

**REGULATION (EC) No 988/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 16 September 2009**

**amending Regulation (EC) No 883/2004 on the coordination of social security systems,  
and determining the content of its Annexes**

(Text with relevance for the EEA and for Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

Whereas:

- (1) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems <sup>(3)</sup> provides for the content of Annexes II, X and XI to that Regulation to be determined before its date of application.
- (2) Annexes I, III, IV, VI, VII, VIII and IX to Regulation (EC) No 883/2004 should be adapted in order to take into account both the requirements of the Member States which have acceded to the European Union since that Regulation was adopted and recent developments in other Member States.
- (3) Articles 56(1) and 83 of Regulation (EC) No 883/2004 provide for special provisions for the implementation of the legislation of certain Member States to be set out in Annex XI to that Regulation. Annex XI is intended to take account of the particularities of the various social security systems of Member States in order to facilitate the application of the rules on coordination. A number of Member States have asked for entries concerning the application of their social security legislation to be included in this Annex and have provided the Commission with legal and practical explanations of their legislation and systems.
- (4) In accordance with the need for rationalisation and simplification, a common approach is needed in order to ensure that entries in respect of different Member States which are of a similar nature or pursue the same objective are in principle dealt with in a similar manner.

(5) As the aim of Regulation (EC) No 883/2004 is to coordinate social security legislation for which Member States are exclusively responsible, entries which are not compatible with its purpose or objectives, and entries seeking solely to clarify the interpretation of national legislation, should not be included in that Regulation.

(6) Some requests raised issues that were common to several Member States: it is therefore appropriate to deal with those issues at a more general level, either by clarification in the body of Regulation (EC) No 883/2004 or in another of its Annexes, which should therefore be amended accordingly, or through a provision in the implementing Regulation referred to in Article 89 of Regulation (EC) No 883/2004, rather than by inserting similar entries in Annex XI for several Member States.

(7) Article 28 of Regulation (EC) No 883/2004 should be amended in order to clarify and extend its scope and to ensure that the members of the family of former frontier workers may also benefit from the possibility of continuing medical treatment in the former country of employment of the insured person after his/her retirement, unless the Member State where the frontier worker last pursued his/her last activity is listed in Annex III.

(8) It is appropriate to assess the significance, frequency, scale and costs relating to the application of the restriction of rights to benefits in kind for members of the family of frontier workers under Annex III to Regulation (EC) No 883/2004 for those Member States still listed in that Annex 4 years after the date of application of that Regulation.

(9) It is also appropriate to deal with certain specific issues in other Annexes to Regulation (EC) No 883/2004, according to their purpose and content, rather than in Annex XI thereto, in order to ensure consistency in the Annexes to that Regulation.

(10) Some Member States' entries in Annex VI to Regulation (EEC) No 1408/71 of the Council <sup>(4)</sup> are now covered by certain general provisions in Regulation (EC) No 883/2004. Consequently, a number of entries in Annex VI to Regulation (EEC) No 1408/71 have become superfluous.

<sup>(1)</sup> OJ C 161, 13.7.2007, p. 61.

<sup>(2)</sup> Opinion of the European Parliament of 9 July 2008 (not yet published in the Official Journal), Council Common Position of 17 December 2008 (OJ C 33 E, 10.2.2009, p. 1) and Position of the European Parliament of 22 April 2009. Council Decision of 27 July 2009.

<sup>(3)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(4)</sup> OJ L 149, 5.7.1971, p. 2.

- (11) In order to facilitate the use of Regulation (EC) No 883/2004 by citizens when asking for information or making claims to the institutions of the Member States, references to the legislation of the Member States concerned should also be made in the original language wherever necessary in order to avoid any possible misunderstanding.
- (12) Regulation (EC) No 883/2004 should therefore be amended accordingly.
- (13) Regulation (EC) No 883/2004 provides that it is to apply from the date of entry into force of the implementing Regulation. This Regulation should therefore apply from the same date,
- (ii) for the purposes of Title III, Chapter 2 (accidents at work and occupational diseases), all benefits in kind relating to accidents at work and occupational diseases as defined in point (i) above and provided for under the Member States' accidents at work and occupational diseases schemes.;

HAVE ADOPTED THIS REGULATON:

*Article 1*

Regulation (EC) No 883/2004 is hereby amended as follows:

1. the following recital shall be inserted after recital (17):

'(17a) Once the legislation of a Member State becomes applicable to a person under Title II of this Regulation, the conditions for affiliation and entitlement to benefits should be defined by the legislation of the competent Member State while respecting Community law.;

2. the following recital shall be inserted after recital (18):

'(18a) The principle of single applicable legislation is of great importance and should be enhanced. This should not mean, however, that the grant of a benefit alone, in accordance with this Regulation and comprising the payment of insurance contributions or insurance coverage for the beneficiary, renders the legislation of the Member State, whose institution has granted that benefit, the applicable legislation for that person.;

3. in Article 1, the following point shall be inserted:

'(va) "Benefits in kind" means:

- (i) for the purposes of Title III, Chapter 1 (sickness, maternity and equivalent paternity benefits), benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care. This includes long-term care benefits in kind.;

4. Article 3(5) shall be replaced by the following:

'5. This Regulation shall not apply to:

- (a) social and medical assistance or
- (b) benefits in relation to which a Member State assumes the liability for damages to persons and provides for compensation, such as those for victims of war and military action or their consequences; victims of crime, assassination or terrorist acts; victims of damage occasioned by agents of the Member State in the course of their duties; or victims who have suffered a disadvantage for political or religious reasons or for reasons of descent.;

5. Article 14(4) shall be replaced by the following:

'4. Where the legislation of a Member State makes admission to voluntary insurance or optional continued insurance conditional upon residence in that Member State or upon previous activity as an employed or self-employed person, Article 5(b) shall apply only to persons who have been subject, at some earlier stage, to the legislation of that Member State on the basis of an activity as an employed or self-employed person.;

6. in Article 15, the term 'auxiliary staff' shall be replaced by 'contract staff';

7. Article 18(2) shall be replaced by the following:

'2. The members of the family of a frontier worker shall be entitled to benefits in kind during their stay in the competent Member State.

Where the competent Member State is listed in Annex III however, the members of the family of a frontier worker who reside in the same Member State as the frontier worker shall be entitled to benefits in kind in the competent Member State only under the conditions laid down in Article 19(1).;

8. Article 28(1) shall be replaced by the following:

'1. A frontier worker who has retired because of old-age or invalidity is entitled in the event of sickness to continue to receive benefits in kind in the Member State where he/she last pursued his/her activity as an employed or self-employed person, in so far as this is a continuation of treatment which began in that Member State. "Continuation of treatment" means the continued investigation, diagnosis and treatment of an illness for its entire duration.

The first subparagraph shall apply *mutatis mutandis* to the members of the family of the former frontier worker unless the Member State where the frontier worker last pursued his/her activity is listed in Annex III.;

9. Article 36(1) shall be replaced by the following:

'1. Without prejudice to any more favourable provisions in paragraphs 2 and 2a of this Article, Articles 17, 18(1), 19(1) and 20(1) shall also apply to benefits relating to accidents at work or occupational diseases.;

10. in Article 36, the following paragraph shall be inserted:

'2a. The competent institution may not refuse to grant the authorisation provided for in Article 20(1) to an employed or self-employed person who has sustained an accident at work or has contracted an occupational disease and who is entitled to benefits chargeable to that institution, where the treatment appropriate to his/her condition cannot be given in the Member State in which the person resides within a time limit which is medically justifiable, taking into account his/her current state of health and the probable course of his illness.;

11. Article 51(3) shall be replaced by the following:

'3. Where the legislation or specific scheme of a Member State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied if that person has been previously insured under the legislation or specific scheme of that Member State and is, at the time of the materialisation of the risk, insured under the legislation of another Member State for the same risk or, failing that, if a benefit is due under the legislation of another Member State for the same risk. The latter condition shall, however, be deemed to be fulfilled in the cases referred to in Article 57.;

12. Article 52(4) shall be replaced by the following:

'4. Where the calculation pursuant to paragraph 1(a) in one Member State invariably results in the independent benefit being equal to or higher than the pro rata benefit, calculated in accordance with paragraph 1(b), the competent institution shall waive the pro rata calculation, provided that:

- (i) such a situation is set out in Part 1 of Annex VIII;
- (ii) no legislation containing rules against overlapping, as referred to in Articles 54 and 55, is applicable unless the conditions laid down in Article 55(2) are fulfilled; and
- (iii) Article 57 is not applicable in relation to periods completed under the legislation of another Member State in the specific circumstances of the case.;

13. the following paragraph shall be added to Article 52:

'5. Notwithstanding the provisions of paragraphs 1, 2 and 3, the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in part 2 of Annex VIII. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Member State concerned.;

14. in Article 56(1)(c), the words 'where necessary' shall be inserted before 'in accordance with the procedures laid down in Annex XI';

15. in Article 56(1), the following point shall be added:

'(d) In the event that point(c) is not applicable because the legislation of a Member State provides for the benefit to be calculated on the basis of elements other than periods of insurance or residence which are not linked to time, the competent institution shall take into account, in respect of each period of insurance or residence completed under the legislation of any other Member State, the amount of the capital accrued, the capital which is considered as having been accrued or any other element for the calculation under the legislation it administers divided by the corresponding units of periods in the pension scheme concerned.;

16. in Article 57, the following paragraph shall be added:

'4. This Article shall not apply to schemes listed in Part 2 of Annex VIII.;

17. in Article 62(3), the term 'frontier workers' shall be replaced by 'unemployed persons';

18. the following Article shall be inserted:

'Article 68a

#### **Provision of benefits**

In the event that family benefits are not used 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 those benefits to the natural or legal person in fact maintaining the members of the family, at the request and through the agency of the institution in their Member State of residence or of the designated institution or body appointed for that purpose by the competent authority of their Member State of residence.;

19. Article 87 shall be amended as follows:

(a) paragraph 8 shall be replaced by the following:

'8. If, as a result of this Regulation, a person is subject to the legislation of a Member State other than that determined in accordance with Title II of Regulation (EEC) No 1408/71, that legislation shall continue to apply while the relevant situation remains unchanged and in any case for no longer than 10 years from the date of application of this Regulation unless the person

concerned requests that he/she be subject to the legislation applicable under this Regulation. The request shall be submitted within 3 months after the date of application of this Regulation to the competent institution of the Member State whose legislation is applicable under this Regulation if the person concerned is to be subject to the legislation of that Member State as of the date of application of this Regulation. If the request is made after the time limit indicated, the change of applicable legislation shall take place on the first day of the following month.;

(b) the following paragraphs shall be inserted:

'10a. The entries in Annex III corresponding to Estonia, Spain, Italy, Lithuania, Hungary and the Netherlands shall cease to have effect 4 years after the date of application of this Regulation.

10b. The list contained in Annex III shall be reviewed no later than 31 October 2014 on the basis of a report by the Administrative Commission. That report shall include an impact assessment of the significance, frequency, scale and costs, both in absolute and in relative

terms, of the application of the provisions of Annex III. That report shall also include the possible effects of repealing those provisions for those Member States which continue to be listed in that Annex after the date referred to in paragraph 10a. In the light of that report, the Commission shall decide whether to submit a proposal concerning a review of the list, with the aim in principle of repealing the list unless the report of the Administrative Commission provides compelling reasons not to do so.;

20. the Annexes shall be amended in accordance with the Annex to this Regulation.

#### Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply from the date of entry into force of the implementing Regulation referred to in Article 89 of Regulation (EC) No 883/2004.

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

Done at Strasbourg, 16 September 2009.

*For the European Parliament*  
*The President*  
J. BUZEK

*For the Council*  
*The President*  
C. MALMSTRÖM

## ANNEX

**Amendments to the Annexes to Regulation (EC) No 883/2004**

A. Annex I is amended as follows:

1. In Part I (advances of maintenance payments):

(a) the heading 'A. BELGIUM' is replaced by 'BELGIUM';

(b) after the entry 'BELGIUM' the following entry is inserted:

'BULGARIA

Maintenance payments made by the State under Article 92 of the Family Code.;

(c) the headings 'B. DENMARK' and 'C. GERMANY' are replaced respectively by 'DENMARK' and 'GERMANY';

(d) after the entry under the heading 'GERMANY' the following entries are inserted:

'ESTONIA

Maintenance allowances under the Maintenance Allowance Act of 21 February 2007;

SPAIN

Advances of maintenance payments under the Royal Decree 1618/2007 of 7 December 2007.;

(e) the heading 'D. FRANCE' is replaced by 'FRANCE';

(f) after the entry under the heading 'FRANCE' the following entries are inserted:

'LITHUANIA

Payments from the Children's Maintenance Fund under the Law on the Children's Maintenance Fund.

LUXEMBOURG

Advances and recovery of maintenance payments within the meaning of the Act of 26 July 1980.;

(g) the heading 'E. AUSTRIA' is replaced by 'AUSTRIA';

(h) after the entry under the heading 'AUSTRIA' the following entry is inserted:

'POLAND

Benefits from the Alimony Fund under the Act of Assistance to the Persons Entitled to Alimony;

(i) the heading 'F. PORTUGAL' is replaced by 'PORTUGAL';

(j) after the entry under the heading 'PORTUGAL' the following entries are inserted:

'SLOVENIA

Maintenance replacement in accordance with the Act of Public Guarantee and Maintenance Fund of the Republic of Slovenia of 25 July 2006.

SLOVAKIA

Substitute alimony benefit (substitute maintenance payment) pursuant to the Act No 452/2004 Coll. on substitute alimony benefit as amended by later regulations.;

(k) the headings 'G. FINLAND' and 'H. SWEDEN' are replaced respectively by 'FINLAND' and 'SWEDEN';

2. in Part II (special childbirth and adoption allowances):

(a) the heading 'A. BELGIUM' is replaced by 'BELGIUM';

- (b) after the entry under the heading 'BELGIUM' the following entries are inserted:
- 'BULGARIA
- Maternity lump sum allowance (Law on Family Allowances for Children).
- CZECH REPUBLIC
- Childbirth allowance.
- ESTONIA
- (a) Childbirth allowance;
- (b) Adoption allowance.;
- (c) the headings 'B. SPAIN' and 'C. FRANCE' are replaced respectively by 'SPAIN' and 'FRANCE';
- (d) the entry under the heading 'SPAIN' is replaced by the following:
- 'SPAIN
- Single payment birth and adoption grants';
- (e) in the entry under the heading 'FRANCE' the following words are added:
- ', except when they are paid to a person who remains subject to French legislation pursuant to Article 12 or Article 16';
- (f) after the entry under the heading 'FRANCE' the following entries are inserted:
- 'LATVIA
- (a) Childbirth grant;
- (b) Adoption allowance.
- LITHUANIA
- Child lump sum grant.;
- (g) the heading 'D. LUXEMBOURG' is replaced by 'LUXEMBOURG';
- (h) after the entry under the heading 'LUXEMBOURG' the following entries are inserted:
- 'HUNGARY
- Maternity grant.
- POLAND
- Single payment birth grant (Act on Family Benefits).
- ROMANIA
- (a) Childbirth allowance;
- (b) Layette for newborn children.
- SLOVENIA
- Childbirth grant.

## SLOVAKIA

- (a) Childbirth allowance;
- (b) Supplement to childbirth allowance.;
- (i) the heading 'E. FINLAND' is replaced by 'FINLAND'.

## B. Annex II is replaced by the following:

## 'ANNEX II

**PROVISIONS OF CONVENTIONS WHICH REMAIN IN FORCE AND WHICH, WHERE APPLICABLE, ARE RESTRICTED TO THE PERSONS COVERED THEREBY (Article 8(1))****General comments**

It is to be noted that the provisions of bilateral conventions which do not fall within the scope of this Regulation and which remain in force between Member States are not listed in this Annex. This includes obligations between Member States arising from conventions providing, for example, for provisions regarding aggregation of insurance periods fulfilled in a third country.

Provisions of social security conventions remaining applicable:

## BELGIUM-GERMANY

Articles 3 and 4 of the Final Protocol of 7 December 1957 to the General Convention of that date, as set out in the Complementary Protocol of 10 November 1960 (reckoning of insurance periods completed in some border regions before, during and after the Second World War).

## BELGIUM-LUXEMBOURG

Convention of 24 March 1994 on social security for frontier workers (relating to the complementary flat rate reimbursement).

## BULGARIA-GERMANY

Article 28(1)(b) of the Convention on social security of 17 December 1997 (maintenance of conventions concluded between Bulgaria and the former German Democratic Republic for persons who already received a pension before 1996).

## BULGARIA-AUSTRIA

Article 38(3) of the Convention on social security of 14 April 2005 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by that Convention.

## BULGARIA-SLOVENIA

Article 32(2) of the Convention on Social Security of 18 December 1957 (reckoning of periods of insurance completed until 31 December 1957).

## CZECH REPUBLIC-GERMANY

Article 39(1)(b) and (c) of the Convention on Social Security of 27 July 2001 (maintenance of the convention concluded between the former Czechoslovak Republic and the former German Democratic Republic for persons who already received a pension before 1996; reckoning of periods of insurance completed in one of the contracting States for persons who already received a pension for these periods on 1 September 2002 from the other contracting State, while residing in its territory).

## CZECH REPUBLIC-CYPRUS

Article 32(4) of the Convention on Social Security of 19 January 1999 (determining competence for the calculation of periods of employment completed under the relevant Convention of 1976); the application of that provision remains restricted to the persons covered by it.

## CZECH REPUBLIC-LUXEMBOURG

Article 52(8) of the Convention on Social Security of 17 November 2000 (reckoning of pension insurance periods for political refugees).

## CZECH REPUBLIC-AUSTRIA

Article 32(3) of the Convention on social security of 20 July 1999 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

## CZECH REPUBLIC-SLOVAKIA

Articles 12, 20 and 33 of the Convention on Social Security of 29 October 1992 (Article 12 determines competence for a grant of survivor's benefits; Article 20 determines competence for calculation of insurance periods completed until the day of dissolution of the Czech and Slovak Federal Republic; Article 33 determines competence for payment of pensions awarded before the day of the dissolution of the Czech and Slovak Federal Republic).

## DENMARK-FINLAND

Article 7 of the Nordic Convention on social security of 18 August 2003 (concerning coverage of extra travel expenses in case of sickness during stay in another Nordic country increasing the cost of return travel to the country of residence).

## DENMARK-SWEDEN

Article 7 of the Nordic Convention on social security of 18 August 2003 (concerning coverage of extra travel expenses in case of sickness during stay in another Nordic country increasing the cost of return travel to the country of residence).

## GERMANY-SPAIN

Article 45(2) of the Social Security Convention of 4 December 1973 (representation by diplomatic and consular authorities).

## GERMANY-FRANCE

- (a) Complementary Agreement No 4 of 10 July 1950 to the General Convention of the same date, as set out in Supplementary Agreement No 2 of 18 June 1955 (reckoning of periods of insurance completed between 1 July 1940 and 30 June 1950);
- (b) Title I of that Supplementary Agreement No 2 (reckoning of periods of insurance completed before 8 May 1945);
- (c) points 6, 7 and 8 of the General Protocol of 10 July 1950 to the General Convention of the same date (administrative arrangements);
- (d) Titles II, III and IV of the Agreement of 20 December 1963 (social security in the Saar).

## GERMANY-LUXEMBOURG

Articles 4, 5, 6 and 7 of the Convention of 11 July 1959 (reckoning of insurance periods completed between September 1940 and June 1946).



## GERMANY-HUNGARY

Article 40(1)(b) of the Convention on social security of 2 May 1998 (maintenance of the convention concluded between the former German Democratic Republic and Hungary for persons who already received a pension before 1996).

## GERMANY-NETHERLANDS

Articles 2 and 3 of Complementary Agreement No 4 of 21 December 1956 to the Convention of 29 March 1951 (settlement of rights acquired under the German social insurance scheme by Dutch workers between 13 May 1940 and 1 September 1945).

## GERMANY-AUSTRIA

- (a) Article 1(5) and Article 8 of the Convention on Unemployment Insurance of 19 July 1978 and Article 10 of the Final Protocol to this Convention (granting of unemployment allowances to frontier workers by the previous State of employment) shall continue to apply to persons who have exercised an activity as a frontier worker on or before 1 January 2005 and become unemployed before 1 January 2011;
- (b) Article 14(2)(g), (h), (i) and (j) of the Convention on social security of 4 October 1995 (determination of competencies between both countries with regard to former insurance cases and acquired insurance periods); the application of that provision remains restricted to the persons covered by it.

## GERMANY-POLAND

- (a) Convention of 9 October 1975 on old-age and work injury provisions, under the conditions and the scope defined by Article 27(2) to (4) of the Convention on social security of 8 December 1990 (maintenance of legal status, on the basis of the Convention of 1975, of the persons who had established their residence in the territory of Germany or Poland before 1 January 1991 and who continue to reside there);
- (b) Articles 27(5) and 28(2) of the Convention on social security of 8 December 1990 (maintenance of entitlement to a pension paid on the basis of the Convention of 1957 concluded between the former German Democratic Republic and Poland; reckoning of periods of insurance completed by Polish employees under the Convention of 1988 concluded between the former German Democratic Republic and Poland).

## GERMANY-ROMANIA

Article 28(1)(b) of the Convention on social security of 8 April 2005 (maintenance of the Convention concluded between the former German Democratic Republic and Romania for persons who already received a pension before 1996).

## GERMANY-SLOVENIA

Article 42 of the Convention on social security of 24 September 1997 (settlement of rights acquired before 1 January 1956 under the social security scheme of the other contracting state); the application of that provision remains restricted to the persons covered by it.

## GERMANY-SLOVAKIA

Article 29(1), second and third subparagraphs of the Agreement of 12 September 2002 (maintenance of the Convention concluded between the former Czechoslovak Republic and the former German Democratic Republic for persons who already received a pension before 1996; reckoning of periods of insurance completed in one of the contracting States for persons who already received a pension for these periods on 1 December 2003 from the other contracting State, while residing in its territory).

## GERMANY-UNITED KINGDOM

- (a) Article 7(5) and (6) of the Convention on social security of 20 April 1960 (legislation applicable to civilians serving in the military forces);
- (b) Article 5(5) and (6) of the Convention on unemployment insurance of 20 April 1960 (legislation applicable to civilians serving in the military forces).

## IRELAND-UNITED KINGDOM

Article 19(2) of the Agreement of 14 December, 2004 on social security (concerning the transfer and reckoning of certain disability credits).

## SPAIN-PORTUGAL

Article 22 of the General Convention of 11 June 1969 (export of unemployment benefits). This entry will remain valid for 2 years from the date of application of this Regulation.

## ITALY-SLOVENIA

- (a) Agreement on regulation of mutual obligations in social insurance with reference to paragraph 7 of Annex XIV to the Peace Treaty, concluded by exchange of notes on 5 February 1959 (reckoning of periods of insurance completed before 18 December 1954); the application of that provision remains restricted to the persons covered by that Agreement;
- (b) Article 45(3) of the Convention on social security of 7 July 1997 concerning ex-Zone B of the Free Territory of Trieste (reckoning of periods of insurance completed before 5 October 1956); the application of that provision remains restricted to the persons covered by that Convention.

## LUXEMBOURG-PORTUGAL

Agreement of 10 March 1997 (on the recognition of decisions by institutions in one contracting party concerning the state of invalidity of applicants for pensions from institutions in the other contracting party).

## LUXEMBOURG-SLOVAKIA

Article 50(5) of the Convention on Social Security of 23 May 2002 (reckoning of pension insurance periods for political refugees).

## HUNGARY-AUSTRIA

Article 36(3) of the Convention on social security of 31 March 1999 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

## HUNGARY-SLOVENIA

Article 31 of the Convention on social security of 7 October 1957 (reckoning of periods of insurance completed before 29 May 1956); the application of that provision remains restricted to the persons covered by it.

## HUNGARY-SLOVAKIA

Article 34(1) of the Convention on social security of 30 January 1959 (Article 34(1) of that Convention provides that the insurance periods awarded before the day of signing that Convention are the insurance periods of the contracting State on which territory the entitled person had a residence); the application of that provision remains restricted to the persons covered by it.

## AUSTRIA-POLAND

Article 33(3) of the Convention on social security of 7 September 1998 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

## AUSTRIA-ROMANIA

Article 37(3) of the Agreement on social security of 28 October 2005 (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

## AUSTRIA-SLOVENIA

Article 37 of the Convention on social security of 10 March 1997 (reckoning of periods of insurance completed before 1 January 1956); the application of that provision remains restricted to the persons covered by it.

## AUSTRIA-SLOVAKIA

Article 34(3) of the Convention of 21 December 2001 on Social Security (reckoning of periods of insurance completed before 27 November 1961); the application of that provision remains restricted to the persons covered by it.

## FINLAND-SWEDEN

Article 7 of the Nordic Convention on social security of 18 August 2003 (concerning coverage of extra travel expenses in case of sickness during stay in another Nordic country increasing the cost of return travel to the country of residence).'

## C. Annex III is replaced by the following:

'ANNEX III

**RESTRICTION OF RIGHTS TO BENEFITS IN KIND FOR MEMBERS OF THE FAMILY OF A FRONTIER WORKER**

(referred to in Article 18(2))

## DENMARK

ESTONIA (this entry will be valid during the period referred to in Article 87(10a))

## IRELAND

SPAIN (this entry will be valid during the period referred to in Article 87(10a))

ITALY (this entry will be valid during the period referred to in Article 87(10a))

LITHUANIA (this entry will be valid during the period referred to in Article 87(10a))

HUNGARY (this entry will be valid during the period referred to in Article 87(10a))

NETHERLANDS (this entry will be valid during the period referred to in Article 87(10a))

## FINLAND

## SWEDEN

## UNITED KINGDOM'.

## D. Annex IV is amended as follows:

## 1. after the entry 'BELGIUM', the following entries are inserted:

'BULGARIA

CZECH REPUBLIC';

## 2. the entry 'ITALY' is deleted;

## 3. after the entry 'FRANCE', the entry 'CYPRUS' is inserted;

4. after the entry 'LUXEMBOURG', the following entries are inserted:

'HUNGARY

THE NETHERLANDS';

5. after the entry 'AUSTRIA', the following entries are inserted:

'POLAND

SLOVENIA'.

- E. Annex VI is amended as follows:

1. at the beginning of the Annex the following entries are inserted:

'CZECH REPUBLIC

Full disability pension for persons whose total disability arose before reaching 18 years of age and who were not insured for the required period (Section 42 of the Pension Insurance Act No 155/1995 Coll.).

ESTONIA

- (a) Invalidity pensions granted before 1 April 2000 under the State Allowances Act and which are retained under the State Pension Insurance Act.

- (b) National pensions granted on the basis of invalidity according to the State Pension Insurance Act.

- (c) Invalidity pensions granted according to the Defence Forces Service Act, Police Service Act, Prosecutor's Office Act, Status of Judges Act, Members of the Riigikogu Salaries, Pensions and Other Social Guarantees Act and President of the Republic Official Benefits Act.;

2. the headings 'A. GREECE' and 'B. IRELAND' are replaced respectively by 'GREECE' and 'IRELAND';

3. the entry under the heading 'IRELAND' is removed and reinserted before the entry under the heading 'GREECE' and is replaced by the following:

'Part 2, Chapter 17 of the Social Welfare Consolidation Act 2005';

4. after the entry under the heading 'GREECE' the following entry is inserted:

'LATVIA

Invalidity pensions (third group) under Article 16(1)(2) of the Law on State Pensions of 1 January 1996.;

5. the heading 'C. FINLAND' is replaced by 'FINLAND' and the corresponding entry is replaced by the following:

'FINLAND

National Pensions to persons who are born disabled or become disabled at an early age (the National Pension Act, 568/2007);

Invalidity pensions determined according to transitional rules and awarded prior to 1 January 1994 (Act on Enforcement of the National Pensions Act, 569/2007).;

6. The headings 'D. SWEDEN' and 'E. UNITED KINGDOM' are replaced respectively by 'SWEDEN' and 'UNITED KINGDOM'.

- F. Annex VII is amended as follows:

1. in the tables headed 'BELGIUM' and 'FRANCE', the rows relating to Luxembourg are deleted;

2. the table headed 'LUXEMBOURG' is deleted.

G. Annex VIII is replaced by the following:

'ANNEX VIII

**CASES IN WHICH THE PRO RATA CALCULATION SHALL BE WAIVED OR SHALL NOT APPLY** (Article 52(4) and 52(5))

Part 1: Cases in which the pro rata calculation shall be waived pursuant to Article 52(4)

DENMARK

All applications for pensions referred to in the law on social pensions, except for pensions mentioned in Annex IX.

IRELAND

All applications for state pension (transition), state pension (contributory), widow's (contributory) pension and widower's (contributory) pension.

CYPRUS

All applications for old age, invalidity, widow's and widower's pensions.

LATVIA

- (a) All applications for invalidity pensions (Law on State Pensions of 1 January 1996);
- (b) All applications for survivor's pensions (Law on State pensions of 1 January 1996; Law on State funded pensions of 1 July 2001).

LITHUANIA

All applications for State social insurance survivor's pensions calculated on the basis of the basic amount of survivor's pension (Law on State Social Insurance Pensions).

NETHERLANDS

All applications for old-age pensions under the law on general old-age insurance (AOW).

AUSTRIA

- (a) All applications for benefits under the Federal Act of 9 September 1955 on General Social Insurance – ASVG, the Federal Act of 11 October 1978 on social insurance for self-employed persons engaged in trade and commerce – GSVG, the Federal Act of 11 October 1978 on social insurance for self-employed farmers – BSVG and the Federal Act of 30 November 1978 on social insurance for the self-employed in the liberal professions (FSVG);
- (b) All applications for invalidity pensions based on a pension account pursuant to the General Pensions Act (APG) of 18 November 2004;
- (c) All applications for survivors' pensions based on a pension account pursuant to the General Pensions Act (APG) of 18 November 2004, if no increase in benefits is to be applied in respect of additional months of insurance pursuant to Article 7(2) of the General Pensions Act (APG);
- (d) All applications for invalidity and survivors' pensions of the Austrian Provincial Chambers of Physicians (Landesärztekammer) based on basic provision (basic and any supplementary benefit, or basic pension);
- (e) All applications for permanent occupational invalidity support and survivors' support from the pension fund of the Austrian Chamber of Veterinary Surgeons;
- (f) All applications for benefits from occupational invalidity, widows and orphans pensions according to the statutes of the welfare institutions of the Austrian bar associations, Part A.

## POLAND

All applications for disability pensions, old-age pensions under the defined benefits scheme and survivors' pensions.

## PORTUGAL

All applications for invalidity, old-age and survivors' pension claims, except for the cases where the totalised periods of insurance completed under the legislation of more than one Member State are equal to or longer than 21 calendar years, the national periods of insurance are equal or inferior to 20 years, and the calculation is made under Article 11 of Decree-Law No 35/2002, 19 February.

## SLOVAKIA

- (a) All applications for survivors' pension (widow's pension, widower's and orphan's pension) calculated according to the legislation in force before 1 January 2004, the amount of which is derived from a pension formerly paid to the deceased;
- (b) All applications for pensions calculated pursuant to Act No 461/2003 Coll. on social security as amended.

## SWEDEN

All applications for guarantee pension in the form of old-age pension (Act 1998:702) and old-age pension in the form of supplementary pension (Act 1998:674).

## UNITED KINGDOM

All applications for retirement pension, widows' and bereavement benefits, with the exception of those for which during a tax year beginning on or after 6 April 1975:

- (i) the party concerned had completed periods of insurance, employment or residence under the legislation of the United Kingdom and another Member State; and one (or more) of the tax years was not considered a qualifying year within the meaning of the legislation of the United Kingdom;
- (ii) the periods of insurance completed under the legislation in force in the United Kingdom for the periods prior to 5 July 1948 would be taken into account for the purposes of Article 52(1)(b) of the Regulation by application of the periods of insurance, employment or residence under the legislation of another Member State.

All applications for additional pension pursuant to the Social Security Contributions and Benefits Act 1992, section 44, and the Social Security Contributions and Benefits (Northern Ireland) Act 1992, section 44.

Part 2: Cases in which Article 52(5) applies

## BULGARIA

Old age pensions from the Supplementary Compulsory Pension Insurance, under Part II, Title II, of the Social Insurance Code.

## ESTONIA

Mandatory funded old-age pension scheme.

## FRANCE

Basic or supplementary schemes in which old-age benefits are calculated on the basis of retirement points.

## LATVIA

Old-age pensions (Law on State pensions of 1 January 1996; Law on State funded pensions of 1 July 2001).

## HUNGARY

Pension benefits based on membership of private pension funds.

## AUSTRIA

- (a) Old-age pensions based on a pension account pursuant to the General Pensions Act (APG) of 18 November 2004;
- (b) Compulsory allowances under Article 41 of the Federal Law of 28 December 2001, BGBl I Nr. 154 on the general salary fund of Austrian pharmacists (Pharmazeutische Gehaltskasse für Österreich);
- (c) Retirement and early retirement pensions of the Austrian Provincial Chambers of Physicians based on basic provision (basic and any supplementary benefit, or basic pension), and all pension benefits of the Austrian Provincial Chambers of Physicians based on additional provision (additional or individual pension);
- (d) Old-age support from the pension fund of the Austrian Chamber of Veterinary Surgeons;
- (e) Benefits according to the statutes of the welfare institutions of the Austrian bar associations, Parts A and B, with the exception of applications for benefits from disability, widows' and orphans' pensions according to the statutes of the welfare institutions of the Austrian bar associations, Part A;
- (f) Benefits by the welfare institutions of the Federal Chamber of Architects and Consulting Engineers under the Austrian Civil Engineers' Chamber Act (Ziviltechnikerammergesetz) 1993 and the statutes of the welfare institutions, with the exception of benefits on grounds of occupational invalidity and survivors' benefits deriving from the last-named benefits;
- (g) Benefits according to the statute of the welfare institution of the Federal Chamber of Professional Accountants and Tax Advisors under the Austrian Professional Accountants and Tax Advisors' Act (Wirtschaftstreuhandberufsgesetz).

## POLAND

Old-age pensions under the defined contribution scheme.

## SLOVENIA

Pension from compulsory supplementary pension insurance.

## SLOVAKIA

Mandatory old-age pension saving.

## SWEDEN

Income-based pension and premium pension (Act 1998:674).

## UNITED KINGDOM

Graduated retirement benefits paid pursuant to the National Insurance Act 1965, sections 36 and 37, and the National Insurance Act (Northern Ireland) 1966, sections 35 and 36.;

## H. Annex IX is amended as follows:

## 1. in Part I:

- (a) the headings 'A. BELGIUM', 'B. DENMARK', 'C. GREECE', 'D. SPAIN', 'E. FRANCE', 'F. IRELAND', 'G. NETHERLANDS', 'H. FINLAND' and 'I. SWEDEN' are respectively replaced by 'BELGIUM', 'DENMARK', 'GREECE', 'SPAIN', 'FRANCE', 'IRELAND', 'NETHERLANDS', 'FINLAND' and 'SWEDEN';
- (b) the entry under the heading 'IRELAND' is moved after the entry under the heading 'DENMARK' and before the entry under the heading 'GREECE';
- (c) after the entry under the heading 'FRANCE' the following entry is inserted:

LATVIA

Invalidity pensions (third group) under Article 16(1)(2) of the Law on State Pensions of 1 January 1996.;

- (d) in the entry under the heading 'NETHERLANDS' the following text is added:

The law of 10 November 2005 on work and income according to labour capacity (WIA).;

- (e) the entry under the heading 'FINLAND' is replaced by the following:

National pensions to persons who are born disabled or become disabled at an early age (the National Pensions Act, 568/2007);

National pensions and spouse's pensions determined according to the transitional rules and awarded prior to the 1 of January 1994 (Act on Enforcement of the National Pensions Act, 569/2007);

The additional amount of child's pension when calculating independent benefit according to the National Pension Act (the National Pension Act, 568/2007).;

- (f) The entry under the heading 'SWEDEN' is replaced by the following:

Swedish income-related sickness compensation and activity compensation (Act 1962:381).

Swedish guarantee pension and guaranteed compensation which replaced the full Swedish state pensions provided under the legislation on the state pension which applied before 1 January 1993, and the full state pension awarded under the transitional rules of the legislation applying from that date.;

## 2. in Part II:

- (a) the headings 'A. GERMANY', 'B. SPAIN', 'C. ITALY', 'D. LUXEMBOURG', 'E. FINLAND' and 'F. SWEDEN' are respectively replaced by 'GERMANY', 'SPAIN', 'ITALY', 'LUXEMBOURG', 'FINLAND' and 'SWEDEN';
- (b) after the entry under the heading 'ITALY' the following entries are inserted:

LATVIA

Survivors' pension calculated on the basis of assumed insurance periods (Article 23(8) of the Law on State Pensions of 1 January 1996).

LITHUANIA

- (a) State social insurance work incapacity pensions, paid under the Law on State Social Insurance Pensions;
- (b) State social insurance survivors' and orphans' pensions, calculated on the basis of the work incapacity pension of the deceased under the Law on State Social Insurance Pensions.;



(c) after the entry under the heading 'LUXEMBOURG' the following entry is inserted:

'SLOVAKIA

- (a) Slovak invalidity pension and survivors' pension derived therefrom;
- (b) Invalidity pension for a person who became invalid as a dependent child and who is always deemed to have fulfilled the required period of insurance (Article 70(2), Article 72(3) and Article 73(3) and (4) of Act No 461/2003 on social insurance, as amended).';

3. in Part III:

the entry 'Nordic Convention of 15 June 1992 on social security' is replaced by the following: 'Nordic Convention on social security of 18 August 2003.'

I. Annex X is replaced by the following:

'ANNEX X

**SPECIAL NON-CONTRIBUTORY CASH BENEFITS** (Article 70(2)(c))

BELGIUM

- (a) Income replacement allowance (Law of 27 February 1987);
- (b) Guaranteed income for elderly persons (Law of 22 March 2001).

BULGARIA

Social Pension for old age (Article 89 of the Social Insurance Code).

CZECH REPUBLIC

Social allowance (State Social Support Act No 117/1995 Sb.).

DENMARK

Accommodation expenses for pensioners (Law on individual accommodation assistance, consolidated by Law No 204 of 29 March 1995).

GERMANY

- (a) Basic subsistence income for the elderly and for persons with reduced earning capacity under Chapter 4 of Book XII of the Social Code;
- (b) Benefits to cover subsistence costs under the basic provision for jobseekers unless, with respect to these benefits, the eligibility requirements for a temporary supplement following receipt of unemployment benefit (Article 24(1) of Book II of the Social Code) are fulfilled.

ESTONIA

- (a) Disabled adult allowance (Social Benefits for Disabled Persons Act of 27 January 1999);
- (b) State unemployment allowance (Labour Market Services and Support Act of 29 September 2005).

## IRELAND

- (a) Jobseekers' allowance (Social Welfare Consolidation Act 2005, Part 3, Chapter 2);
- (b) State pension (non-contributory) (Social Welfare Consolidation Act 2005, Part 3, Chapter 4);
- (c) Widow's (non-contributory) pension and widower's (non-contributory) pension (Social Welfare Consolidation Act 2005, Part 3, Chapter 6);
- (d) Disability allowance (Social Welfare Consolidation Act 2005, Part 3, Chapter 10);
- (e) Mobility allowance (Health Act 1970, Section 61);
- (f) Blind pension (Social Welfare Consolidation Act 2005, Part 3, Chapter 5).

## GREECE

Special benefits for the elderly (Law 1296/82).

## SPAIN

- (a) Minimum income guarantee (Law No 13/82 of 7 April 1982);
- (b) Cash benefits to assist the elderly and invalids unable to work (Royal Decree No 2620/81 of 24 July 1981);
- (c)
  - (i) Non-contributory invalidity and retirement pensions as provided for in Article 38(1) of the Consolidated Text of the General Law on Social Security, approved by Royal Legislative Decree No 1/1994 of 20 June 1994; and
  - (ii) the benefits which supplement the above pensions, as provided for in the legislation of the Comunidades Autónomas, where such supplements guarantee a minimum subsistence income having regard to the economic and social situation in the Comunidades Autónomas concerned;
- (d) Allowances to promote mobility and to compensate for transport costs (Law No 13/1982 of 7 April 1982).

## FRANCE

- (a) Supplementary allowances of:
  - (i) the Special Invalidity Fund; and
  - (ii) the Old Age Solidarity Fund in respect of acquired rights(Law of 30 June 1956, codified in Book VIII of the Social Security Code);
- (b) Disabled adults' allowance (Law of 30 June 1975, codified in Book VIII of the Social Security Code);
- (c) Special allowance (Law of 10 July 1952, codified in Book VIII of the Social Security Code) in respect of acquired rights;
- (d) Old-age solidarity allowance (ordinance of 24 June 2004, codified in Book VIII of the Social Security Code) as of 1 January 2006.

## ITALY

- (a) Social pensions for persons without means (Law No 153 of 30 April 1969);
- (b) Pensions and allowances for the civilian disabled or invalids (Laws No 118 of 30 March 1971, No 18 of 11 February 1980 and No 508 of 23 November 1988);
- (c) Pensions and allowances for the deaf and dumb (Laws No 381 of 26 May 1970 and No 508 of 23 November 1988);

- (d) Pensions and allowances for the civilian blind (Laws No 382 of 27 May 1970 and No 508 of 23 November 1988);
- (e) Benefits supplementing the minimum pensions (Laws No 218 of 4 April 1952, No 638 of 11 November 1983 and No 407 of 29 December 1990);
- (f) Benefits supplementing disability allowances (Law No 222 of 12 June 1984);
- (g) Social allowance (Law No 335 of 8 August 1995);
- (h) Social increase (Article 1(1) and (12) of Law No 544 of 29 December 1988 and successive amendments).

## CYPRUS

- (a) Social Pension (Social Pension Law of 1995 (Law 25(I)/95), as amended);
- (b) Severe motor disability allowance (Council of Ministers' Decisions Nos 38210 of 16 October 1992, 41370 of 1 August 1994, 46183 of 11 June 1997 and 53675 of 16 May 2001);
- (c) Special grant to blind persons (Special Grants Law of 1996 (Law 77(I)/96), as amended).

## LATVIA

- (a) State Social Security Benefit (Law on State Social Benefits of 1 January 2003);
- (b) Allowance for the compensation of transportation expenses for disabled persons with restricted mobility (Law on State Social Benefits of 1 January 2003).

## LITHUANIA

- (a) Social assistance pension (Law of 2005 on State Social Assistance Benefits, Article 5);
- (b) Relief compensation (Law of 2005 on State Social Assistance Benefits, Article 15);
- (c) Transport compensation for the disabled who have mobility problems (Law of 2000 on Transport Compensation, Article 7).

## LUXEMBOURG

Income for the seriously disabled (Article 1(2), Law of 12 September 2003), with the exception of persons recognised as being disabled workers and employed on the mainstream labour market or in a sheltered environment.

## HUNGARY

- (a) Invalidity annuity (Decree No 83/1987 (XII 27) of the Council of Ministers on Invalidity Annuity);
- (b) Non-contributory old age allowance (Act III of 1993 on Social Administration and Social Benefits);
- (c) Transport allowance (Government Decree No 164/1995 (XII 27) on Transport Allowances for Persons with Severe Physical Handicap).

## MALTA

- (a) Supplementary allowance (Section 73 of the Social Security Act (Cap. 318) 1987);
- (b) Age pension (Social Security Act (Cap. 318) 1987).

## NETHERLANDS

- (a) Disablement Assistance Act for Handicapped Young Persons, of 24 April 1997 (Wajong);
- (b) Supplementary Benefits Act of 6 November 1986 (TW).

## AUSTRIA

Compensatory supplement (Federal Act of 9 September 1955 on General Social Insurance — ASVG, Federal Act of 11 October 1978 on Social insurance for persons engaged in trade and commerce — GSVG and Federal Act of 11 October 1978 on Social insurance for farmers — BSVG).

## POLAND

Social pension (Act of 27 June 2003 on social pensions).

## PORTUGAL

- (a) Non-contributory State old-age and invalidity pension (Decree-Law No 464/80 of 13 October 1980);
- (b) Non-contributory widowhood pension (Regulatory Decree No 52/81 of 11 November 1981);
- (c) Solidarity supplement for the elderly (Decree – Law No 232/2005 of 29 December 2005, amended by Decree – Law No 236/2006 of 11 December 2006).

## SLOVENIA

- (a) State pension (Pension and Disability Insurance Act of 23 December 1999);
- (b) Income support for pensioners (Pension and Disability Insurance Act of 23 December 1999);
- (c) Maintenance allowance (Pension and Disability Insurance Act of 23 December 1999).

## SLOVAKIA

- (a) Adjustment awarded before 1 January 2004 to pensions constituting the sole source of income;
- (b) Social pension which has been awarded before 1 January 2004.

## FINLAND

- (a) Housing allowance for pensioners (Act concerning the Housing Allowance for pensioners, 571/2007);
- (b) Labour market support (Act on Unemployment Benefits 1290/2002);
- (c) Special assistance for immigrants (Act on Special Assistance for Immigrants, 1192/2002).

## SWEDEN

- (a) Housing supplements for persons receiving a pension (Law 2001:761);
- (b) Financial support for the elderly (Law 2001:853).

## UNITED KINGDOM

- (a) State Pension Credit (State Pension Credit Act 2002 and State Pension Credit Act (Northern Ireland) 2002);
- (b) Income-based allowances for jobseekers (Jobseekers Act 1995 and Jobseekers (Northern Ireland) Order 1995);
- (c) Income Support (Social Security Contributions and Benefits Act 1992 and Social Security Contributions and Benefits (Northern Ireland) Act 1992);
- (d) Disability Living Allowance mobility component (Social Security Contributions and Benefits Act 1992 and Social Security Contributions and Benefits (Northern Ireland) Act 1992).

J. Annex XI is replaced by the following:

## 'ANNEX XI

**SPECIAL PROVISIONS FOR THE APPLICATION OF THE LEGISLATION OF THE MEMBER STATES**

(Articles 51(3), 56(1) and 83)

## BULGARIA

Article 33(1) of the Bulgarian Health Insurance Act shall apply to all persons for whom Bulgaria is the competent Member State under Chapter 1 of Title III of this Regulation;

## CZECH REPUBLIC

For the purposes of defining members of the family according to Article 1(i), "spouse" also includes registered partners as defined in the Czech act no. 115/2006 Coll., on registered partnership.;

## DENMARK

1. (a) For the purpose of calculating the pension under the "lov om social pension" (Social Pension Act), periods of activity as an employed or self-employed person completed under Danish legislation by a frontier worker or a worker who has gone to Denmark to do work of a seasonal nature are regarded as periods of residence completed in Denmark by the surviving spouse in so far as, during those periods, the surviving spouse was linked to the abovementioned worker by marriage without separation from bed and board or de facto separation on grounds of incompatibility, and provided that, during those periods, the spouse resided in the territory of another Member State. For the purposes of this point, "work of a seasonal nature" means work which, being dependent on the succession of the seasons, automatically recurs each year.
- (b) For the purpose of calculating the pension under the "lov om social pension" (Social Pension Act), periods of activity as an employed or self-employed person completed under Danish legislation before 1 January 1984 by a person to whom point 1(a) does not apply shall be regarded as periods of residence completed in Denmark by the surviving spouse, in so far as, during those periods, the surviving spouse was linked to the person by marriage without separation from bed and board or de facto separation on grounds of incompatibility, and provided that, during those periods, the spouse resided in the territory of another Member State.
- (c) Periods to be taken into account under points (a) and (b) shall not be taken into consideration if they coincide with the periods taken into account for the calculation of the pension due to the person concerned under the legislation on compulsory insurance of another Member State or with the periods during which the person concerned received a pension under such legislation. These periods shall, however, be taken into consideration if the annual amount of the said pension is less than half the basic amount of the social pension.

2. (a) Notwithstanding the provisions of Article 6 of this Regulation, persons who have not been gainfully employed in one or more Member States are entitled to a Danish social pension only if they have been, or have previously been, permanent residents of Denmark for at least 3 years, subject to the age limits prescribed by Danish legislation. Subject to Article 4 of this Regulation, Article 7 does not apply to a Danish social pension to which entitlement has been acquired by such persons.
- (b) The abovementioned provisions do not apply to Danish social pension entitlement for the members of the family of persons who are or have been gainfully employed in Denmark, or for students or the members of their families.
3. The temporary benefit for unemployed persons who have been admitted to the ledighedsydelse (flexible job' scheme) (Law No 455 of 10 June 1997) is covered by Title III, Chapter 6 of this Regulation. As regards unemployed persons going to another Member State, Articles 64 and 65 will be applicable when this Member State has similar employment schemes for the same category of persons.
4. Where the beneficiary of a Danish social pension is also entitled to a survivor's pension from another Member State, these pensions for the implementation of Danish legislation shall be regarded as benefits of the same kind within the meaning of Article 53(1) of this Regulation, subject to the condition, however, that the person whose periods of insurance or of residence serve as the basis for the calculation of the survivor's pension had also acquired a right to a Danish social pension.

#### GERMANY

1. Notwithstanding Article 5(a) of this Regulation and Article 5(4) point 1 of the Sozialgesetzbuch VI (Volume VI of the Social Code), a person who receives a full old-age pension under the legislation of another Member State may request to be compulsorily insured under the German pension insurance scheme.
2. Notwithstanding Article 5(a) of this Regulation and Article 7(1) and (3) of the Sozialgesetzbuch VI (Volume VI of the Social Code), a person who is compulsorily insured in another Member State or receives an old-age pension under the legislation of another Member State may join the voluntary insurance scheme in Germany.
3. For the purpose of granting cash benefits under §47(1) of SGB V, §47(1) of SGB VII and §200(2) of the Reichsversicherungsordnung to insured persons who live in another Member State, German insurance schemes calculate net pay, which is used to assess benefits, as if the insured person lived in Germany, unless the insured person requests an assessment on the basis of the net pay which he actually receives.
4. Nationals of other Member States whose place of residence or usual abode is outside Germany and who fulfil the general conditions of the German pension insurance scheme may pay voluntary contributions only if they had been voluntarily or compulsorily insured in the German pension insurance scheme at some time previously; this also applies to stateless persons and refugees whose place of residence or usual abode is in another Member State.
5. The pauschale Anrechnungszeit (fixed credit period) pursuant to Article 253 of the Sozialgesetzbuch VI (Volume VI of the Social Code) shall be determined exclusively with reference to German periods.
6. In cases where the German pension legislation, in force on 31 December 1991, is applicable for the recalculation of a pension, only the German legislation applies for the purposes of crediting German Ersatzzeiten (substitute periods).
7. The German legislation on accidents at work and occupational diseases to be compensated for under the law governing foreign pensions and on benefits for insurance periods which can be credited under the law governing foreign pensions in the territories named in paragraph 1(2)(3) of the Act on affairs of displaced persons and refugees (Bundesvertriebenengesetz) continues to apply within the scope of application of this Regulation, notwithstanding the provisions of paragraph 2 of the Act on foreign pensions (Fremdrentengesetz).
8. For the calculation of the theoretical amount referred to in Article 52(1)(b)(i) of this Regulation, in pension schemes for liberal professions, the competent institution shall take as a basis, in respect of each of the years of insurance completed under the legislation of any other Member State, the average annual pension entitlement acquired during the period of membership of the competent institution through the payment of contributions.

## ESTONIA

For the purpose of calculating parental benefits, periods of employment in Member States other than Estonia shall be considered to be based on the same average amount of Social Tax as paid during the periods of employment in Estonia with which they are aggregated. If during the reference year the person has been employed only in other Member States, the calculation of the benefit shall be considered to be based on the average Social Tax paid in Estonia between the reference year and the maternity leave.

## IRELAND

1. Notwithstanding Articles 21(2) and 62 of this Regulation, for the purposes of calculating the prescribed reckonable weekly earnings of an insured person for the grant of sickness or unemployment benefit under Irish legislation, an amount equal to the average weekly wage of employed persons in the relevant prescribed year shall be credited to that insured person in respect of each week of activity as an employed person under the legislation of another Member State during that prescribed year.
2. Where Article 46 of this Regulation applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, Ireland shall, for the purposes of Section 118(1)(a) of the Social Welfare Consolidation Act 2005, take account of any periods during which, in respect of the invalidity that followed that incapacity for work, he/she would have been regarded as being incapable of work under Irish legislation.

## GREECE

1. Law No 1469/84 concerning voluntary affiliation to the pension insurance scheme for Greek nationals and foreign nationals of Greek origin is applicable to nationals of other Member States, stateless persons and refugees, where the persons concerned, regardless of their place of residence or stay, have at some time in the past been compulsorily or voluntarily affiliated to the Greek pension insurance scheme.
2. Notwithstanding Article 5(a) of this Regulation and Article 34 of Law 1140/1981, a person who receives a pension in respect of accidents at work or occupational diseases under the legislation of another Member State may request to be compulsorily insured under the legislation applied by OGA, to the extent that he/she pursues an activity falling within the scope of that legislation.

## SPAIN

1. For the purposes of implementing Article 52(1)(b)(i) of this Regulation, the years which the worker lacks to reach the pensionable or compulsory retirement age as stipulated under Article 31(4) of the consolidated version of the Ley de Clases Pasivas del Estado (Law on State Pensioners) shall be taken into account as actual years of service to the State only if at the time of the event in respect of which invalidity or death pensions are due, the beneficiary was covered by Spain's special scheme for civil servants or was performing an activity assimilated under the scheme, or if, at the time of the event in respect of which the pensions are due, the beneficiary was performing an activity that would have required the person concerned to be included under the State's special scheme for civil servants, the armed forces or the judiciary, had the activity been performed in Spain.
2. (a) Under Article 56(1)(c) of this Regulation, the calculation of the theoretical Spanish benefit shall be carried out on the basis of the actual contributions of the person during the years immediately preceding payment of the last contribution to Spanish social security. Where, in the calculation of the basic amount for the pension, periods of insurance and/or residence under the legislation of other Member States have to be taken into account, the contribution basis in Spain which is closest in time to the reference periods shall be used for the aforementioned periods, taking into account the development of the retail price index.  
  
(b) The amount of the pension obtained shall be increased by the amount of the increases and revaluations calculated for each subsequent year for pensions of the same nature.
3. Periods completed in other Member States which must be calculated in the special scheme for civil servants, the armed forces and the judicial administration, will be treated in the same way, for the purposes of Article 56 of this Regulation, as the periods closest in time covered as a civil servant in Spain.
4. The additional amounts based on age referred to in the Second Transitional Provision of the General Law on Social Security shall be applicable to all beneficiaries of the Regulation who have contributions to their name under the Spanish legislation prior to 1 January 1967; it shall not be possible, by application of Article 5 of this Regulation, to treat periods of insurance credited in another Member State prior to the aforementioned date as being the same as contributions paid in Spain, solely for the present purposes. The date corresponding to 1 January 1967 shall be 1 August 1970 for the Special Scheme for Seafarers and 1 April 1969 for the Special Social Security Scheme for Coal Mining.

## FRANCE

1. Nationals of other Member States whose place of residence or usual abode is outside France and who fulfil the general conditions of the French pension insurance scheme may pay voluntary contributions to it only if they had been voluntarily or compulsorily insured in the French pension insurance scheme at some time previously; this also applies to stateless persons and refugees whose place of residence or usual abode is in another Member State.
2. For persons receiving benefits in kind in France pursuant to Articles 17, 24 or 26 of this Regulation who are resident in the French departments of Haut-Rhin, Bas-Rhin or Moselle, benefits in kind provided on behalf of the institution of another Member State which is responsible for bearing their cost include benefits provided by both the general sickness insurance scheme and the obligatory supplementary local sickness insurance scheme of Alsace-Moselle.
3. French legislation applicable to a person engaged, or formerly engaged, in an activity as an employed or self-employed person for the application of Chapter 5 of Title III of this Regulation includes both the basic old-age insurance scheme(s) and the supplementary retirement scheme(s) to which the person concerned was subject.

## CYPRUS

For the purpose of applying the provisions of Articles 6, 51 and 61 of this Regulation, for any period commencing on or after 6 October 1980, a week of insurance under the legislation of the Republic of Cyprus is determined by dividing the total insurable earnings for the relevant period by the weekly amount of the basic insurable earnings applicable in the relevant contribution year, provided that the number of weeks so determined shall not exceed the number of calendar weeks in the relevant period.

## MALTA

## Special provisions for civil servants

- (a) Solely for the purposes of the application of Articles 49 and 60 of this Regulation, persons employed under the Malta Armed Forces Act (Chapter 220 of the Laws of Malta), the Police Act (Chapter 164 of the Laws of Malta) and the Prisons Act (Chapter 260 of the Laws of Malta) shall be treated as civil servants.
- (b) Pensions payable under the above Acts and under the Pensions Ordinance (Chapter 93 of the Laws of Malta) shall, solely for the purposes of Article 1(e) of the Regulation, be considered as "special schemes for civil servants".

## NETHERLANDS

## 1. Health care insurance

- (a) As regards entitlement to benefits in kind under Dutch legislation, persons entitled to benefits in kind for the purpose of the implementation of Chapters 1 and 2 of Title III of this Regulation shall mean:
  - (i) persons who, under Article 2 of the Zorgverzekeringswet (Health Care Insurance Act), are obliged to take out insurance under a health care insurer; and
  - (ii) in so far as they are not already included under point (i), members of the family of active military personnel who are living in another Member State and persons who are resident in another Member State and who, under this Regulation are entitled to health care in their state of residence, the costs being borne by the Netherlands.
- (b) The persons referred to in point 1(a)(i) must, in accordance with the provisions of the Zorgverzekeringswet (Health Care Insurance Act) take out insurance with a health care insurer, and the persons referred to in point 1(a)(ii) must register with the College voor zorgverzekeringen (Health Care Insurance Board).
- (c) The provisions of the Zorgverzekeringswet (Health Care Insurance Act) and the Algemene Wet Bijzondere Ziektekosten (General Act on Exceptional Medical Expenses) concerning liability for the payment of contributions shall apply to the persons referred to in point (a) and the members of their families. In respect of members of the family, the contributions shall be levied on the person from whom the right to health care is derived with the exception of the members of the family of military personnel living in another Member State, who shall be levied directly.



- (d) The provisions of the Zorgverzekeringswet (Health Care Insurance Act) concerning late insurance shall apply *mutatis mutandis* in the event of late registration with the College voor zorgverzekeringen (Health Care Insurance Board) in respect of the persons referred to in point 1(a)(ii).
- (e) Persons entitled to benefits in kind by virtue of the legislation of a Member State other than the Netherlands who reside in the Netherlands or stay temporarily in the Netherlands shall be entitled to benefits in kind in accordance with the policy offered to insured persons in the Netherlands by the institution of the place of residence or the place of stay, taking into account Article 11(1), (2) and (3) and Article 19(1) of the Zorgverzekeringswet (Health Care Insurance Act), as well as to benefits in kind provided for by the Algemene Wet Bijzondere Ziektekosten (General Act on Exceptional Medical Expenses).
- (f) For the purposes of Articles 23 to 30 of this Regulation, the following benefits (in addition to pensions covered by Title III, Chapters 4 and 5 of this Regulation) shall be treated as pensions due under Dutch legislation:
- pensions awarded under the Law of 6 January 1966 on pensions for civil servants and their survivors (Algemene burgerlijke pensioenwet) (Netherlands Civil Service Pensions Act),
  - pensions awarded under the Law of 6 October 1966 on pensions for military personnel and their survivors (Algemene militaire pensioenwet) (Military Pensions Act),
  - benefits for incapacity for work awarded under the Law of 7 June 1972 on benefits for incapacity for work for military personnel (Wetarbeidsongeschiktheidsvoorziening militairen) (Military Personnel Incapacity for Work Act),
  - pensions awarded under the Law of 15 February 1967 on pensions for employees of the NV Nederlandse Spoorwegen (Dutch Railway Company) and their survivors (Spoorwegpensioenwet) (Railway Pensions Act),
  - pensions awarded under the Reglement Dienstvoorwaarden Nederlandse Spoorwegen (Regulation governing conditions of employment of the Netherlands Railway Company),
  - benefits awarded to retired persons before reaching the pensionable age of 65 years under a pension designed to provide income for former employed persons in their old age, or benefits provided in the event of premature exit from the labour market under a scheme set up by the state or by an industrial agreement for persons aged 55 or over,
  - benefits awarded to military personnel and civil servants under a scheme applicable in the event of redundancy, superannuation and early retirement.
- (g) For the purposes of Chapters 1 and 2 of Title III of this Regulation, the no-claims refund provided for in the Netherlands scheme in the event of limited use of health care facilities shall be deemed to be a sickness benefit in cash.
2. Application of the Algemene Ouderdomswet (AOW) (Dutch legislation on general old-age insurance)
- (a) The reduction referred to in Article 13(1) of the Algemene Ouderdomswet (AOW) (Dutch legislation on general old-age insurance) shall not be applied for calendar years before 1 January 1957 during which a recipient not satisfying the conditions for having such years treated as periods of insurance:
- resided in the Netherlands between the ages of 15 and 65, or
  - while residing in another Member State, worked in the Netherlands for an employer established in the Netherlands, or
  - worked in another Member State during periods regarded as periods of insurance under the Dutch social security system.

By way of derogation from Article 7 of the AOW, anyone who resided or worked in the Netherlands in accordance with the above conditions only prior to 1 January 1957 shall also be regarded as being entitled to a pension.

- (b) The reduction referred to in Article 13(1) of the AOW shall not apply to calendar years prior to 2 August 1989 during which, between the ages of 15 and 65, a person who is or was married was not insured under the above legislation, while being resident in the territory of a Member State other than the Netherlands, if these calendar years coincide with periods of insurance completed by the person's spouse under that legislation or with calendar years to be taken into account under point 2(a), provided that the couple's marriage subsisted during that time.

By way of derogation from Article 7 of the AOW, such a person shall be regarded as entitled to a pension.

- (c) The reduction referred to in Article 13(2) of the AOW shall not apply to calendar years before 1 January 1957 during which a pensioner's spouse who fails to satisfy the conditions for having such years treated as periods of insurance:
- resided in the Netherlands between the ages of 15 and 65, or
  - while residing in another Member State, worked in the Netherlands for an employer established in the Netherlands, or
  - worked in another Member State during periods regarded as periods of insurance under the Netherlands social security system.
- (d) The reduction referred to in Article 13(2) of the AOW shall not apply to calendar years prior to 2 August 1989 during which, between the ages of 15 and 65, a pensioner's spouse resident in a Member State other than the Netherlands was not insured under the above legislation, if those calendar years coincide with periods of insurance completed by the pensioner under that legislation or with calendar years to be taken into account under point 2(a), provided that the couple's marriage subsisted during that time.
- (e) Points 2(a), 2(b), 2(c) and 2(d) shall not apply to periods which coincide with:
- periods which may be taken into account for calculating pension rights under the old-age insurance legislation of a Member State other than the Netherlands, or
  - periods for which the person concerned has drawn an old-age pension under such legislation.

Periods of voluntary insurance under the system of another Member State shall not be taken into account for the purposes of this provision.

- (f) Points 2(a), 2(b), 2(c) and 2(d) shall apply only if the person concerned has resided in one or more Member States for 6 years after the age of 59 and only for such time as that person is resident in one of those Member States.
- (g) By way of derogation from Chapter IV of the AOW, anyone resident in a Member State other than the Netherlands whose spouse is covered by compulsory insurance under that legislation shall be authorised to take out voluntary insurance under that legislation for periods during which the spouse is compulsorily insured.

This authorisation shall not cease where the spouse's compulsory insurance is terminated as a result of his death and where the survivor receives only a pension under the *Algemene nabestaandenwet* (Dutch legislation on general law for surviving dependants).

In any event, the authorisation in respect of voluntary insurance ceases on the date on which the person reaches the age of 65.

The contribution to be paid for voluntary insurance shall be set in accordance with the provisions relating to the determination of the contribution for voluntary insurance under the AOW. However, if the voluntary insurance follows on from a period of insurance as referred to in point 2(b), the contribution shall be set in accordance with the provisions relating to the determination of the contribution for compulsory insurance under the AOW, with the income to be taken into account being deemed to have been received in the Netherlands.

- (h) The authorisation referred to in point 2(g) shall not be granted to anyone insured under another Member State's legislation on pensions or survivors' benefits.
- (i) Anyone wishing to take out voluntary insurance under point 2(g) shall be required to apply for it to the Social Insurance Bank (*Sociale Verzekeringsbank*) not later than 1 year after the date on which the conditions for participation are fulfilled.

3. Application of the Algemene nabestaandenwet (ANW) (Dutch general law on insurance for surviving dependants)

- (a) Where the surviving spouse is entitled to a survivor's pension under the Algemene Nabestaandenwet (ANW) (General Surviving Relatives Act) pursuant to Article 51(3) of this Regulation, that pension shall be calculated in accordance with Article 52(1)(b) of this Regulation.

For the application of these provisions, periods of insurance prior to 1 October 1959 shall also be regarded as periods of insurance completed under Dutch legislation if during those periods the insured person, after the age of 15:

- resided in the Netherlands, or
  - while resident in another Member State, worked in the Netherlands for an employer established in the Netherlands, or
  - worked in another Member State during periods regarded as periods of insurance under the Dutch social security system.
- (b) Account shall not be taken of the periods to be taken into consideration under point 3(a) which coincide with periods of compulsory insurance completed under the legislation of another Member State in respect of survivor's pensions.
- (c) For the purposes of Article 52(1)(b) of this Regulation, only periods of insurance completed under Dutch legislation after the age of 15 shall be taken into account as periods of insurance.
- (d) By way of derogation from Article 63a(1) of the ANW, a person resident in a Member State other than the Netherlands whose spouse is compulsorily insured under the ANW shall be authorised to take out voluntary insurance under that legislation, provided that such insurance has already begun by the date of application of this Regulation, but only for periods during which the spouse is compulsorily insured.

This authorisation shall cease as from the date of termination of the spouse's compulsory insurance under the ANW, unless the spouse's compulsory insurance is terminated as a result of his death and where the survivor only receives a pension under the ANW.

In any event, the authorisation in respect of voluntary insurance ceases on the date on which the person reaches the age of 65.

The contribution to be paid for voluntary insurance shall be set in accordance with the provisions relating to the determination of contributions for voluntary insurance under the ANW. However, if the voluntary insurance follows on from a period of insurance as referred to in point 2(b), the contribution shall be set in accordance with the provisions relating to the determination of contributions for compulsory insurance under the ANW, with the income to be taken into account being deemed to have been received in the Netherlands.

4. Application of Dutch legislation relating to incapacity for work

- (a) Where, pursuant to Article 51(3) of this Regulation, the person concerned is entitled to a Netherlands invalidity benefit, the amount referred to in Article 52(1)(b) of this Regulation for calculating that benefit shall be determined:
- (i) where, prior to the occurrence of incapacity for work, the person last exercised an activity as an employed person within the meaning of Article 1(a) of this Regulation:
    - in accordance with the provisions laid down in the Wet op arbeidsongeschiktheidsverzekering (WAO) (Act on Incapacity for Work) if the incapacity for work occurred before 1 January 2004, or
    - in accordance with the provisions laid down in the Wet Werk en inkomen naar arbeidsvermogen (WIA) (Work and Income according to labour capacity Act) if the incapacity for work occurred on or after 1 January 2004;
  - (ii) where, prior to the occurrence of the incapacity for work, the person concerned last exercised an activity as a self-employed person within the meaning of Article 1 (b) of this Regulation, in accordance with the provisions laid down in the Wet arbeidsongeschiktheidsverzekering zelfstandigen (WAZ) (Self-employed Persons Act on Incapacity for Work) if the incapacity for work occurred before 1 August 2004.

- (b) In calculating benefits under either the WAO, WIA or the WAZ, the Netherlands institutions shall take account of:
- periods of paid employment, and periods treated as such, completed in the Netherlands before 1 July 1967,
  - periods of insurance completed under the WAO,
  - periods of insurance completed by the person concerned, after the age of 15, under the Algemene Arbeidsongeschiktheidswet (AAW) (General Act on Incapacity for Work), in so far as these do not coincide with the periods of insurance completed under the WAO,
  - periods of insurance completed under the WAZ,
  - periods of insurance completed under the WIA.

## AUSTRIA

1. For the purpose of acquiring periods in the pension insurance, attendance at a school or comparable educational establishment in another Member State shall be regarded as equivalent to attendance at a school or educational establishment pursuant to Articles 227(1)(1) and 228(1)(3) of the Allgemeines Sozialversicherungsgesetz (ASVG) (General Social Security Act), Article 116(7) of the Gewerbliches Sozialversicherungsgesetz (GSVG) (Federal Act on Social Insurance for Persons engaged in Trade and Commerce) and Article 107(7) of the Bauern-Sozialversicherungsgesetz (BSVG) (Social Security Act for Farmers), when the person concerned was subject at some time to Austrian legislation on the grounds that he pursued an activity as an employed or self-employed person, and the special contributions provided for under Article 227(3) of the ASVG, Article 116(9) of the GSVG and Article 107(9) of the BSVG for the purchase of such periods of education, are paid.
2. For the calculation of the pro rata benefit referred to in Article 52(1)(b) of this Regulation, special increments for contributions for supplementary insurance and the miners' supplementary benefit under Austrian legislation shall be disregarded. In these cases the pro rata benefit calculated without those contributions shall, if appropriate, be increased by unreduced special increments for contributions for supplementary insurance and the miners' supplementary benefit.
3. Where pursuant to Article 6 of this Regulation substitute periods under an Austrian pension insurance scheme have been completed, but these cannot form a basis for calculation pursuant to Articles 238 and 239 of the Allgemeines Sozialversicherungsgesetz (ASVG) (General Social Security Act), Articles 122 and 123 of the Gewerbliches Sozialversicherungsgesetz (GSVG) (Federal Act on Social Insurance for Persons engaged in Trade and Commerce) and Articles 113 and 114 of the Bauern-Sozialversicherungsgesetz (BSVG) (Social Security Act for Farmers), the calculation basis for periods of childcare pursuant to Article 239 of the ASVG, Article 123 of the GSVG and Article 114 of the BSVG shall be used.

## FINLAND

1. For the purposes of determining entitlement and of calculating the amount of the Finnish national pension under Articles 52 to 54 of this Regulation, pensions acquired under the legislation of another Member State are treated in the same way as pensions acquired under Finnish legislation.
2. When applying Article 52(1)(b)(i) of this Regulation for the purpose of calculating earnings for the credited period under Finnish legislation on earnings-related pensions, where an individual has pension insurance periods based on activity as an employed or self-employed person in another Member State for part of the reference period under Finnish legislation, the earnings for the credited period shall be equivalent to the sum of earnings obtained during the part of the reference period in Finland, divided by the number of months for which there were insurance periods in Finland during the reference period.

## SWEDEN

1. When parental leave allowance is paid under Article 67 of this Regulation to a member of the family who is not employed, the parental leave allowance is paid at a level corresponding to the basic or lowest level.
2. For the purpose of calculating parental leave allowance in accordance with Chapter 4, paragraph 6 of the Lag (1962:381) om allmän försäkring (the National Insurance Act) for persons eligible for a work-based parental leave allowance, the following shall apply:

For a parent for whom sickness benefit generating income is calculated on the basis of income from gainful employment in Sweden, the requirement to have been insured for sickness benefit above the minimum level for at least 240 consecutive days preceding the child's birth shall be satisfied if, during the period mentioned, the parent had income from gainful employment in another Member State corresponding to insurance above the minimum level.

3. The provisions of this Regulation on the aggregation of insurance periods and periods of residence shall not apply to the transitional provisions in the Swedish legislation on entitlement to guarantee pension for persons born in or before 1937 who have been resident in Sweden for a specified period before applying for a pension (Act 2000:798).
4. For the purpose of calculating income for notional income-related sickness compensation and income-related activity compensation in accordance with Chapter 8 of the Lag (1962:381) om allmän försäkring (the National Insurance Act), the following shall apply:
  - (a) where the insured person, during the reference period, has also been subject to the legislation of one or more other Member States on account of activity as an employed or self-employed person, income in the Member State(s) concerned shall be deemed to be equivalent to the insured person's average gross income in Sweden during the part of the reference period in Sweden, calculated by dividing the earnings in Sweden by the number of years over which those earnings accrued;
  - (b) where the benefits are calculated pursuant to Article 46 of this Regulation and persons are not insured in Sweden, the reference period shall be determined in accordance with Chapter 8, paragraphs 2 and 8 of the above-mentioned Act as if the person concerned were insured in Sweden. If the person concerned has no pension-generating income during this period under the Act on income-based old-age pension (1998:674), the reference period shall be permitted to run from the earlier point in time when the insured person had income from gainful activity in Sweden.
5. (a) For the purpose of calculating notional pension assets for income-based survivor's pension (Act 2000:461), if the requirement in Swedish legislation for pension entitlement in respect of at least three out of the 5 calendar years immediately preceding the insured person's death (reference period) is not met, account shall also be taken of insurance periods completed in other Member States as if they had been completed in Sweden. Insurance periods in other Member States shall be regarded as based on the average Swedish pension base. If the person concerned has only 1 year in Sweden with a pension base, each insurance period in another Member State shall be regarded as constituting the same amount.
  - (b) For the purpose of calculating notional pension credits for widows' pensions relating to deaths on or after 1 January 2003, if the requirement in Swedish legislation for pension credits in respect of at least two out of the 4 years immediately preceding the insured person's death (reference period) is not met and insurance periods were completed in another Member State during the reference period, those years shall be regarded as being based on the same pension credits as the Swedish year.

## UNITED KINGDOM

1. Where, in accordance with United Kingdom legislation, a person may be entitled to a retirement pension if:
  - (a) the contributions of a former spouse are taken into account as if they were that person's own contributions; or
  - (b) the relevant contribution conditions are satisfied by that person's spouse or former spouse, then provided, in each case, that the spouse or former spouse is or had been exercising an activity as an employed or self-employed person, and had been subject to the legislation of two or more Member States, the provisions of Chapter 5 of Title III of this Regulation shall apply in order to determine entitlement under United Kingdom legislation. In this case, references in the said Chapter 5 to "periods of insurance" shall be construed as references to periods of insurance completed by:
    - (i) a spouse or former spouse where a claim is made by:
      - a married woman, or
      - a person whose marriage has terminated otherwise than by the death of the spouse; or
    - (ii) a former spouse, where a claim is made by:
      - a widower who immediately before pensionable age is not entitled to widowed parent's allowance, or
      - a widow who immediately before pensionable age is not entitled to widowed mother's allowance, widowed parent's allowance or widow's pension, or who is only entitled to an age-related widow's pension calculated pursuant to Article 52(1)(b) of this Regulation, and for this purpose "age-related widow's pension" means a widow's pension payable at a reduced rate in accordance with section 39(4) of the Social Security Contributions and Benefits Act 1992.

2. For the purposes of applying Article 6 of this Regulation to the provisions governing entitlement to attendance allowance, carer's allowance and disability living allowance, a period of employment, self-employment or residence completed in the territory of a Member State other than the United Kingdom shall be taken into account in so far as is necessary to satisfy conditions as to required periods of presence in the United Kingdom, prior to the day on which entitlement to the benefit in question first arises.
3. For the purposes of Article 7 of this Regulation, in the case of invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants, any beneficiary under United Kingdom legislation who is staying in the territory of another Member State shall, during that stay, be considered as if he resided in the territory of that other Member State.
4. Where Article 46 of this Regulation applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, the United Kingdom shall, for the purposes of Section 30A (5) of the Social Security Contributions and Benefits Act 1992, take account of any periods during which the person concerned has received, in respect of that incapacity for work:
  - (i) cash sickness benefits or wages or salary in lieu thereof; or
  - (ii) benefits within the meaning of Chapters 4 and 5 of Title III of this Regulation granted in respect of the invalidity which followed that incapacity for work, under the legislation of the other Member State, as though they were periods of short-term incapacity benefit paid in accordance with Sections 30A (1)-(4) of the Social Security Contributions and Benefits Act 1992.

In applying this provision, account shall only be taken of periods during which the person would have been incapable of work within the meaning of United Kingdom legislation.

5. (1) For the purpose of calculating an earnings factor in order to determine entitlement to benefits under United Kingdom legislation, for each week of activity as an employed person under the legislation of another Member State, and which commenced during the relevant income tax year within the meaning of United Kingdom legislation, the person concerned shall be deemed to have paid contributions as an employed earner, or have earnings on which contributions have been paid, on the basis of earnings equivalent to two-thirds of that year's upper earnings limit.
  - (2) For the purposes of Article 52(1)(b)(ii) of this Regulation, where:
    - (a) in any income tax year starting on or after 6 April 1975, a person carrying out activity as an employed person has completed periods of insurance, employment or residence exclusively in a Member State other than the United Kingdom, and the application of point 5(1) above results in that year being counted as a qualifying year within the meaning of United Kingdom legislation for the purposes of Article 52(1)(b)(i) of this Regulation, he shall be deemed to have been insured for 52 weeks in that year in that other Member State;
    - (b) any income tax year starting on or after 6 April 1975 does not count as a qualifying year within the meaning of United Kingdom legislation for the purposes of Article 52(1)(b)(i) of this Regulation, any periods of insurance, employment or residence completed in that year shall be disregarded.
  - (3) 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.'
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