident to do work there of a seasonal nature for an undertaking or an employer of that State for a period which may on no account exceed eight months, and who stays in the territory of the said State for the duration of his work; work of a seasonal nature shall be taken to mean work which, being dependent on the succession of the seasons, automatically recurs each year;
- (d) "member of the family" means any person defined or recognized as a member of the family or designated as a member of the household by the legislation under which benefits are provided or, in the cases referred to in Article 19 (1)(a) and Article 29, by the legislation of the Member State in whose territory such person resides; where, however, the said legislations regard as a member of the family or a member of the household only a person living under the same roof as the worker, this condition shall be considered satisfied if the person in question is mainly dependent on that worker;
- (e) "survivor" means any person defined or recognized as such by the legislation under which the benefits are granted; where, however, the said legislation regards as a survivor only a person who was living under the same roof as the deceased worker, this condition shall be considered satisfied if such person was mainly dependent on the deceased worker;
- (f) "residence" means habitual residence;
- (g) "stay" means temporary residence;
- (h) "legislation" means all laws, regulations and other provisions and all other present or future implementing measures of each Member State and of Tunisia/Morocco/Algeria/Portugal relating to the sectors of social security and schemes for social security covered by Article 4(1) and (2).

The term excludes provisions of existing or future industrial agreements, whether or not they have been the subject of a decision by the authorities rendering them compulsory or extending their scope;

- (i) "social security convention" means any bilateral or multilateral instrument which binds or will bind either two or more Member States exclusively or a Member State and Tunisia/Morocco/Algeria/Portugal, in the field of social security, for all or part of the branches and schemes set out in Article 4(1) and (2), together with agreements of whatever kind, concluded pursuant to the said instruments;
- (j) "competent authority" means, in respect of each Member State and of Tunisia/Morocco/Algeria/Portugal, the Minister, Ministers or other equivalent authority responsible for social security schemes throughout or in any part of the territory of the State in question;
- (k) "institution" means, in respect of each Member State and of Tunisia/Morocco/Algeria/Portugal, the Minister, the body or authority responsible for administering all or part of the legislation;
- (l) "competent institution" means :
 - (i) the institution of the Member State or of Tunisia/Morocco/Algeria/Portugal with which the person concerned is insured at the time of the application for benefit, or
 - (ii) the institution from which the person concerned is entitled or would be entitled to benefits if he or a member or members of his family were resident in the territory of the Member State or of Tunisia/Morocco/Algeria/Portugal in which the institution is situated, or
 - (iii) the institution designated by the competent authority of the Member State concerned or of Tunisia/Morocco/Algeria/Portugal,
 - (iv) in the case of a scheme relating to an employer's liability in respect of the benefits set out in Article 4(1), either the employer or the insurer involved or, in default thereof, a body or authority designated by the competent authority of the Member State concerned or of Tunisia/Morocco/Algeria/Portugal;
- (m) "institution of the place of residence" and "institution of the place of stay" mean respectively the institution which is competent to provide benefits in the place where the person concerned resides and the institution which is competent to provide benefits in the place where the person concerned is staying, under the legislation administered by that institution or, where no such institution exists, the institution designated by the competent authority of the Member State in question or of Tunisia/Morocco/Algeria/Portugal;

- (n) "competent State" means the Member State in whose territory the competent institution is situated;
- (o) "insurance periods" means contribution periods or periods of employment as defined or recognized as insurance periods by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to insurance periods;
- (p) "periods of employment" means periods defined or recognized as such by the legislation under which they were completed, and all periods treated as such where they are regarded by the said legislation as equivalent to periods of employment;
- (q) "periods of residence" means periods of residence as defined or recognized as such by the legislation under which they were completed or are deemed to have been completed;
- (r) "benefits" and "pensions" mean all benefits and pensions, including all elements thereof payable out of public funds, revalorization increases and supplementary allowances, subject to the provisions of Title II of Part II, as also lump-sum benefits which may be paid in lieu of pensions, and payments made by way of reimbursement of contributions;
- (s) (i) "family benefits" means all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4(1)(h), excluding the special childbirth allowances mentioned in Annex I;
(ii) "family allowances" means periodical cash benefits granted exclusively by reference to the number and, where appropriate, the age of members of the family;
- (t) "death grants" means any once-for-all payment in the event of death, exclusive of the lump-sum benefits referred to in subparagraph (r);

- (u) "Regulation No 1408/71" means, for the purposes of this Decision, Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.

Article 2

Persons covered

This Decision shall apply

- (a) to workers of Tunisian/Moroccan/Algerian/Portuguese nationality who are or have been subject to the legislation of one or more Member States, as also to the members of their families residing within the territory of a Member State and their survivors;
- (b) to workers who are nationals of a Member State who are or have been subject to Tunisian/Moroccan/Algerian/Portuguese legislation as also the members of their families residing in Tunisia/Morocco/Algeria/Portugal and their survivors.

Article 3

Equality of treatment

1. Subject to the special provisions of this Decision, persons who are Tunisian/Moroccan/Algerian/Portuguese nationals to whom this Decision applies and who are resident in the territory of one of the Member States shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.
2. Subject to the special provisions of this Decision, nationals of a Member State to whom the provisions of this Decision apply who are resident in Tunisia/Morocco/Algeria/Portugal shall be subject to the same obligations and enjoy the same benefits under Tunisian/Moroccan/Algerian/Portuguese legislation as the nationals of that State.

3. The provision of paragraphs 1 and 2 shall apply to the right to elect members of the organs of social security institutions or to participate in their nomination, but shall not affect the legislative provisions of any Member State or of Tunisia/Morocco/Algeria/Portugal relating to eligibility or methods of nomination.

Article 4

Matters covered

1. Taking into account of the special provisions contained herein, this Decision shall apply to all legislation concerning the following branches of social security :
 - (a) sickness and maternity benefits;
 - (b) invalidity benefits, including those intended for the maintenance or improvement or earning capacity;
 - (c) old-age benefits;
 - (d) survivors' benefits;
 - (e) benefits in respect of accidents at work and occupational diseases;
 - (f) death grants;
 - (g) unemployment benefits;
 - (h) family benefits.
2. This Decision shall apply to all general and special social security schemes, whether contributory or non-contributory, and to schemes concerning the liability of an employer or shipowner in respect of the benefits referred to in paragraph 1.
3. The provisions of Title II of Part II shall not, however, affect the legislative provisions of any Member State or of Tunisia/Morocco/Algeria/Portugal concerning a shipowner's liability.

4. This Decision shall not apply to social and medical assistance or to benefit schemes for victims of war and its consequences.

Article 5

Declarations of the Contracting Parties on the scope of this Decision

The Member States and Tunisia/Morocco/Algeria/Portugal shall specify the legislation and schemes referred to in Article 4(1) and (2) and the benefits referred to in Articles 70 and 71 in declarations to be notified and published in accordance with Article 84.

Article 6 (EEC-Tunisia/Morocco/Algeria version)

Social security conventions concluded between two or more Member States

Social security conventions listed in Annex II as binding two or more Member States exclusively shall apply to all persons to whom this Decision applies.

Article 6 (EEC-Portugal version)

Relationship between this Decision and social security conventions binding two or more Member States exclusively

1. Subject to the provisions of paragraph 2, this Decision shall, as regards the persons and matters which it covers, replace any social security convention exclusively binding two or more Member States.
2. The provisions of the social security conventions referred to in paragraph 1 shall remain applicable and all the persons covered by this Decision shall be covered by them, insofar as they are listed in Annex II.

Article 7

Effect of compulsory insurance on reimbursement of contributions

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

Article 8

Waiving of residence clauses

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

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

2. The provisions of paragraph 1 shall apply save as regards invalidity benefits other than those provided in the case of **an accident at work or an occupational disease**, to benefits **acquired** under the legislation of one or more Member States, if the beneficiary is a Tunisian/Moroccan/Algerian/Portuguese national resident in Tunisia/Morocco/Algeria/Portugal, and to benefits acquired under Tunisian/Moroccan/Algerian/Portuguese legislation, if the beneficiary is a national of a Member State resident within the territory of that State or of any other Member State.

Article 9

Revalorization of benefits

Subject to the restrictions laid down in Annex V, rules for revalorization provided for by the legislation of a Member State or of Tunisia/Morocco/Algeria/Portugal shall apply to benefits due under that legislation by virtue of the provisions of this Decision.

Article 10

Revention of overlapping of benefits

1. This Decision can neither confer nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance. However, this provision shall not apply to benefits in respect of invalidity, old age or death (pensions) which are awarded by the institutions of two or more Member States, in accordance with Articles 39, 41(2) and (3), 44, 48, 59(1)(b).
2. The legislative provisions of a Member State for reduction, suspension or withdrawal of benefit in cases of overlapping of a social security benefit with other social security benefits or other income may be invoked as regards :
 - (a) benefits acquired under the legislation of another Member State or of Tunisia/Morocco/Algeria/Portugal;
 - (b) income earned within the territory of another Member State or of Tunisia/Morocco/Algeria/Portugal.
3. The legislative provisions of Tunisia/Morocco/Algeria/Portugal for reduction, suspension or withdrawal of benefit in cases of overlapping of a social security benefit with other social security benefits or other income may also be invoked as regards :

- (a) benefits acquired under the legislation of one or more Member States;
 - (b) income earned within the territory of one or several Member States.
4. The provisions of paragraph 2 shall not apply, however, where the person concerned is receiving benefits of the same kind in respect of invalidity, old age or death (pensions) that have been awarded
- by the institutions of two or more Member States in accordance with the provisions of Articles 44, 48 or 59(1)(b) of this Decision, or
 - by a Tunisian/Moroccan/Algerian/Portuguese institution in accordance with the provisions of a social security convention concluded between Tunisia/Morocco/Algeria/Portugal and a Member State.
5. The legislative provisions of a Member State for reduction, suspension or withdrawal of benefit in the case of a person in receipt of invalidity benefits or anticipatory old-age benefits pursuing a professional or trade activity may be invoked against such person even though he is pursuing his activity in the territory of another Member State or of Tunisia/Morocco/Algeria/Portugal.
6. For the purpose of the provisions of this Article, the institutions concerned shall exchange the relevant information upon request.

PART II - PROVISIONS CONCERNING
THE APPLICATION OF SOCIAL SECURITY SCHEMES OF THE MEMBER STATES
TO TUNISIAN/MOROCCAN/ALGERIAN/PORTUGUESE WORKERS AND MEMBERS OF
THEIR FAMILIES

TITLE I : DETERMINATION OF THE LEGISLATION APPLICABLE

Article 11

General rules

1. A worker to whom this Decision applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.
2. Subject to the provisions of Articles 12 to 14 :
 - (a) a worker employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State;
 - (b) a worker employed on board a vessel flying the flag of a Member State shall be subject to the legislation of that State.

Article 12

Special rules

1. Article 11(2)(a) shall apply subject to the following exceptions or circumstances :
 - (a) (i) A worker employed in the territory of a Member State by an undertaking to which he is normally attached who is posted by that undertaking to the territory of another Member State to perform work there for that undertaking shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed twelve months and that he is not sent to replace another worker who has completed his term of posting;
 - (ii) if the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds twelve months, the legislation of the first State shall continue to apply until the completion of such work, provided that the competent authority of the State in whose territory the worker is posted or the body designated by that authority gives its consent;

such consent must be requested before the end of the initial twelve-month period. Such consent cannot, however, be given for a period exceeding twelve months;

- (b) a worker employed in international transport in the territory of two or more Member States as a member of travelling or flying personnel and who is working for an undertaking which, for hire or reward or on its own account, operates transport services for passengers or goods by rail, road, air or inland waterway and has its registered office or place of business in the territory of a Member State, shall be subject to the legislation of the latter State, with the following restrictions :
- (i) where the said undertaking has a branch or permanent representation in the territory of a Member State other than that in which it has its registered office or place of business, a worker employed by such branch or agency shall be subject to the legislation of the Member State in whose territory such branch or permanent representation is situated;
 - (ii) where a worker is employed principally in the territory of the Member State in which he resides, he shall be subject to the legislation of that State, even if the undertaking which employs him has no registered office or place of business or branch or permanent representation in that territory;
- (c) a worker, other than one employed in international transport, who normally pursues his activity in the territory of two or more Member States shall be subject :
- (i) to the legislation of the Member State in whose territory he resides, if he pursues his activity partly in that territory or if he is attached to several undertakings or several employers who have their registered offices or places of business in the territory of different Member States;
 - (ii) to the legislation of the Member State in whose territory is situated the registered office or place of business of the undertaking or individual employing him, if he does not reside in the territory of any of the Member States where he is pursuing his activity;
- (d) a worker who is employed in the territory of one Member State by an undertaking which has its registered office or place of business in the territory of another Member State and which straddles the common frontier of these States shall be subject to the legislation of the Member State in whose territory the undertaking has its registered office or place of business.

2. Article 12(2)(b) shall apply subject to the following exceptions and circumstances :

- (a) a worker employed by an undertaking to which he is normally attached, either in the territory of a Member State or on board a vessel flying the flag of a Member State, who is posted by that undertaking on board a vessel flying the flag of another Member State to perform work there for that undertaking shall, subject to the conditions provided in paragraph 1(a), continue to be subject to the legislation of the first Member State;
 - (b) a worker who, while not being habitually employed at sea, is employed in the territorial waters or in a part of a Member State on a vessel flying the flag of another Member State, but is not a member of the crew, shall be subject to the legislation of the first State;
 - (c) a worker employed on board a vessel flying the flag of a Member State and remunerated for such employment by an undertaking or a person whose registered office or place of business is in the territory of another Member State shall be subject to the legislation of the latter State if he is resident in the territory of that State, the undertaking or person paying the remuneration shall be considered as the employer for the purposes of the said legislation.
3. The provision of the legislation of a Member State under which a pensioner who is pursuing a professional or trade activity is not subject to compulsory insurance in respect of such activity shall also apply to a pensioner whose pension was acquired under the legislation of another Member State, unless the person concerned expressly asks to be so subject by applying to the institution designated by the competent authority of the first Member State.

Article 13

Rules concerning voluntary insurance or optional continued insurance

- 1. The provisions of Articles 11 and 12 shall not apply to voluntary insurance or to optional continued insurance unless in respect of one of the sectors referred to in Article 4 there exists in any Member State only a voluntary scheme of insurance.
- 2. Where application of the legislations of two or more Member States entails overlapping of insurance :

- under a compulsory insurance scheme and one or more voluntary or optional continued insurance schemes, the person concerned shall be subject exclusively to the compulsory insurance schemes;
 - under two or more voluntary or optional continued insurance schemes, the person concerned may join only the voluntary or optional continued insurance scheme for which he has opted.
3. However, in respect of invalidity, old age and death (pensions), the person concerned may join the voluntary or optional continued insurance scheme of a Member State, even if he is compulsorily subject to the legislation of another Member State, to the extent that such overlapping is explicitly or implicitly admitted in the first Member State.

Article 14

Exceptions to the provisions of Articles 11 to 13

Two or more Member States or the competent authorities of these States may, by common agreement, provide for exceptions to the provisions of Articles 11 to 13 in the interest of certain workers or categories of workers.

TITLE II - : SPECIAL PROVISIONS

CHAPTER 1
SICKNESS AND MATERNITY

Section 1

Common provisions

Article 15

Aggregation of insurance periods or periods of employment or residence

1. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of insurance periods or periods of employment or residence shall, to the extent necessary, take account of insurance periods or periods of employment or residence completed under the legislation of any other Member State as if they were periods completed under the legislation which it administers.
2. The provisions of paragraph 1 shall apply to seasonal workers, even in respect of periods prior to any break in insurance exceeding the period allowed by the legislation of the competent State, provided however that the worker concerned has not ceased to be insured for a period exceeding four months.

Section 2

Workers and members of their families

Article 16

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

1. A worker residing in the territory of a Member State other than the competent State, who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 15, shall receive in the State in which he is resident :
 - (a) benefits in kind provided on behalf of the competent institution by the institution of the place of residence in accordance with the legislation administered by that institution as though he were insured with it;

- (b) cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.
2. The provisions of paragraph 1 shall apply by analogy to members of the family permanently resident in the territory of a Member State other than the one responsible, in so far as they are not entitled to such benefits under the legislation of the State in the territory of which they are permanently resident.

Where the members of the family reside in the territory of a Member State under whose legislation the right to receive benefits in kind is not subject to conditions of insurance or employment, benefits in kind which they receive shall be considered as being on behalf of the institution with which the worker is insured, unless the spouse or the person looking after the children exercises a professional or trade activity in the territory of the said Member State.

Article 17

Frontier workers and members of their families - Special provisions

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

Article 18

Stay in or transfer of residence to the competent State

1. The worker referred to in Article 16(1) who is staying in the territory of the competent State shall receive benefits in accordance with the provisions of the legislation of that State as though he were resident there, even if he has already received benefits for the same case of sickness or maternity before his stay.

2. Paragraph 1 shall apply by analogy to the members of the family referred to in Article 16(2).

However, where the latter reside in the territory of a Member State other than the one in whose territory the worker resides, benefits in kind shall be provided by the institution of the place of stay on behalf of the institution of the place of residence of the persons concerned.

3. Paragraphs 1 and 2 shall not apply to frontier workers and the members of their families.
4. A worker and members of his family referred to in Article 16 who transfer their residence to the territory of the competent State shall receive benefits in accordance with the provisions of the legislation of that State even if they have already received benefits for the same case of sickness or maternity before transferring their residence.

Article 19

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

1. A worker who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 15, and :
 - (a) whose condition necessitates immediate benefits during a stay in the territory of another Member State, or
 - (b) who, having become entitled to benefits chargeable to the competent institution, is authorized by that institution to return to the territory of the Member State where he resides, or to transfer his residence to the territory of another Member State, or
 - (c) who is authorized by the competent institution to go to the territory of another Member State to receive there the treatment appropriate to his condition, shall be entitled :
 - (i) to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence in accordance with the legislation which it administers, as though he were insured with it; the length of the period during which benefits are provided shall be governed however by the legislation of the competent State;

- (ii) to cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of stay or residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.
2. The authorization required under paragraph 1(b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or the receipt of medical treatment. The authorization required under paragraph 1(c) may not be refused where the treatment in question cannot be provided for the person concerned within the territory of the Member State in which he resides.
3. The provisions of paragraphs 1 and 2 shall apply by analogy to members of a worker's family.

However, for the purpose of applying paragraph 1(a)(i) and (c)(i) to the members of the family referred to in Article 16(2) who reside in the territory of a Member State other than the one in whose territory the worker resides :

- (a) benefits in kind shall be provided on behalf of the institution of the Member State in whose territory the members of the family are residing by the institution of the place of stay in accordance with the provisions of the legislation which it administers as if the worker were insured there. The period during which benefits are provided shall, however, be that laid down under the legislation of the Member State in whose territory the members of the family are residing;
- (b) the authorization required under paragraph 1(c) shall be issued by the institution of the Member State in whose territory the members of the family are residing.

Article 20

Calculation of cash benefits

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

2. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on a standard wage or salary, shall take account exclusively of the standard wage or salary or, where appropriate, of the average of the standard wages or salaries for the periods completed under the said legislation.
3. The competent institution of a Member State under whose legislation the amount of cash benefits varies with the number of members of the family, shall also take into account the members of the family of the person concerned who are resident in the territory of another Member State as if they were resident in the territory of the competent State.

Article 21

Substantial benefits in kind

1. Where the right of a worker or a member of his family to a prosthesis, a major appliance or other substantial benefits in kind has been recognized by the institution of a Member State before he becomes insured with the institution of another Member State, the said worker shall receive such benefits at the expense of the first institution, even if they are granted after he becomes insured with the second institution.
2. The list of benefits to which the provisions of paragraph 1 apply shall be that drawn up by the Administrative Commission on Social Security for Migrant Workers referred to in Article 80 of Regulation No 1408/71 and defined in Article 1(u) of this Decision.

Section 3

Unemployed persons and members of their families

Article 22

1. The provisions of Article 16 shall apply by analogy to totally unemployed frontier workers satisfying the conditions of the legislation of the competent State for entitlement to sickness insurance benefits, as also to members of their families.
2. Where an unemployed person other than those referred to in paragraph 1 satisfies the conditions laid down by the legislation of the Member State responsible for the cost of unemployment benefits for entitlement to sickness and maternity benefits, taking account where necessary of the provisions of Article 15, the members of his family shall receive these benefits, whichever the Member State on whose territory they are permanently or temporarily resident. Such benefits shall be issued :

- (i) with regard to benefits in kind, by the institution of the place of permanent or temporary residence in accordance with the legislation which it applies, on behalf of the responsible institution of the Member State which is to bear the cost of unemployment benefit;
- (ii) with regard to cash benefits, by the responsible institution of the Member State which is to bear the cost of unemployment benefit, under the provisions of the legislation which it applies.

Section 4

Pension claimants and members of their families

Article 23

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

1. A worker, members of his family or his survivors who, during the investigation of a claim, cease to be entitled to benefits in kind under the legislation of the Member State last competent, shall nevertheless receive such benefits under the following conditions : benefits in kind shall be provided in accordance with the legislation of the Member State in whose territory the person or persons concerned reside, provided that they are entitled to such benefits under that legislation or would be entitled to them under the legislation of another Member State if they were residing in the territory of that State, taking account where appropriate of the provisions of Article 15.
2. A pension claimant who is entitled to benefits in kind under the legislation of a Member State which obliges the person concerned to pay sickness insurance contributions himself during the investigation of his pension claim shall cease to be entitled to benefits in kind at the end of the second month for which he has not paid the contributions due.
3. Benefits in kind provided pursuant to paragraph 1 shall be chargeable to the institution which has collected contributions pursuant to paragraph 2; where no contributions are payable under paragraph 2, the institution responsible for the cost of the benefits in kind shall, after awarding the pension pursuant to Article 25, refund the amount of the benefits provided to the institution of the place of residence.

Section 5

Pensioners and members of their families

Article 24

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

A pensioner who is entitled to draw pensions under the legislation of two or more Member States, of which one is that of the Member State in whose territory he resides, and who is entitled to benefits under the legislation of the latter Member State, taking account where appropriate of the provisions of Article 15 and Annex V shall, with the members of his family, receive such benefits from the institution of the place of residence and at the expense of that institution as though the person concerned were a pensioner whose pension was payable solely under the legislation of the latter Member State.

Article 25

Pensions payable under the legislation of one or more States, in cases where entitlement to such benefits does not exist in the country of permanent residence.

1. The holder of pension rights under the legislation of one or more Member States who is not entitled to benefits under the legislation of the Member State in whose territory he is permanently resident shall nevertheless receive such benefits for himself and for members of his family, in so far as he would, taking account where appropriate of the provisions of Article 15 and Annex V, be entitled to those benefits under the legislation of the single Member State or one at least of the several Member States responsible in the pensions field, had he been permanently resident in the territory of the State in question. Benefits shall be issued under the following conditions :
 - (a) benefits in kind shall be issued on behalf of the institution referred to in paragraph 2 by the institution of the place of permanent residence as though the person concerned were the holder of pension rights under the legislation of the State on whose territory he is permanently resident and were entitled to such benefits;

- (b) cash benefits shall where appropriate be issued by the responsible institution determined by the rules of paragraph 2, in accordance with the legislation applied by it. However, upon agreement between the responsible institution and the institution of the place of permanent residence, such benefits may be issued by the latter institution on behalf of the former, in accordance with the legislation of the State responsible.
2. In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution determined according to the following rules :
- (a) where the pensioner is entitled to the said benefits under the legislation of a single Member State, the cost shall be borne by the competent institution of that State;
 - (b) where the pensioner is entitled to the said benefits under the legislations of two or more Member States the cost thereof shall be borne by the competent institution of the Member State to whose legislation the pensioner has been subject for the longest period of time; should the application of this rule result in several institutions being responsible for the cost of benefits the cost shall be borne by the institution administering the legislation to which the pensioner was last subject.

Article 26

Pensions payable under the legislation of one or more of the Member States other than the country of residence where a right to benefits is enjoyed in the latter country.

Where the pensioner entitled to a pension under the legislation of one Member State, or pensions under the legislations of two or more Member States, resides in the territory of a Member State under whose legislation the right to receive benefits in kind is not subject to conditions of insurance or employment, nor is any pension payable, the cost of benefits in kind enjoyed by him and members of his family shall be borne by the institution of one of the Member States competent in respect of pensions, determined according to the rules laid down in Article 25 (2), to the extent that the pensioner and members of his family would have been entitled to such benefits under the legislation administered by the said institution if they resided in the territory of the Member State where that institution is situated.

Article 27

Permanent residence of members of the family in a State other than the one in which the pensioner is permanently resident - Transfer of permanent residence to the State where the pensioner is permanently resident.

1. Members of the family of the holder of pension rights under the legislation of one or more Member States, who are permanently resident in the territory of a Member State other than the one in which the pensioner is permanently resident, shall receive benefits as though he were permanently resident in the same territory as the members of his family, in so far as he is entitled to the said benefits under the legislation of a Member State. Benefits shall be issued under the following conditions :
 - (a) benefits in kind shall be issued by the institution of the place of permanent residence of the members of the family in accordance with the legislation applied by that institution, the cost being borne by the institution of the pensioner's place of residence;
 - (b) cash benefits shall where appropriate be issued by the responsible institution determined by the provisions of Article 24 or Article 25(2), in accordance with the legislation applied by it. However, upon agreement between the responsible institution and the institution of the place of permanent residence of the members of the family, such benefits may be issued by the latter institution on behalf of the former, in accordance with the legislation of the State responsible.
2. Members of the family covered by paragraph 1 who transfer their permanent residence to the territory of the Member State where the pensioner resides, shall receive :
 - (a) benefits in kind under the provisions of the legislation of that State, even if they have already received benefits for the same case of sickness or maternity before transferring their permanent residence;
 - (b) cash benefits issued where appropriate by the responsible institution determined by the provisions of Article 24 or of Article 25(2), in accordance with the legislation applied by it. However, upon agreement between the responsible institution and the institution of the place of permanent residence of the pensioner, such benefits may be issued by the latter institution on behalf of the former, in accordance with the legislation of the State responsible.

Article 28

Substantial benefits in kind

The provisions of Article 21 shall apply by analogy to pensioners.

Article 29

Temporary residence of the pensioner and/or members of his family in a State other than that in which they are permanently resident.

A pensioner entitled to draw a pension or pensions under the legislation of one or more Member States who is also entitled to benefits under the legislation of one of those States shall, with members of his family, who are staying in the territory of a Member State other than the one in which they reside, receive :

- (a) benefits in kind issued by the institution of the place of temporary residence, under the provisions of the legislation applied by it, the cost being borne by the institution of the pensioner's place of permanent residence;:
- (b) cash benefits issued where appropriate by the responsible institution, determined by the provisions of Article 24 or Article 25(2), in accordance with the legislation applied by it. However, following an agreement between the responsible institution and the institution of the place of temporary residence, these benefits may be issued by the latter institution on behalf of the former, in accordance with the legislation of the State responsible.

Article 30

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

The cost of benefits with which a pensioner who is a former frontier worker or the survivor of a frontier worker is provided under Article 24, and the cost of benefits with which the members of his family are provided under Article 24 or 29 shall, where the frontier worker was working as such for the three months immediately preceding the date on which the pension became payable on the date of his death, be divided equally between the institution of the pensioner's place of residence and that with which he was last insured.

Article 31

Contributions payable by pensioners

The institution responsible for payment of a pension, and belonging to a Member State whose legislation provides for deductions from pensions in respect of contributions for sickness and maternity shall be authorized to make such deductions from the pension payable by such institution, calculated in accordance with the legislation concerned to the extent that the cost of the benefits under Articles 24, 25, 26, 27, 29 and 30 are to be borne by an institution of the said Member State.

Article 32

General provisions

The provisions of Articles 24 to 31 shall not apply to a pensioner or to members of his family who are entitled to benefits under the legislation of a Member State as a result of pursuing an occupational activity. In such a case, the person concerned shall be considered as a worker or as a member of a worker's family for the purposes of this Chapter.

Section 6

Miscellaneous provisions

Article 33

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

1. Where the legislation of the country of stay or residence contains several sickness or maternity insurance schemes, the provisions applicable under Articles 16, 18(1), 19, 22, 23, 25(1), 27(1) or Article 29 shall be those of the scheme covering manual workers in the steel industry. Where, however, the said legislation includes a special scheme for workers in mines and similar undertakings, the provisions of such scheme shall apply to that category of workers and members of their families provided the institution of the place of stay or residence to which application is made is competent to administer such scheme.

2. Where under the legislation of a Member State, the granting of benefits is conditional upon the origin of the illness, that condition shall apply neither to workers nor to the members of their families to whom this Decision applies, regardless of the Member State in whose territory they reside.
3. Where the legislation of a Member State fixes a maximum period for the granting of benefits, the institution which administers that legislation may, where appropriate, take account of the period during which the benefits have already been provided by the institution of another Member State for the same case of sickness or maternity.

Section 7

Reimbursement between institutions

Article 34

1. Without prejudice to the provisions of Article 30, benefits in kind provided pursuant to this Chapter by the institution of one Member State on behalf of the institution of another Member State shall be fully refunded.
2. The funds referred to in paragraph 1 shall be determined and made in accordance with the procedure provided for by the Decision referred to in Article 85, either on production of proof of actual expenditure or on the basis of lump-sum payments.

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

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

CHAPTER 2

INVALIDITY

Section 1

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

Article 35

General provisions

1. A worker who has been successively or alternately subject to the legislations of two or more Member States and who has completed insurance periods exclusively under legislations according to which the amount of invalidity benefits is independent of the duration of insurance periods, shall receive benefits in accordance with Article 37.
2. Annex III, Part A, lists legislations of the kind mentioned in paragraph 1 which are in force in the territory of each of the Member States concerned.

Article 36

Aggregation of insurance periods

1. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefit conditional upon the completion of insurance periods shall take account, to the extent necessary, of insurance periods completed under the legislation of any other Member States, as though they had been completed under its own legislation.
2. Where the legislation of a Member State makes the granting of certain benefits conditional upon the insurance periods having been completed in an occupation which is subject to a special scheme or, where appropriate, in a specific employment, insurance periods completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing this, in the same occupation or, where appropriate, in the same employment. If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate.

Article 37

Award of benefits

1. The institution of the Member State, whose legislation was applicable at the time when incapacity for work followed by invalidity occurred, shall determine, in accordance with that legislation, whether the person concerned satisfies the conditions for entitlement to benefits, taking account where appropriate of the provisions of Article 36.
2. A person who satisfies the conditions referred to in paragraph 1 shall obtain the benefits exclusively from the said institution, in accordance with the legislation which it administers.
3. A person who does not satisfy the conditions referred to in paragraph 1 shall receive the benefits to which he is still entitled under the legislation of another Member State, taking account where appropriate of the provisions of Article 36.
4. If the legislation applicable under paragraph 2 or 3 provides that the amount of the benefits shall be determined taking into account the existence of members of the family other than the children, the competent institution shall also take into consideration the members of the family of the person concerned who are residing in the territory of another Member State or of Tunisia/Morocco/Algeria/Portugal, as if they were residing in the territory of the competent State.

Section 2

Workers subject either exclusively to legislations according to which the amount of invalidity benefit depends on the length of periods of insurance or residence to the legislations of this type and of the type referred to in Section 1.

Article 38

General provisions

1. A worker who has been successively or alternately subject to the legislations of two or more Member States, of which at least one is not of the type referred to in Article 35(1), shall receive benefits under the provisions of Chapter 3, which shall apply by analogy, taking into account the provisions of paragraph 4.

2. However, a worker who suffers incapacity for work followed by invalidity while subject to a legislation listed in Annex III, Part A, shall receive benefits in accordance with Article 35(1) on two conditions :
- that he satisfies the conditions of that legislation or other legislations of the same type, taking account where appropriate of the provisions of Article 36, but without having recourse to insurance periods completed under legislations not listed in Annex III, Part A, and
 - that he does not satisfy the conditions for entitlement to benefits under a legislation not listed in Annex III, Part A.
- 3.(a) For the purpose of determining the right to benefits under the legislation of a Member State, listed in Annex III, Part A, which makes the granting of invalidity benefits conditional upon the person concerned during a specified period having received cash sickness benefit or having been incapable of work, where a worker who has been subject to that legislation suffers incapacity for work followed by invalidity while subject to the legislation of another Member State, account shall, without prejudice to Article 35(1), be taken of :
- (i) any period during which, in respect of that incapacity for work, he has, under the legislation of the second Member State, received cash sickness benefits or, in lieu thereof, continued to receive his wage or salary,
 - (ii) any period during which, in respect of the invalidity which followed that incapacity for work, he has received invalidity benefits under the legislation of the second Member State,
as if it were a period during which cash sickness benefits were paid to him under the legislation of the first Member State or during which he was incapable of work within the meaning of that legislation.
- (b) The right to invalidity benefits under the legislation of the first Member State shall be acquired either upon expiry of the preliminary period of compensation for sickness as required by that legislation or upon expiry of the preliminary period of incapacity for work as required by that legislation, and at the earliest :

- (i) on the day on which the right to invalidity benefits is acquired under the legislation of the second Member State, or
 - (ii) on the day following the last day on which the person concerned is entitled to cash sickness benefits under the legislation of the second Member State.
4. A decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State concerned, provided that that concordance between the legislations of these States on conditions relating to the degree of invalidity is acknowledged in Annex IV.

Section 3

Aggravation of invalidity

Article 39

1. The case of aggravation of an invalidity for which a worker is receiving benefits under the legislation of a single Member State, the following provisions shall apply :
- (a) if the person concerned has not been subject to the legislation of another Member State since receiving benefits, the competent institution of the first State shall be bound to grant the benefits, taking the aggravation into account, in accordance with the legislation which it administers;
 - (b) if the person concerned has been subject to the legislation of one or more Member States since receiving benefits, the benefits shall be granted to him, taking the aggravation into account, in accordance with Article 35(1) or Article 38(1) or (2) as appropriate;
 - (c) if the total amount of the benefit or benefits payable under subparagraph (b) is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously liable for payment, such institution shall be bound to pay him a supplement equal to the difference between the two amounts;
 - (d) if, in the case referred to in subparagraph (b), the person concerned is not entitled to benefits at the expense of an institution of another Member State, the competent institution of the first State shall be bound to grant the benefits, according to the legislation of that State, taking into account the aggravation and, where appropriate, the provisions of Article 36.

2. In cases of aggravation of an invalidity for which a worker is receiving benefits under the legislations of two or more Member States, the benefits shall be granted to him, taking the aggravation into account, in accordance with the provisions of Article 38(1).

Section 4

Resumption of provisions of benefits after suspension
or withdrawal - Conversion of invalidity benefits into
old-age benefits

Article 40

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

1. If provision of benefits is to be resumed after their suspension such provision shall, without prejudice to Article 41, be the responsibility of the institution or institutions which were responsible for provision of the benefits at the time of their suspension.
2. If, after withdrawal of benefits, the condition of the person concerned warrants the granting of further benefits, they shall be granted in accordance with the provisions of Article 35(1) or Article 38(1) or (2), as appropriate.

Article 41

Conversion of invalidity benefits into old-age benefits

1. Invalidity benefits shall be converted into old-age benefits, where appropriate, under the conditions laid down by the legislation or legislations under which they were granted, and in accordance with the provisions of Chapter 3.
2. Any institution of a Member State which is responsible for providing invalidity benefits shall, where a person receiving invalidity benefits can, by virtue of Article 47, establish a claim to old-age benefits under the legislation of other Member States, continue to provide such person with the invalidity benefits to which he is entitled under the legislation which it administers until the provisions of paragraph 1 become applicable as regards that institution.

3. However, if in the case referred to in paragraph 2 the invalidity benefits have been granted pursuant to Article 37, the institution remaining responsible for providing those benefits may apply Article 47(1)(a) as if the recipient of the said benefits satisfied the conditions of the legislation of the Member State concerned for entitlement to old-age benefits, by substituting for the theoretical amount referred to in Article 44(1)(a) the amount of the invalidity benefits due from the said institution.

CHAPTER 3
OLD AGE AND DEATH (PENSIONS)

Article 42

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

1. The rights to benefits of a worker who has been subject to the legislation of two or more Member States, or of his survivors, shall be determined in accordance with the provisions of this Chapter.
2. Subject to the provisions of Article 47, when a claim for the award of a benefit is lodged, such award must be made having regard to all the legislations to which the worker has been subject. Exception shall be made to this rule if the person concerned expressly asks for postponement of the award of old-age benefits to which he would be entitled under the legislation of one or more Member States.

Article 43

Recognition of periods of insurance or residence completed under the legislations to which a worker has been subject, for the acquisition, retention or recovery of entitlement to benefits.

1. An institution of a Member State whose legislation makes the acquisition, retention or recovery of the rights to benefits conditional upon the completion of insurance periods or periods of residence shall take into account, to the extent necessary, insurance periods or periods of residence completed under the legislation of any Member State, as though they had been completed under the legislation which it administers.
2. Where the legislation of a Member State makes the granting of certain benefits conditional upon the insurance periods having been completed in an occupation

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

3. Where the legislation of a Member State which makes the granting of benefits conditional upon a worker being subject to its legislation at the time when the risk materializes has no requirements as to the length of insurance periods either for entitlement to or calculation of benefits, any worker who is no longer subject to that legislation shall for the purposes of this Chapter, be deemed to be still so subject at the time when the risk materializes, if at that time he is subject to the legislation of another Member State.

Article 44

Award of benefits

1. Without prejudice to the provisions of paragraph 2 of this Article, where a worker has been subject to the legislation of any Member State and where he satisfies the conditions for entitlement to benefits, taking account, where appropriate, of the provisions of Article 43 and/or Article 38(3), the competent institution of that Member State shall apply the following rules :
 - (a) the institution shall calculate the theoretical amount of benefit that the person concerned could claim if all the insurance periods or periods of residence completed under the legislation of the Member States to which the worker has been subject had been completed in the State in question and under the legislation administered by it on the date the benefit is awarded. If, under that legislation, the amount of the benefits does not depend on the length of the periods completed then that amount shall be taken as the theoretical amount referred to in this subparagraph.

- (b) the institution shall then establish the actual amount of the benefit on the basis of the theoretical amount referred to in the preceding subparagraph, pro rata with the length of the periods of insurance or residence completed before the occurrence of the event insured against under the legislation applied by it, as compared with the total length of the periods of insurance and residence completed under the legislations of all the Member States concerned before the occurrence of that event;
 - (c) if the total length of the periods of insurance and residence completed before the occurrence of the event insured against under the legislations of all the Member States concerned is longer than the maximum period required by the legislation of one of these States for receipt of the full benefit, the responsible institution of that State shall, when applying the provisions of this paragraph, take into consideration this maximum period instead of the total length of the periods completed; this method of calculation must not result in imposing on that institution the cost of a benefit greater than the full benefit provided for by its own legislation;
 - (d) the procedure for taking into account overlapping periods when applying the rules of calculation referred to in this paragraph shall be laid down in the Decision referred to in Article 85.
2. However, the provisions of paragraph 1 shall not apply to the benefits listed in Annex III, Part B, in respect of which the conditions for entitlement are satisfied without the need to apply the provisions of Article 38(3) or Article 43, as the case may be. In this case, the competent institution of the Member State concerned shall, in accordance with the provisions of the legislation it administers, determine the amount of the benefit proportionate to the total length of the periods of insurance or of residence to be taken into account under that legislation.

Article 45

Additional provisions for the calculation of benefits

1. For the calculation of the theoretical amount referred to in Article 44(1)(a), the following rules shall apply :

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

2. The legislative provisions of a Member State concerning the reassessment of the factors taken into account for the calculation of benefits shall apply, as necessary, to the factors to be taken into account by the responsible institution of that State, in accordance with the provisions of paragraph 1, in respect of the periods of insurance or residence completed under the legislation of other Member States.
3. If, under the legislation of a Member State, the amount of benefits is determined taking into account the existence of members of the family other than children, the competent institution of that State shall also take into consideration the members of the family of the person concerned who are residing in the territory of another Member State as if they were residing in the territory of the competent State.

Article 46

Periods of insurance or of residence of less than a year

1. Notwithstanding the provisions of Article 44(1), if the total length of the periods of insurance or residence completed under the legislation of a Member State does not amount to a year and if, taking into account these periods alone, no entitlement to benefit is acquired under the provisions of that legislation, the institution of that State shall not be obliged to grant benefits in respect of those periods.
2. The competent institution of each of the other Member States concerned shall take into account the periods referred to in paragraph 1, for the purposes of applying the provisions of Article 44(1) excepting those of subparagraph (b).
3. If the effect of applying the provisions of paragraph 1 is to relieve of their obligations all the institutions of the Member States concerned, benefits shall be granted exclusively under the legislation of the last of those States whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with the provisions of Article 43(1) and (2) had been completed under the legislation of that State.

Article 47

Calculation of benefits when the interested person does not simultaneously satisfy the conditions of all the legislations under which periods of insurance or of residence have been completed.

1. If, at a given time, the person concerned does not satisfy the conditions laid down for the provision of benefits by all the legislations of the Member States to which he has been subject, taking into account where appropriate the provisions of Article 43, but satisfies the conditions of one or more of them only, the following provisions shall apply :
 - (a) each of the competent institutions administering a legislation whose conditions are satisfied shall calculate the amount of the benefit due, in accordance with the provisions of Article 44.
 - (b) however,
 - (i) if the interested person satisfies the conditions of at least two legislations without there being any need to resort to periods of insurance or residence completed under legislations whose conditions are not satisfied, these periods shall not be taken into account for the purposes of Article 44(1);
 - (ii) if the interested person satisfies the conditions of only one legislation without there being any need to resort to periods of insurance or of residence completed under legislations whose conditions are not satisfied, the amount of the benefit payable shall be calculated in accordance with the provisions of the only legislation whose conditions are satisfied and taking account only of the periods completed under that legislation.
2. The benefit or benefits awarded under one or more of the legislations in question in the case referred to in paragraph 1, shall be recalculated automatically in accordance with Article 44, as and when the conditions required by one or more of the other legislations to which the person concerned had been subject are satisfied, taking into account as appropriate the provisions of Article 43.

3. A recalculation shall automatically be made in accordance with paragraph 1, and without prejudice to Article 38(2), when the conditions required by one or more of the legislations concerned are no longer satisfied.

Article 48

Revalorization and recalculation of benefits

1. If, by reason of an increase in the cost of living or changes in the level of wages or salaries or other reasons for adjustment, the benefits of the States concerned are altered by a fixed percentage or amount, such percentage or amount must be applied directly to the benefits determined under Article 44, without the need for a recalculation in accordance with the provisions of that Article.
2. On the other hand, if the method of determining, or the rules for calculating benefits should be altered, a recalculation shall be carried out in accordance with Article 44.

Article 49

Special provisions applying to workers who have been subject to the legislation of two or more Member States, of which at least one is bound by a social security convention with Tunisia/Morocco/Algeria/Portugal.

1. Where a worker has been subject to the legislation of two or more Member States, of which at least one is bound by a bilateral social security convention with Tunisia/Morocco/Algeria/Portugal, the competent institution of each Member State so bound shall award the benefit in accordance with the provisions thereof.
2. Where appropriate, a supplement equal to the difference between the amount of the benefit provided for in paragraph 1 and the amount of the benefit determined under Article 44(1) shall be paid in addition to that benefit.

3. Where a supplement is payable in accordance with paragraph 3 of this Article, the provisions of Article 48 shall apply to the full amount of the benefit payable by the Member State concerned.
4. Where the competent institution of a Member State calculates benefits directly, in accordance with a social security convention concluded with Tunisia/Morocco/Algeria/Portugal, these benefits shall be awarded exclusively in accordance with the provisions of that convention.

CHAPTER 4
ACCIDENTS AT WORK AND OCCUPATIONAL
DISEASES

Section 1

Right to benefits

Common provision

Article 50

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

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

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

Article 51

Frontier workers - Special rule

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

Article 52

Stay in or transfer of residence to the competent State

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

2. A worker covered by Article 50 who transfers his place of residence to the territory of the competent State shall receive benefits in accordance with the legislation of that State, even if he has already received benefits before transferring his residence.

Article 53

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

1. A worker who sustains an accident at work or contracts an occupational disease and :

- (a) who is staying in the territory of a Member State other than the competent State, or
- (b) who, after having become entitled to benefits at the expense of the competent institution, is authorized by that institution to return to the territory of the Member State where he is resident, or to transfer his place of residence to the territory of another Member State or,
- (c) who is authorized by the competent institution to go to the territory of another Member State in order to receive there the treatment appropriate to his condition,

shall be entitled :

- (i) to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence in accordance with the legislation administered by that institution as though he were insured with it, the period during which benefits are provided shall, however, be governed by the legislation of the competent State;
 - (ii) to cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of stay or residence, those benefits may be provided by the latter institution on behalf of the former institution, in accordance with the legislation of the competent State.
2. The authorization required under paragraph 1(b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or to the medical treatment being given.

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

Article 54

Accidents while travelling

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

Article 55

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

1. When a person who has contracted an occupational disease has, under the legislation of two or more Member States, pursued a professional or trade activity likely to cause that disease, the benefits that he or his survivors may claim shall be awarded exclusively under the legislation of the last of these States whose conditions are satisfied, taking into account, where appropriate, the provisions of paragraphs 2 and 3.
2. If, under the legislation of a Member State, the granting of benefits in respect of an occupational disease is subject to the condition that the disease in question was first diagnosed within its territory, such condition shall be deemed to be fulfilled if the disease was first diagnosed in the territory of another Member State.
3. In cases of sclerogenic pneumoconiosis, the following provisions shall apply :
 - (a) if under the legislation of a Member State the granting of benefits in respect of an occupational disease is subject to the condition that the disease in question was diagnosed within a specific time limit following cessation of the last activity which was likely to cause such a disease, the competent institution of that State, in examining the time at which such activity was pursued shall take into account, to the extent necessary, similar activities pursued under the legislation of any other Member State, as if they had been pursued under the legislation of the first State;
 - (b) if under the legislation of a Member State the granting of benefits in respect of an occupational disease is subject to the condition that the activity likely to cause the disease in question was pursued for a certain

length of time, the competent institution of that State shall take into account, to the extent necessary, periods during which such activity was pursued under the legislation of any other Member State, as if it had been pursued under the legislation of the first State;

- (c) The cost of benefits in cash including pensions shall be divided between the responsible institutions of the Member States in whose territory the interested person practised an occupation liable to encourage the disease. This division shall be carried out pro rata with the length of the periods of old-age insurance or of residence referred to in Article 43(1) completed under the legislation of each of the States in relation to the total length of the periods of old-age insurance or of residence completed under the legislation of all the States on the date on which the benefits commenced.

Article 56

Calculation of cash benefits

1. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on an average wage or salary shall determine such average wage or salary exclusively by reference to wages or salaries recorded during the periods completed under the said legislation.
2. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on a standard wage or salary shall take account exclusively of the standard wage or salary or, where appropriate, of the average of the standard wages or salaries corresponding to the periods completed under the said legislation.
3. The competent institution of a Member State whose legislation provides that the amount of cash benefits shall vary with the number of members in the family shall take into account also the members of the family of the person concerned who are residing in the territory of another Member State or in the territory of Tunisia/Morocco/Algeria/Portugal, as if they were residing in the territory of the competent State.

Article 57

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

1. The competent institution of a Member State whose legislation provides for meeting the costs of transporting a person who has sustained an accident at work or is suffering from an occupational disease, either to his place of residence or to

a hospital, shall meet such costs to the corresponding place in the territory of another Member State where the person resides, provided that that institution gives prior authorization for such transport, duly taking into account the reasons justifying it. Such authorization shall not be required in the case of a frontier worker.

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

Section 2

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

Article 58

1. In the event of aggravation of an occupational disease for which a worker has received or is receiving benefit under the legislation of a Member State, the following rules shall apply :
 - (a) if the worker has not, while in receipt of benefits, been in employment under the legislation of another Member State likely to cause or aggravate the disease in question, the competent institution of the first Member State shall be bound to meet the cost of the benefits under the legislation which it administers taking into account the aggravation;
 - (b) if the worker, while in receipt of benefits, has been in such employment under the legislation of another Member State, the competent institution of the first State shall be bound to meet the cost of the benefits under the legislation which it administers without taking into account the aggravation. The competent institution of the second Member State shall grant a supplement to the worker, the amount of which shall be determined according to the legislation which it administers and shall be equal to the difference between the amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the legislation which it administers if the disease in question had occurred under the legislation of that State;

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

2. In the event of aggravation giving rise to the application of Article 55(3)

(c), the following provisions shall apply :

(a) the competent institution which granted the benefits pursuant to Article 55(1) shall be bound to provide benefits under the legislation which it administers, taking into account the aggravation;

(b) the cost of cash benefits, including pensions, shall continue to be divided between the institutions which shared the costs of former benefits in accordance with Article 55(3)(c).

Where, however, the person has again pursued an activity likely to cause or to aggravate the occupational disease in question, either under the legislation of one of the Member States in which he had already pursued an activity of the same nature or under the legislation of another Member State, the competent institution of such State shall meet the cost of the difference between the amount of benefits due, taking account of the aggravation, and the amount of benefits due prior to the aggravation.

Section 3

Miscellaneous provisions

Article 59

Rules for taking into account the special features of certain legislations

1. If there is no insurance against accidents at work or occupational diseases in the territory of the Member State in which a worker happens to be, or if

such insurance exists but there is no institution responsible for providing benefits in kind, those benefits shall be provided by the institution of the place of stay or residence responsible for providing benefit in kind in the event of illness.

2. Where the legislation of the competent State makes wholly cost-free benefits in kind conditional upon use of the medical service organized by the employer, benefits in kind provided in the cases referred to in Articles 50 and 52(1) shall be deemed to have been provided by such a medical service.
3. Where the legislation of the competent State includes a scheme relating to the obligations of the employer, benefits in kind provided in the cases referred to in Articles 50 and 52(1) shall be deemed to have been provided at the request of the competent institution.
4. Where the nature of the scheme of the competent State relating to compensation for accidents at work is not that of compulsory insurance, the provision of benefits in kind shall be made directly by the employer or by the insurer involved.
5. Where the legislation of a Member State expressly or by implication provides that accidents at work or occupational diseases which have occurred or have been confirmed previously shall be taken into consideration in order to assess the degree of incapacity, the competent institution of that State shall also take into consideration accidents at work or occupational diseases which have occurred or have been confirmed previously under the legislation of another Member State, as if they had occurred or had been confirmed under the legislation which it administers.

Article 60

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

1. If the legislation of the country of stay or residence has several insurance schemes, the provisions applicable to workers covered by Article 50 or 52(1) shall be those of the scheme for manual workers in the steel industry. However, if the said legislation includes a special scheme for workers in mines and similar undertakings, the provisions of that scheme shall apply to that

category of workers where the institution of the place of stay or residence to which they submit their claim is competent to administer that scheme.

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

Section 4

Reimbursement between institutions

Article 61

1. The competent institutions shall be obliged to reimburse the amount of benefits in kind provided on their behalf pursuant to Articles 50 and 52(1).
2. The reimbursements referred to in paragraph 1 shall be determined and made in accordance with the procedures laid down by the Decision referred to in Article 85, on proof of actual expenditure.
3. Two or more Member States, or the competent authorities of such States, may provide for other methods of reimbursement or waive reimbursement between the institutions coming under their jurisdiction.

CHAPTER 5

DEATH GRANTS

Article 62

Aggregation of insurance periods or periods of residence

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

Article 63

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

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

Article 64

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

In the event of the death of a pensioner who was entitled to draw a pension or pensions under the legislation of one or more Member States, when such

pensioner was residing in the territory of a Member State other than the one whose institution was responsible for providing him with benefits in kind under Article 25, the death grants payable under the legislation administered by that institution shall be provided by the institution at its own expense as though the pensioner had been residing in the territory of the Member State of that institution at the time of his death.

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

CHAPTER 6

FAMILY BENEFITS AND FAMILY ALLOWANCES FOR EMPLOYED AND UNEMPLOYED PERSONS

Section 1

Common provision

Article 65

Aggregation of periods of insurance or employment

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

Section 2

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

Article 66

Workers

1. A worker subject to the legislation of a Member State other than France shall be entitled to the family benefits provided for by the legislation of the first Member State for members of his family residing in the territory of another Member State, as though they were residing in the territory of the first State.
2. A worker subject to French legislation shall be entitled, in respect of members of his family residing in the territory of a Member State other than France, to the family allowances provided for by the legislation of such Member State; the worker must satisfy the conditions regarding

employment on which French legislation bases entitlement to such benefits.

3. However, a worker who is subject to French legislation by virtue of the provisions of Article 12(1)(a) shall be entitled to the family benefits provided for by French legislation and set out in Annex V in respect of members of his family who accompany him to the territory of the Member state where he is posted.

Article 67

Unemployed persons

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

Article 68

Provision of benefits and reimbursements

1. (a) Family benefits shall be provided, in the cases referred to in Article 66(1) and (3), by the competent institution of the State to whose legislation the worker is subject and, in the case referred to in Article 67(1) by the competent institution of the State under whose legislation the unemployed worker is receiving unemployment benefits. They shall be provided in accordance with the provisions administered by such institutions, whether the natural or legal person to whom such benefits are payable is residing or staying in the territory of the competent State or in that of another Member State;

- (b) however, if the family benefits are not applied by the person to whom they should be provided for the maintenance of the members of the family, the competent institution shall discharge its legal obligations by providing the said benefits to the natural or legal person actually maintaining the members of the family, on application by and through the agency of the institution of their place of residence or of the institution or body appointed to that end by the competent authority of their country of residence;
 - (c) two or more Member States may agree that the competent institution shall provide the family benefits due under the legislation of one or more of those States to the natural or legal person actually maintaining the members of the family, either directly, or through the agency of the institution of their place of residence.
2. (a) Family allowances shall be provided, in the cases referred to in Articles 66(2) and 67(2), by the institution of the place of residence of the members of the family, in accordance with the legislation administered by that institution;
- (b) however, if, under that legislation, the allowances must be provided to the worker, the institution referred to in the preceding subparagraph shall pay such allowances to the natural or legal person actually maintaining the members of the family in their place of residence or, where appropriate, directly to the members of the family;
 - (c) the competent institution shall reimburse the full amount of the allowances provided in accordance with the preceding subparagraphs. The reimbursements shall be determined and made in accordance with the procedures laid down by the Decision referred to in Article 85.

Article 69

Rules of priority in cases of overlapping entitlement to family benefits or family allowances in pursuance of Articles 66 and 67 by reason of the pursuit of a professional or trade activity in the country of residence of the members of the family.

Entitlement to family benefits or family allowances under Articles 66 and 67 shall be suspended if, by reason of the pursuit of a professional or trade

activity, family benefits or family allowances are also payable under the legislation of the Member State in whose territory the members of the family are residing.

CHAPTER 7

BENEFITS FOR DEPENDENT CHILDREN OF PENSIONERS AND FOR ORPHANS

Article 70

Dependent children of pensioners

1. The term "benefits", for the purposes of this Article, shall mean family allowances for persons receiving pensions for old age, invalidity or an accident at work or occupational disease, provided in accordance with a legislation referred to in Article 4(1)(h).
2. Benefits shall be granted in accordance with the following rules, irrespective of the Member State in whose territory the pensioner or the children are residing:
 - (a) to a pensioner who draws a pension under the legislation of one Member State only, in accordance with the legislation of the Member State responsible for the pension;
 - (b) to a pensioner who draws pensions under the legislation of more than one Member State:
 - (i) in accordance with the legislation of whichever of these States he resides in provided that, taking into account where appropriate Article 72(1), second subparagraph, a right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State, or
 - (ii) in other cases in accordance with that legislation to which he has been subject for the longest period of time, provided that, taking into account where appropriate Article 72(1), second subparagraph, a right to one of the benefits referred to in paragraph (i) is acquired under such legislation; if no right to benefit is acquired under that legislation, the conditions for the acquisition of such right under the legislations of the other Member States concerned

shall be examined in decreasing order of the length of insurance periods or periods of residence completed under the legislation of those Member States.

Article 71

Orphans

1. The term "benefits", for the purposes of this Article, means family allowances and, where appropriate, supplementary or special allowances for orphans provided under a legislation referred to in Article 4(1)(h).
2. Orphans' benefits shall be granted in accordance with the following rules, irrespective of the Member State in whose territory the orphan or the natural or legal person actually maintaining him is resident or situated:
 - (a) for the orphan of a deceased worker who was subject to the legislation of one Member State only in accordance with the legislation of that State;
 - (b) for the orphan of a deceased worker who was subject to the legislation of several Member States:
 - (i) in accordance with the legislation of the Member State in whose territory the orphan resides provided that, taking into account where appropriate Article 72(1), second subparagraph, a right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State, or
 - (ii) in other cases in accordance with the legislation of the Member State to which the deceased worker had been subject for the longest period of time, provided that, taking into account, where appropriate Article 72(1), second subparagraph, the right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State; if no right is acquired under that legislation, the conditions for the acquisition of such right under the legislations of the other Member States shall be examined

in decreasing order of the length of insurance periods or periods of residence completed under the legislation of those Member States.

However, the legislation of the Member State applicable in respect of provision of the benefits referred to in Article 70 for a pensioner's children shall remain applicable after the death of the said pensioner in respect of the provision of the benefits to his orphans.

Article 72

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

1. Benefits, within the meaning of Articles 70 and 71, shall be provided in accordance with the legislation determined by applying the provisions of those Articles by the institution responsible for administering such legislation and at its expense as if the pensioner or the deceased worker had been subject only to the legislation of the competent State.

However if that legislation makes the acquisition of entitlement to benefits dependent on the length of periods of insurance, employment or residence, such lengths shall be determined taking into account, where necessary, the provisions of Article 65.

2. In a case where the effect of applying the rule laid down in Article 70(2)(b)(ii) and 71(2)(b)(ii) would be to make several Member States competent, the length of the periods being equal, benefits within the meaning of Article 70 or Article 71, as the case may be, shall be granted in accordance with the legislation of the Member State to which the worker was last subject.
3. The right to benefits due under paragraph 2 and under Articles 70 and 71 shall be suspended if the children become entitled to family benefits or family allowances under the legislation of a Member State by virtue of the pursuit of a professional or trade activity. In such a case, the persons concerned shall be considered as members of the family of a worker.

PART III - MISCELLANEOUS PROVISIONS

Article 73

Cooperation between competent authorities

1. The competent authorities of Member States and of Tunisia/Morocco/Algeria/Portugal shall communicate to each other all information regarding measures taken to implement this Decision.
2. For the purposes of implementing this Decision, the authorities and institutions of Member States and of Tunisia/Morocco/Algeria/Portugal 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 and of Tunisia/Morocco/Algeria/Portugal may, for the purpose of implementing this Decision communicate directly with one another and with the persons concerned or their representatives.
4. The authorities, institutions and tribunals of one Member State may not reject claims or other documents submitted to them on the grounds that they are written in an official language of another Member State or in Arabic/Portuguese.

Article 74

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 a State shall be extended to similar documents required to be produced for the purposes of the legislation of another Member State or of Tunisia/Morocco/Algeria/Portugal or of this Decision.

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

Article 75

Claims, declarations or appeals submitted to an authority, institution or court of a Member State other than the competent State or to a Tunisian/Moroccan/Algerian/Portuguese authority, institution or court.

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

Article 76

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 or of Tunisia/Morocco/Algeria/Portugal by the institution of the place of stay or residence of the person entitled

to benefits, under conditions laid down in the Decision referred to in Article 67 or, failing that, under conditions agreed upon between the competent authorities of the Member States concerned.

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

Article 77

Transfers of sums of money payable pursuant to this Decision

1. Money transfers effected pursuant to this Decision shall be made in accordance with the relevant agreements in force between the States concerned at the time of transfer. Where no such agreements are in force between two 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.
2. Transfers of amounts acquired as a result of the implementation of this Decision shall take place in accordance with the relevant agreements in force at the time of the transfer between the Member State concerned and Tunisia/Morocco/Algeria/Portugal.

In the case where no such agreements are in force between Tunisia/Morocco/Algeria/Portugal and a Member State, the competent authorities in both States, or the authorities responsible for international payment shall, by common accord, adopt the measures required to make these transfers.

Article 78

Special procedures for implementing certain legislations

Special procedures for implementing the legislations of certain Member States or of Tunisia/Morocco/Algeria/Portugal are set out in Annex V.

Article 79

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

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

Article 80

Collection of contributions

1. Contributions payable to an institution of one Member State may be collected in the territory of another Member State in accordance with the administrative procedure and with the guarantees and privileges applicable to the collection of contributions payable to the corresponding institution of the latter State.
2. The procedure for the implementation of paragraph 1 shall be governed, in so far as is necessary, by means of agreements between Member States. Such implementing procedure may also cover procedure for enforcing payment.

Article 81

Rights of institutions responsible for benefits against liable third parties

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

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

(b) where the said institution has direct rights against the third party, such rights shall be recognized by each Member State.

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

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

PART IV - TRANSITIONAL AND FINAL PROVISIONS

Article 82

Miscellaneous provisions

1. This Decision shall create no entitlement to benefits for a period prior to the date of its entry into force.
2. All insurance periods, as also, where applicable, all periods of employment or residence completed under the legislation of a Member State or of Tunisia/Morocco/Algeria/Portugal before the date of entry into force of this Decision or before the date of its application in the territory of that Member State, shall be taken into consideration for the purpose of determining entitlement to benefits in accordance with the provisions of this Decision.
3. Subject to the provisions of paragraph 1, an entitlement shall exist under this Decision even if it relates to an event prior to the date of the entry into force of this Decision.
4. Any benefit which has not been determined or has been suspended by reason of the nationality or place of permanent residence of the person concerned shall, on the application of the person concerned, be determined or resumed with effect from the date of entry into force of this Decision unless the entitlement previously determined has been compounded by a capital payment.
5. If the application referred to in paragraph 4 is submitted within two years from the date of entry into force of this Decision persons concerned shall by virtue of this Decision acquire from that date the entitlement to benefits, and the provisions of the legislation of any Member State or of Tunisia/Morocco/Algeria/Portugal concerning the forfeit or limitation of rights shall not apply to them.
6. If the application referred to in paragraph 4 is submitted after the expiry of the two-year period following the entry into force of this Decision, a right to benefit that has not lapsed or is not barred by limitation shall

be acquired from the date on which the application was submitted except where more favourable provisions of the legislation of a Member State or of Tunisia/Morocco/Algeria/Portugal apply.

Article 83

Annexes to this Decision

1. The Annexes to this Decision are an integral part thereof.
2. These Annexes may be amended by a Decision adopted by the cooperation Council at the request of one or more Member States concerned or of Tunisia/Morocco/Algeria/Portugal.

Article 84

Notifications pursuant to certain provisions

1. The notifications referred to in Article 5 shall be addressed to the Chairman of the Cooperation Council. They shall indicate the date of entry into force of the laws and regulations in question.
2. Notifications received in accordance with paragraph 1 shall be published in the Official Journal of the European Communities.

Article 85

Implementation of this Decision

A further Decision shall lay down the procedure for implementing this Decision.

Article 86

Agreements to supplement the procedures for implementing the Decision

Two or more Member States, or Tunisia/Morocco/Algeria/Portugal and one or more Member States, may, where necessary, conclude agreements designed to supplement the administrative procedures for implementing this Decision

Article 87

Reexamination of the problem of payment of family benefits

The Cooperation Council shall amend this Decision in a manner identical to the amendments made to Regulation No 1408/71 following the examination of the problem of payment of family benefits to members of families who are not residing in the territory of the competent State provided for in Article 98 of that Regulation.

Article 88

Each Contracting Party shall, each to the extent to which they are concerned, take the necessary steps to implement this Decision.

ANNEX I

(Article 1(s) of the Decision)

Special maternity benefits excluded from the scope of the Decision in
pursuance of Article 1(s)

A. BELGIUM

Childbirth allowance

B. DENMARK

None

C. GERMANY

None

D. FRANCE

(a) Prenatal allowances

(b) Postnatal allowances

E. IRELAND

None

F. ITALY

None

G. LUXEMBOURG

Childbirth allowances

H. NETHERLANDS

None

I. UNITED KINGDOM

None

ANNEX II (EEC-Portugal)

(Article 6(2))

Provisions of conventions between two or more Member States which remain in force pursuant to Article 6(2) and which apply to persons to whom the Decision applies

1. BELGIUM - DENMARK

No convention

2. BELGIUM - GERMANY

None

3. BELGIUM - FRANCE

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

4. BELGIUM - IRELAND

No convention

5. BELGIUM - ITALY

Article 29 of the Convention of 30 April 1948

6. BELGIUM - LUXEMBOURG

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

7. BELGIUM - NETHERLANDS

None

8. BELGIUM - UNITED KINGDOM

None

9. DENMARK - GERMANY

None

ANNEX II (EEC-Tunisia/Morocco/Algeria)

Provisions of conventions between two or more Member States which apply to persons to whom the Decision applies

1. BELGIUM - DENMARK

No convention

2. BELGIUM - GERMANY

None

3. BELGIUM - FRANCE

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

4. BELGIUM - IRELAND

No convention

5. BELGIUM - ITALY

Article 29 of the Convention of 30 April 1948

6. BELGIUM - LUXEMBOURG

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

7. BELGIUM - NETHERLANDS

None

8. BELGIUM - UNITED KINGDOM

None

9. DENMARK - GERMANY

None

10. DENMARK - FRANCE

None

11. DENMARK - IRELAND

No convention

12. DENMARK - ITALY

No convention

13. DENMARK - LUXEMBOURG

No convention

14. DENMARK - NETHERLANDS

No convention

15. DENMARK - UNITED KINGDOM

None

16. GERMANY - FRANCE

(a) Article 11(1) of the General Convention of 10 July 1950;

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

17. GERMANY - IRELAND

No convention

18. GERMANY - ITALY

None

19. GERMANY - LUXEMBOURG

None

20. GERMANY - NETHERLANDS

None

21. GERMANY - UNITED KINGDOM

Articles 2 to 7 of the final Protocol to the Convention on Social Security of 20 April 1960;

22. FRANCE - IRELAND

No convention

23. FRANCE - ITALY

Exchange of Letters of 3 March 1956 (sickness benefits for seasonal workers employed in agriculture).

24. FRANCE - LUXEMBOURG

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

25. FRANCE - NETHERLANDS

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

26. FRANCE - UNITED KINGDOM

No convention

27. IRELAND - ITALY

No convention

28. IRELAND - LUXEMBOURG

No convention

29. IRELAND - NETHERLANDS

No convention

30. IRELAND - UNITED KINGDOM

Article 8 of the Agreement of 14 September 1971 on social security.

31. ITALY - LUXEMBOURG

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

32. ITALY - NETHERLANDS

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

33. ITALY - UNITED KINGDOM

None

34. LUXEMBOURG - NETHERLANDS

None

35. LUXEMBOURG - UNITED KINGDOM

None

36. NETHERLANDS - UNITED KINGDOM

None

ANNEX III

Part A

(Article 35(2) of the Decision)

Legislations referred to in Article 35(1) of the Decision under the terms of which the amount of invalidity benefits does not depend on the length of periods of insurance or of residence.

A. BELGIUM

The legislation relating to the general invalidity scheme, to the special invalidity scheme for miners and to the special scheme for sailors in the Merchant Navy.

B. DENMARK

None

C. GERMANY

None

D. FRANCE

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

E. IRELAND

Section 6 of the Social Welfare Act of 29 July 1970.

F. ITALY

None

G. LUXEMBOURG

None

H. NETHERLANDS

- (a) The law of 18 February 1966 on insurance against incapacity for work.
- (b) The law of 11 December 1975 establishing a general disablement insurance.

I. UNITED KINGDOM

- (a) Great Britain

Section 15 of the Social Security Act, 1975

Sections 14 to 16 of Social Security Pensions Act, 1975

- (b) Northern Ireland

Section 15 of the Social Security (Northern Ireland) Act, 1975

Sections 16 to 18 of Social Security Pensions (Northern Ireland) Order, 1975.

Part B

(Article 44(2) of the Decision)

Benefits referred to in Article 44(2) of the Decision to which Article 44(1) does not apply.

(to be notified by the Member States)

ANNEX IV

(Article 38(4) of the Decision)

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

BELGIUM

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

FRANCE

Member States	Schemes administered by Member States' institutions having taken a decision recognising the degree of invalidity	Schemes administered by French institutions on which the decision is binding in cases of concordance											
		General scheme			Agricultural scheme			Miners' scheme			Mariners' scheme		
		Group I	Group II	Group III Constant attendance	^{2/3} invalidity	Total invalidity	Constant attendance	^{2/3} General invalidity	Constant attendance	Occu- pational invalidity	^{2/3} general invalidity	Total occu- pational invalidity	Constant attendance
BELGIUM	1. General scheme	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	2. Miners' scheme: — partial general invalidity	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	— occupational invalidity	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance ²			
	3. Mariners' scheme	Concordance ¹	No concordance	No concordance	Concordance ¹	No concordance	No concordance	Concordance ¹	No concordance	No concordance	No concordance	No concordance	No concordance
ITALY	1. General scheme: — invalidity — manual workers	Concordance ⁴	No concordance	No concordance	Concordance ⁴	No concordance	No concordance	Concordance ⁴	No concordance	No concordance	No concordance	No concordance	No concordance
	— invalidity — clerical staff	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	2. Mariners' scheme:	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance
LUXEMBOURG	Invalidity — manual workers	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	Concordance	No concordance	No concordance	No concordance	No concordance	No concordance
	Invalidity — clerical staff	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance	No concordance

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

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

ITALY

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

LUXEMBOURG

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

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

ANNEX V

(Article 78 of the Decision)

Part A - Special procedures for applying the legislations of certain Member States

A. BELGIUM

1. The provisions of Article 1(a)(i) of the Decision shall not apply to self-employed persons or to other persons receiving medical treatment under the law of 9 August 1963 on the establishment and organization of a compulsory sickness and invalidity insurance scheme, unless they receive the same protection as employed persons in respect of such treatment.
2. For the application of the provisions of Chapters 6 and 7 of Title II of Part II of the Decision by the competent Belgian institution, a child shall be considered to have been brought up in the Member State in whose territory he resides.
3. For the purposes of Article 44(1) of the Decision, old-age insurance periods completed under Belgian legislation before 1 January 1945 shall also be considered as insurance periods completed under the Belgian legislation on the general invalidity scheme and the mariners' scheme.
4. For the purposes of Article 38(3)(a)(ii) only periods during which the worker was incapable of working within the meaning of Belgian legislation are taken into account.
5. This Decision does not apply to the guaranteed income for elderly persons or to allowances for disabled persons.

B. DENMARK

1. Any person who, from the fact of pursuing an activity as an employed person, is subject to legislation on accidents at work and occupational diseases shall be considered a worker within the meaning of Article 1(b)(ii) of this Decision.
2. Workers, applicants for pensions and pensioners with members of their family referred to in Articles 16, 19(1) and (3), 22(2), 23(1), 25(1)(a), 27 and 29 of the Decision, resident or staying in Denmark shall be entitled to benefits in kind on the same terms as those laid down by Danish legislation for persons insured in Class 1 of the general sickness insurance scheme.
3. In order to determine whether entitlement to benefits in kind has been acquired pursuant to Articles 19(1)(a) and 29 of the Decision, "member of the family" shall mean any person regarded as a member of the family under the general sickness insurance scheme.
4. In order to determine whether the conditions of a right to maternity benefits laid down in Chapter 12 of the Law on the daily cash benefits for sickness or maternity are satisfied in the case where the person concerned was not subject to the Danish legislation throughout the whole period referred to in Article 34(1) or (2) of the aforementioned Law:
 - (a) account shall be taken of the insurance periods completed, as appropriate, under the legislation of a Member State other than Denmark, during which the person concerned was not subject to the Danish legislation, as if those periods completed were under the latter legislation, and
 - (b) the person concerned shall be deemed to have received during the periods taken into account an average salary equal to that of the average salary confirmed as having been paid during the periods completed under the Danish legislation for the said periods of reference.

5. The periods during which a frontier worker residing within the territory of a Member State other than Denmark has worked in Denmark are to be considered as periods of residence for the purposes of Danish legislation. The same shall apply to those periods during which such a worker is posted to the territory of a Member State other than Denmark.
6. Article 1(1) No 2 of the Law on general pensions, Article 1(1) No 2 of the Law on invalidity pensions and Article 2(1) No 2 of the law on widows' pensions are not applicable to workers or their survivors whose residence is in the territory of a Member State other than Denmark, or who reside in Tunisia/Morocco/Algeria/Portugal.
7. For the purposes of applying Article 10(2) of this Decision to Danish legislation, disability, old-age and widows' pensions shall be considered as benefits of the same kind.
8. The Danish legislation governing general and widows' pensions is applicable to the widow of a worker subject to the Danish legislation, even if she was not resident in Denmark.
9. The terms of the Decision shall be without prejudice to the provisional rules under the Danish Laws of 7 June 1972 on the pension rights of Danish nationals having their effective residence in Denmark for a specified period immediately preceding the date of the application.
10. When a Tunisian/Moroccan/Algerian/Portuguese worker to whom this Decision applies has been subject to Danish legislation and to the legislation of one or more other Member States, and fulfils the requirements for a disability pension under Danish legislation, his entitlement to such pension shall be subject to the condition that he has been resident in Denmark for a period of at least one year and during that period has been capable, physically and mentally, of carrying out a normal occupation.
11. The following provisions shall apply until the entry into force of a bilateral social security convention between Denmark and Tunisia/Morocco/Algeria/Portugal:

When a Tunisian/Moroccan/Algerian/Portuguese worker to whom this Decision applies has been subject to Danish legislation and not to the legislation of another Member State, his entitlement and that of his survivors to old-age, disability and death benefits (pensions) shall be determined in accordance with the following provisions:

- (a) Tunisian/Moroccan/Algerian/Portuguese nationals resident in Denmark shall be entitled to an old-age pension granted in accordance with Danish legislation if, between the age of 18 and the minimum age for entitlement to an old-age pension, they have been resident in Denmark for at least fifteen years, at least five of which immediately preceded the date of the application for a pension;
- (b) Tunisian/Moroccan/Algerian/Portuguese nationals resident in Denmark shall be entitled to a disability pension granted in accordance with Danish legislation if they have been resident in Denmark for at least five years immediately preceding the date of the application for a pension and during that period have been capable, physically and mentally, of carrying out a normal occupation;
- (c) Tunisian/Moroccan/Algerian/Portuguese nationals resident in Denmark shall be entitled to a widow's pension granted in accordance with Danish legislation
 - if the deceased spouse had been resident in Denmark after the age of 18 for at least five years immediately preceding the date of death,
 - or if the widow had been resident in Denmark for at least five years immediately preceding the date of the application for a pension.

C. GERMANY

1. (a) In order to determine whether periods considered by German legislation as interrupted periods (Ausfallzeiten) or supplementary periods (Zurechnungszeiten) should be taken into account as such, compulsory contributions paid under the legislation of another Member State and insurance under the pensions¹ insurance scheme of another Member State shall be treated as compulsory contributions paid under German legislation and as insurance under the German pension insurance scheme.

When calculating the number of calendar months which have elapsed between the date of entry into the insurance scheme and the materialisation of the risk, periods taken into consideration under the legislation of another Member State which fall between those two dates shall not be taken into account, neither shall periods during which the person concerned has been in receipt of a pension.

- (b) Subparagraph (a) shall not apply to the standard interrupted period (pauschale Ausfallzeit). This shall be determined exclusively on the basis of insurance periods completed in Germany.
- (c) The taking into account of an additional period (Zurechnungszeit) in pursuance of German legislation on pension insurance for miners shall, moreover, be subject, to the condition that the last contribution paid under German legislation was paid into the pension insurance for miners.
- (d) For the purpose of taking into account German substitute periods (Ersatzzeiten), only German national legislation shall apply.
- (e) By way of derogation from the provision laid down in subparagraph (d), the following provision shall apply to persons insured under the German pension insurance scheme who were residing in German territories under Netherlands administration during the period from 1 January 1948 to 31 July 1963; for the purpose of taking into account German substitute periods (Ersatzzeiten) within the meaning of Article 1251(2) of the German social security law (RVO) or corresponding provisions, payment of contributions to Netherlands insurance schemes during that period shall be treated as equivalent to having been employed or having pursued an activity coming under compulsory insurance within the meaning of German legislation.

2. Where payments to be made into German sickness insurance funds are concerned, compulsory payment of the contributions referred to in Article 23(2) of this Decision shall be suspended until a decision is made concerning pension claims.
3. If application of this Decision or of subsequent social security Decisions involves exceptional expenses for certain sickness insurance institutions, such expenses may be partially or totally reimbursed. The Federal Association of Regional Sickness Funds, in its function of liaison agency (sickness insurance) shall decide on such reimbursement by common agreement with the other Central Associations of Sickness Funds. The resources needed for effecting such reimbursements shall be provided by taxes imposed on all sickness insurance institutions in proportion to the average number of members during the preceding year, including retired persons.
4. If the competent institution for granting family benefits in accordance with Title II, Chapter 6 of Part II of the Decision is a German institution, a person compulsorily insured against the risk of unemployment or a person who, as a result of such insurance, obtains cash benefits under sickness insurance or comparable benefits shall be considered as a worker (Article 1(a) of the Decision).
5. For the purposes of this Decision, the lump-sum contributions towards medical treatment for confinement, granted under German legislation to insured persons and members of their families shall be considered as a benefit in kind.
6. If the benefits in kind which are provided by German institutions of the place of residence to pensioners or to the members of their family who are insured with the competent institutions of other Member States have to be refunded on the basis of monthly lump sums such benefits shall, for the purpose of financial equalizing between German sickness insurance institutions for pensioners, be deemed to be benefits payable under the German sickness insurance scheme for pensioners; lump sums reimbursed by the competent institutions of other Member States to the German institutions of the place of residence shall be deemed to be revenue to be taken into account in this equalization.

7. Article 8 of this Decision shall not affect the provisions under which accidents (and occupational diseases) occurring outside the territory of the Federal Republic of Germany, and periods completed outside that territory, do not give rise to payment of benefits, or only give rise to payment of benefits under certain conditions, when those entitled to them reside outside the territory of the Federal Republic of Germany.

8. Article 1233 of the insurance code (RVO) and Article 10 of the clerical staff insurance law (AVG), as amended by the pension reform law of 16 October 1972, which govern voluntary insurance under German pension insurance schemes, shall apply to Tunisian/Moroccan/Algerian/Portuguese nationals who fulfil the general conditions:
 - (a) if the person concerned has his permanent address or residence in the territory of the Federal Republic of Germany;

 - (b) if the person concerned has his permanent address or residence in the territory of another Member State and at any time previously contributed compulsorily or voluntarily to a German pension insurance scheme.

D. FRANCE

1. The provisions of the Decision shall not affect the provisions of French legislation under which only periods of work as employed persons or periods treated as such which are completed in the territories of the European departments and the overseas departments (Guadeloupe, Guiana, Martinique and Réunion) of the French Republic shall be taken into consideration for acquisition of the right to the allowance for elderly employed persons.
2. The special allowance and cumulative indemnity provided for by the special legislation for social security in the mines shall be provided only for workers employed in French mines.
3. Within the meaning of Article 66(3) of the Decision, the expression "family benefits" shall include:
 - (a) prenatal allowances provided for in Article L 516 of the Social Security Code;
 - (b) the family allowances provided for in Articles L 524 and L 531 of the Social Security Code;
 - (c) the compensatory allowance for scheduled taxes provided for in Article L 532 of the Social Security Code;
However, this benefit can only be paid if the wage or salary received during the period of the posting is subject to tax on income in France;
 - (d) the single wage or salary allowance provided for in Article L 533 of the Social Security Code.
4. The Decision shall not apply to the supplementary allowance of the National Mutual Aid Fund.

E. IRELAND

1. Any person who is compulsorily or voluntarily insured pursuant to the provisions of Section 4 of the Social Welfare Act 1952 shall be considered a worker within the meaning of Article 1(b)(ii) of this Decision.
2. Workers and pensioners, together with members of their families referred to in Article 16, 19(1) and (3), 22(3), 23(1) and Articles 26, 27 and 29 of the Decision, resident or staying in Ireland, shall be entitled, free of charge, to any such form of medical treatment as is provided for by Irish legislation, where the cost of this treatment is payable by the institution of a Member State other than Ireland.
3. For the purposes of applying Article 10(2) of this Decision to Irish legislation, disability, old-age and widows' pensions shall be considered as benefits of the same kind.
4. For the purpose of calculating earnings for the award of earnings-related benefits payable with sickness and maternity benefits under Irish legislation, a worker shall, in derogation from Article 20(1) of the Decision, be credited for each week of employment completed under the legislation of another Member State during the relevant income-tax year with an amount equivalent to the average weekly earnings in that year of male and female workers, respectively.
5. For the purpose of determining entitlement to benefits in kind pursuant to Article 19(1)(a) and Article 29 of the Regulation, "member of the family" shall mean any person regarded as a dependant of the worker for the purposes of the Health Acts 1947-1970.
6. For the purpose of applying Article 38(3)(a)(ii) only periods during which the worker was incapable of working within the meaning of Irish legislation are taken into account.

7. For the purpose of applying Article 42(2), the worker shall be deemed expressly to have requested the waiving of the award of the old-age pension to which he is entitled under Irish legislation if he has not actually retired, where retirement is a condition for receiving the old-age pension.

F. ITALY

None.

G. LUXEMBOURG

1. By way of derogation from Article 82(2) of the Decision, insurance periods or periods treated as such completed before 1 January 1946 under Luxembourg legislation for invalidity, old-age or death pension insurance shall only be taken into consideration for the purpose of applying this legislation to the extent that rights in the process of being acquired should be maintained until 1 January 1959 or subsequently recovered in accordance with that legislation alone, or in accordance with bilateral conventions in force or to be concluded. Where several bilateral conventions apply, the insurance periods or periods treated as such dating the farthest back shall be taken into consideration.
2. For the purpose of granting the fixed part of Luxembourg pensions, insurance periods completed under Luxembourg legislation by workers not residing in Luxembourg territory shall, as from 1 October 1972, be treated as periods of residence.
3. By way of derogation from Chapter 3 of Title II of Part II of this Decision, the fixed part of Luxembourg pensions is calculated in accordance with Luxembourg legislation.
4. The supplement to make up the minimum pension as well as the children's supplement in Luxembourg pensions shall be granted in the same proportion as the fixed part.

H. NETHERLANDS

1. Sickness insurance (benefits in kind)

(a) Chapter 1 of Title II of Part II of this Decision applies only to persons who are entitled to benefits in kind pursuant to the law on sickness fund insurance (Ziekenfondswet).

(b) A person receiving an old-age pension under Netherlands legislation and a pension under the legislation of another Member State shall, for the purposes of Article 24 and/or Article 25, be considered to be entitled to benefits in kind if he satisfies the conditions required for entitlement to sickness insurance for elderly persons or to voluntary insurance, referred to in the law on sickness fund insurance (Ziekenfondswet).

This provision also applies to a married woman whose husband is receiving an old-age pension for married persons under Netherlands legislation and who fulfils the conditions required for entitlement to sickness insurance for elderly persons or to voluntary insurance, referred to in the law on sickness fund insurance.

(c) A person receiving an old-age pension under Netherlands legislation who resides in another Member State shall, if he is insured under the sickness insurance scheme for elderly persons or under the voluntary insurance scheme, referred to in the law on sickness fund insurance, pay, in respect of himself and, where appropriate, of the members of his family, a contribution calculated on the basis of half the average cost incurred in the Netherlands for medical treatment for an elderly person and members of his family. Under the compulsory insurance scheme administered by the Ziekenfondswet, a reduction is applied to this contribution, as it is to the contributions, which are fixed on the same basis, paid by persons who reside in the Netherlands and who are insured with the sickness insurance scheme for elderly persons.

- (d) A person who is not receiving an old-age pension under Netherlands legislation, and, if she is married, if her husband is not receiving a pension for married persons under that legislation, shall, if he or she resides in another Member State and insured under the voluntary scheme referred to in the Ziekenfondswet, pay for himself or herself and for all members of the family who have reached the age of sixteen. a contribution equal to half the average contribution laid down by Netherlands sickness funds for voluntarily insured persons who reside in the Netherlands. The contribution is rounded up to the nearest guilder.

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

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

- (d) Periods to be taken into account in pursuance of subparagraph (c) shall not be taken into account where they coincide with periods taken into account for calculating a pension payable to the married woman in question under the old-age insurance legislation of another Member State or with periods during which she received an old-age pension in pursuance of such legislation.
- (e) As regards a woman who has been married and whose husband has been subject to Netherlands legislation on old-age insurance, or is deemed to have completed insurance periods in pursuance of subparagraph (a), the provisions of the two preceding subparagraphs shall apply by analogy.
- (f) The periods referred to in subparagraphs (a) and (c) shall only be taken into account for calculation of the old-age pension if the person concerned has resided for six years in the territory of one or more Member States after the age of fifty-nine years and for as long as that person is residing in the territory of one of those Member States.

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

- (a) For the purposes of Article 44(1) of the Decision, periods before 1 October 1959 during which the worker resided in the territory of the Netherlands after the age of fifteen years or during which, whilst residing in the territory of another Member State, he pursued an activity as an employed person in the Netherlands for an employer established in that country shall also be considered as insurance periods completed under Netherlands legislation relating to general insurance for widows and orphans.
- (b) Periods to be taken into account in pursuance of subparagraph (a) shall not be taken into account where they coincide with insurance periods completed under the legislation of another State in respect of survivors' pensions.

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

- (a) For the purposes of Article 44(1) of the Decision, periods of paid employment and periods treated as such completed under Netherlands

legislation before 1 July 1967 shall also be considered as insurance periods completed under Netherlands legislation on insurance against incapacity for work.

- (b) The periods to be taken into account in pursuance of subparagraph (a) shall be considered as insurance periods completed under a legislation of the type referred to in Article 35(1) of the Decision.

5. Application of Netherlands legislation on general disablement insurance

- (a) For the purposes of Article 44(1), only insurance periods completed under Netherlands legislation which coincide with insurance periods completed under Netherlands legislation on insurance against incapacity for work shall be considered as insurance periods completed under Netherlands legislation on general disablement insurance.
- (b) If the benefit payable under legislation on insurance against incapacity for work calculated in accordance with Article 44(1) is higher than the benefit payable under legislation on general disablement insurance, the latter benefit is not paid.

6. Application of certain transitional provisions

Article 43(1) does not apply when entitlement to benefits is being assessed pursuant to the transitional provisions of legislation on general old-age insurance (Article 44), general widows' and orphans' insurance and general disablement insurance.

I. UNITED KINGDOM

1. All persons who are employed earners within the meaning of the legislation of Great Britain and Northern Ireland and all persons required to pay contributions as employed persons within the meaning of the legislation of Gibraltar shall be regarded as workers for the purposes of Article 1(a)(ii) of the Decision.
2. When a person who is normally resident in Gibraltar or who has been required, since he last arrived in Gibraltar, to pay contributions under Gibraltar law as an employed person, applies, as a result of incapacity to work, pregnancy or unemployment, for exemption from the payment of contributions over a certain period, and asks for contributions for that period to be credited to him, any period during which that person has been working in the territory of another Member State shall, for the purposes of his application, be regarded as a period during which he has been employed in Gibraltar and for which he has paid contributions as an employed worker in accordance with Gibraltar legislation.
3. For the purposes of Title II, Chapter 3 of Part II of the Decision, where, in accordance with United Kingdom legislation, a woman applies for an old-age pension
 - (a) on the basis of her husband's insurance; or
 - (b) on the basis of her personal insurance, and where, because the marriage has ended as a result of the death of the husband, or for other reasons, the contributions paid by the latter are taken into account for the determination of pension rights,

any reference to a period of insurance completed by her shall be considered, for the purposes of establishing the annual average of the contributions paid by her husband or credited to him, to include reference to a period of insurance completed by the husband.
4. (a) Where, in accordance with Title II of Part II of the Decision, United Kingdom legislation applies to a worker who does not satisfy the qualifying condition laid down by United Kingdom legislation for entitlement to child benefits, viz.
 - (i) presence in Great Britain or, where appropriate, in Northern Ireland; he shall be deemed to be present there in order to fulfil that condition;

- (ii) a period of presence in Great Britain or, where appropriate, in Northern Ireland; insurance periods or periods of employment completed under the legislation of another Member State shall be deemed to be periods of presence in Great Britain or, where appropriate, in Northern Ireland for the purpose of satisfying that condition.
 - (b) With regard to applications for family allowances under the legislation of Gibraltar, subparagraphs (i) and (ii) shall apply by analogy.
5. Any worker subject to United Kingdom legislation in accordance with the provisions of Title II of Part II of the Decision shall be treated, for the purposes of entitlement to the attendance allowance:
- (a) as if his place of birth were within the territory of the United Kingdom, if his place of birth is within the territory of another Member State; and
 - (b) as if he had been normally resident in the United Kingdom and had been there during any period of insurance or employment that he may have completed within the territory or under the legislation of another Member State.
6. This Decision shall not apply to those provisions of United Kingdom legislation implementing a social security agreement between the United Kingdom and a third State other than Tunisia/Morocco/Algeria/Portugal.
7. For the purposes of Title II, Chapter 3 of Part II of the Decision no account shall be taken of graduated contributions paid by the insured person under United Kingdom legislation or of graduated retirement benefits payable under that legislation. The amount of the graduated benefits shall be added to the amount of the benefit due under the United Kingdom legislation as determined in accordance with the said chapter. The total of these two amounts shall constitute the benefit actually due to the person concerned.
8. For the purpose of determining entitlement to benefits in kind pursuant to Articles 19(1)(a) and 29 of this Decision, "member of the family" shall mean:

- (a) under the legislation of Great Britain and Northern Ireland, any person regarded as a dependant within the meaning of the Social Security Act, 1975, or the Social Security (Northern Ireland) Act 1975;
- (b) under the legislation of Gibraltar, any person regarded as a dependant within the meaning of the Group Practice Medical Scheme Ordinance, 1973.

9. For the purpose of applying Article 10(2) of this Decision to the legislation of the United Kingdom, invalidity, old age and widows' pensions shall be regarded as benefits of the same kind.

10. (1) Unless provided otherwise in paragraph 12 below, for the purpose of calculating an earnings factor with a view to determining the right to benefits under United Kingdom legislation, each week during which a worker has been subject to the legislation of another Member State and which commenced during the relevant income tax year within the meaning of United Kingdom legislation shall be taken into account in the following way:

- (a) for each week of insurance, employment or residence as a worker, the person concerned shall be deemed to have paid contributions as an employed earner on the basis of earnings equivalent to two-thirds of that year's upper earnings limit;
- (b) for each full week during the whole of which he has completed a period treated as a period of insurance, employment or residence, the person concerned shall be treated as having a contribution credited to him, but only to the extent required to bring his total earnings factor for that year to the level required to make that year a reckonable year within the meaning of United Kingdom legislation on contributions.

(2) For the purpose of converting an earnings factor into periods of insurance, the earnings factor achieved in the relevant income tax year within the meaning of United Kingdom legislation shall be divided by that year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated shall be treated as representing the number of weeks of insurance completed under United Kingdom legislation during that year provided that such figure shall not exceed the number of weeks

during which in that year the person was subject to that legislation.

11. For the purpose of applying Article 38(3)(a)(ii) only periods during which the worker was incapable of working within the meaning of United Kingdom legislation are taken into account.
12. (1) For the purpose of calculating, pursuant to Article 44(1)(a) of the Decision, the theoretical amount of the part of the pension which is constituted by the additional element within the meaning of United Kingdom legislation:
 - (a) "wages or salaries, contributions or increases in contributions" referred to in Article 45(1)(b) of the Decision shall be interpreted as surplus earnings factors within the meaning of the Social Security Pensions Act, 1975, or the Social Security Pensions (Northern Ireland) Order, 1975;
 - (b) mean surplus earnings factors shall be calculated in accordance with Article 45(1)(b) of the Decision as interpreted in subparagraph (a) above, by dividing the total surplus attained under United Kingdom legislation by the number of financial years (including fractions of financial years) within the meaning of United Kingdom legislation completed under that legislation since 6 April 1978, during the reference insurance period.
- (2) For the purpose of calculating the amount of the part of the pension which is constituted by the additional element within the meaning of United Kingdom legislation, "periods of insurance or residence" referred to in Article 44(1) of the Decision is to be interpreted as meaning periods of insurance or residence completed after 6 April 1978.

