COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.1.2006
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2006/0008 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Article 83 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems provides that "Special provisions for implementing the legislation of certain Member States are referred to in Annex XI.". As recital 41 of Regulation 883/2004 states, "It is necessary to lay down special provisions which correspond to the special characteristics of national legislation in order to facilitate the application of the rules of coordination".

- **General context**

Regulation 883/2004 replaces Regulation (EEC) No 1408/71 which currently provides for the coordination of social security systems. The new Regulation simplifies and modernises the existing legislation. Annex XI of Regulation 883/2004 provides for "Special provisions for the application of the legislation of the Member States" and replaces the corresponding Annex VI of Regulation 1408/71. Regulation 833/2004 provides that the content of Annex XI must be determined before the date of application of this Regulation. This Annex is necessary in order to take into account the particularities of the various social security systems of Member States.

Some entries for Annex XI were specifically agreed during the negotiations on the modernised Regulation (see Council document 8851/04 ADD 1). However, the entries for Germany and Austria regarding certain regional benefits, which were originally agreed in June 2003, have not been included in this proposal due to later developments in the case law of the European Court of Justice (see the opinion of the Advocate General of 20 October 2005 in case C-286/03 Hosse). In addition, entry No 4 under the heading "C. DENMARK" was agreed within the framework of the adoption of Regulation (EC) 647/2005, which amended Regulation 1408/71.

- **Existing provisions in the area of the proposal**

Annex XI of Regulation 883/2004 corresponds to Annex VI of Regulation 1408/71. Both annexes provide for special provisions for the application of the legislation of the Member States. In accordance with the general objective of simplification, Annex XI contains fewer entries than the current Annex VI.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Since Annex XI of Regulation 883/2004 provides for special provisions for the application of the legislation of the Member States, each Member State was invited to submit any proposals needed for the application of its legislation. The Commission services then evaluated the proposals and discussed further details with officials of the Member States concerned.

Summary of responses and how they have been taken into account

Member States requested about 150 entries in Annex XI. Some 50 proposals have been accepted for inclusion in the Annex. Other requests for entries in Annex XI of a more general nature are being covered by proposals for minor amendments to Regulation 883/04; these are of a mainly technical nature. Other issues have been taken into account in the proposal for an Implementing Regulation. Finally, other requests were not considered appropriate for inclusion in the Annex because they were superfluous or incompatible with Regulation 883/2004.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Regulation 883/2004 simplifies and modernises the existing legislation. The Regulation provides that the content of Annex XI must be determined before the date of application of the Regulation. This Annex is necessary in order to take into account the particularities of the various social security systems of Member States.

The proposal facilitates the coordination of social security schemes in the Member States and modernises and simplifies existing procedures. This will have a positive impact in comparison with the existing legislation and will improve administrative procedures for all users of the Regulation, including national social security authorities, employers, in particular small and medium-sized businesses, and individual citizens. However, it may be difficult to gauge the precise impact at this stage.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Annex XI of Regulation 883/2004 sets out particular methods for applying the legislation of certain Member States. This Annex will facilitate the application of Regulation 883/2004 by ensuring the smooth interaction of Community legislation with national laws. Annex XI contains separate sections for each Member State containing, where necessary, supplementary provisions regarding specific aspects of that Member State's legislation. The purpose of each entry is to ensure that the Regulation can be smoothly applied in the Member State concerned.

- **Legal basis**

Articles 42 and 308 of the Treaty establishing the European Community.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

Community action in the form of coordination measures in social security is required by Article 42 of the Treaty and is necessary to guarantee that the right to free movement laid down in the Treaty can be fully exercised. Without such coordination, freedom of movement would run the risk of being inoperable, since people would be less likely to make use of this right if it meant, in essence, losing social security rights already acquired in another Member State. Existing Community legislation on social security does not aim to replace the different national social security systems. It should be stressed that the proposed Regulation is not a harmonisation measure and does not go beyond what is necessary for effective coordination. The proposal is basically aimed at simplifying the existing arrangements.

Annex XI is essentially based on contributions by the Member States. However, the Member States cannot make such provisions at national level since this could potentially conflict with the Regulation. Therefore it is necessary to ensure in Annex XI that the Regulation is properly adapted so that it can apply effectively in the Member State concerned.

Community action will better achieve the objectives of the proposal for the following reason(s).

Coordination of social security schemes - Annex XI being a part of this - can only be done at Community level. The aim is to ensure that coordination of social security schemes operates effectively throughout all Member States.

As regards qualitative indicators, as the proposal is purely a coordination measure, it can only be put into effect at Community level. The proposal will lead to more effective coordination of the Member States' social security schemes.

Member States remain responsible for the organisation and financing of their own social security schemes.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Regulation 883/2004 already requires this form of action, as Annex XI is part of this

Regulation.

The proposal facilitates the coordination of social security schemes for the Member States and is therefore beneficial for both citizens and national social security authorities. These special provisions are based on proposals by the Member States, meaning that any potential financial and administrative burden is minimised and proportionate to the objective mentioned above. Indeed, without Annex XI, financial and administrative burdens would be likely to be greater.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

There is no alternative option since Regulation 883/2004 already requires this form of action, as Annex XI is part of this Regulation.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of legislation, simplification of administrative procedures for public authorities (EU or national).

There will be fewer entries in Annex XI of Regulation 883/2004 compared to the corresponding Annex VI of Regulation 1408/71.

Annex XI facilitates coordination tasks for the competent national authorities since it contains special provisions for the application of the legislation of certain Member States.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

1. Annex XI aims to take account of the particularities of the various social security systems of Member States. Member States have provided the Commission with their requests and with legal and practical explanations of their systems and legislation.

2. In accordance with the need for rationalisation, a common approach has been followed to ensure that entries for different Member States which are of a similar nature or pursue the same objective are in principle dealt with in the same manner.

3. Some entries have not been incorporated into Annex XI as the issue has been raised

to a wider level, either through clarification of Regulation 883/04, or through a provision in the proposal for an implementing regulation.

4.Some technical amendments to provisions of Regulation 883/04 have been made to include items which were of a general character, and also in order to avoid several similar entries in Annex XI in respect of different Member States.

5. As the aim of Regulation 883/04 is to coordinate social security legislation for which Member States are exclusively responsible, entries which are not compatible with the purpose or objectives of the Regulation, and entries seeking solely to clarify the interpretation of national legislation, have not been included in Annex XI.

2006/0008 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(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[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Having regard to the opinion of the Committee of the Regions[3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[4],

Whereas:

(1) Articles 51(3), 56(1) and 83 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems provide for special provisions concerning the application of the legislation of the 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.

(2) A number of Member States have asked for entries concerning the application of their social security legislation to be included in Annex XI and have provided the Commission with legal and practical explanations of their legislation and systems.

(3) In accordance with the need for rationalisation and simplification in the new Regulation, 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.

(4) 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

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1 OJ C , , p. .
2 OJ C , , p. .
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4 OJ C , , p. .

with the purpose or objectives of the Regulation, and entries seeking solely to clarify the interpretation of national legislation, should not be included in the Regulation.

(5) 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, rather than by way of similar provisions in Annex XI for several Member States.

(6) It is also appropriate to deal with certain specific issues in other Annexes, according to their purpose and content, rather than in Annex XI, in order to ensure consistency in the Annexes to the Regulation.

(7) In order to facilitate the use of the Regulation 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 also in the original language wherever necessary to avoid any possible misunderstanding.

(8) Regulation (EC) No 883/2004 should therefore be amended accordingly.

(9) Regulation (EC) No 883/2004 states 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.

HAVE ADOPTED THIS REGULATION:

Article 1

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

1. In Article 14, paragraph 4 is 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.

5 Where the legislation of a Member State makes admission to a voluntary insurance or optional continued insurance scheme conditional upon the person having completed insurance periods, such admission shall only be granted to persons who have previously completed insurance periods in that Member State under the same scheme."

2. In Article 51(3), before the words "in accordance with the procedures provided for in Annex XI", the words "where necessary" are inserted.

3. In Article 52, paragraph 4 is replaced by the following:

"4 The competent institution may waive the pro rata calculation:

(a) 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);

(b) where the pension is based on a defined contribution scheme.

The cases referred to in points (a) and (b) are set out in Annex VIII.".

4. In Article 56(1)(c), before the words "in accordance with the procedures laid down in Annex XI", the words "where necessary" are inserted.

5. The Annexes are amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from the date of entry into force of the Implementing Regulation.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

The Annexes to Regulation (EC) No 883/2004 are amended as follows.

1. In Annex I, section II, after the text under the heading "C. FRANCE" the following phrase is added:

   ", except when they are paid to a person who remains subject to French legislation pursuant to Article 12 or Article 16".

2. Annex VIII is amended as follows:

   (a) the title of the Annex is replaced by the following:

   "**CASES IN WHICH THE PRO RATA CALCULATION MAY BE WAIVED**";

   (b) after the entry under the heading "A. DENMARK" the following entry is added:

   "AA. GERMANY
   Benefits of a *Berufsständische Versorgungseinrichtung für die kammerfähigen Berufe* (welfare institution for professions that have set up their own chambers).";

   (c) after the entry under the heading "B. FRANCE" the following entry is added:

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

   (d) after the entry under the heading "D. NETHERLANDS" the following entries are added:

   "DA. AUSTRIA
   Benefits or parts of benefits of a *Versorgungseinrichtung der Kammern der Freien Berufe* (Welfare Institution of the Chambers for Liberal Professions), which are financed exclusively by a capital-funded pension scheme or which are based on a pension account system.

   DB. POLAND
   Old age pensions under the scheme based on the defined contribution principle.";

   (e) after the entry under the heading "G. UNITED KINGDOM" the following entries are added:
   "All applications for 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.

   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.".

3. 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)

A. BELGIUM

None

B. CZECH REPBULIC

None

C. DENMARK

1. Persons who, pursuant to Chapter 1 of Title III of the Regulation, are entitled to benefits in kind during a period of stay in Denmark shall be entitled to such benefits on the same terms as persons who, under the *lov om offentlig sygesikring* (National Health Security Act), come within Group 1.

2. (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 in Denmark 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 insofar as, during those periods, the surviving spouse was linked to the above-mentioned 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 paragraph, "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 in Denmark before 1 January 1984 by a person to whom paragraph 2(a) does not apply shall be regarded as periods of residence completed in Denmark by the surviving spouse, insofar 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 the terms of (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.

3. (a) Notwithstanding the provisions of Article 6, persons who have not been gainfully employed in one or more Member States are entitled to a Danish social pension only if they have been, or have previously been, permanent residents of Denmark for at least three years, subject to the age limits prescribed by Danish legislation. Subject to Article 4, Article 7 does not apply to a Danish social pension to which entitlement has been acquired by such persons.

(b) The above-mentioned provisions do not apply to Danish social pension entitlement for the family members of persons who are or have been gainfully employed in Denmark, or for students or the members of their families.

4. 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.

5. 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), 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.

D. GERMANY

1. Notwithstanding Article 5(a), pensions which are paid by the institution of another Member State are subject to compulsory insurance with the sickness insurance scheme for pensioners to the extent determined by German legislation alone.

2. A person in receipt of a pension under German legislation and a pension under the legislation of another Member State shall be deemed, for the purpose of applying Article 23, to be entitled to sickness and maternity benefits in kind if, under Article 8(1), point 4, of the *Sozialgesetzbuch V* (VolumeV of the Social Code), that person is exempted from compulsory sickness insurance.

3. Notwithstanding Article 5(a), the provisions under Article 5(4), point1, of the *Sozialgesetzbuch VI* (Volume VI of the Social Code) do not apply to a person

entitled to a full old-age pension under the legislation of another Member State if that person requests compulsory affiliation.

4. Notwithstanding Article 5(a) of this Regulation and Article 7(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.

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 to which the German pension legislation in force on 31 December 1991 is applicable, only the German legislation in force at that date applies for the purposes of crediting German *Ersatzzeiten* (substitute qualifying periods).

E. ESTONIA

1. For the purpose of calculating parental benefit, 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.

F. GREECE

None.

G. SPAIN

1 In all Spanish social security schemes, with the exception of the scheme for civil servants, the armed forces and the judicial administration, a person who is no longer insured under Spanish legislation shall be deemed still to be insured, when the risk materialises, for the purposes of Chapter 5 of Title III of this Regulation, if he is insured under the legislation of another Member State at the time of materialisation of the risk or, failing that, in the case where a benefit is due for the same risk in pursuance of the legislation of another Member State. The latter condition shall be deemed to have been fulfilled, however, in the case referred to in Article 57(1).

2 For the purposes of implementing the provisions of Chapter 5 of Title III of this Regulation, the years which the worker lacks to reach the pensionable or compulsory retirement age stipulated in point 4 of Article 31 of the consolidated text of the *Ley de clases pasivas del Estado* (Law on State Pensioners) will be taken into account as service performed only if at the time of materialisation of the risk in respect of which invalidity or death pensions are due, the beneficiary was covered by Spain's special scheme for public servants or in an activity accorded like treatment under that scheme.

3 (a) Under Article 56(1)(c), 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.

3 (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.

4 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 the Regulation, as the periods closest in time covered as a civil servant in Spain.

H. FRANCE

1. For persons receiving benefits in kind in France pursuant to Articles 17, 24 or 26 of the 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.

2. 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 the Regulation includes both the basic old-age insurance scheme(s) and the supplementary retirement scheme(s) to which the person concerned was subject.

I. IRELAND

1. For the purposes of calculating the earnings for the granting of sickness benefit or unemployment benefit under Irish legislation, an amount equal to the average weekly wage in that year of employed persons shall, notwithstanding Articles 21(2) and 62, be credited to the employed person in respect of each week of activity as an employed person under the legislation of another Member State during the prescribed period.

2. Where Article 46 applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, Ireland shall, for the purposes of Section 95(1)(a) of the Social Welfare (Consolidation) Act, 1993, take account of any periods during which, in respect of the invalidity that followed that incapacity for work, he was regarded as being incapable of work under Irish legislation.

J. ITALY

None.

K. CYPRUS

For the purpose of applying the provisions of Articles 6, 51 and 61, 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.

L. LATVIA

None.

M. LITHUANIA

None.

N. LUXEMBOURG

None.

O. HUNGARY

None.

P. MALTA

None.

Q. NETHERLANDS

1. *Health care insurance*

(a) As regards entitlement to benefits in kind under Netherlands 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) insofar as they are not already included under point (i), persons who are resident in another Member State and who, under the Regulation are entitled to health care in their state of residence, the costs being borne by the Netherlands.

(b) The persons referred to in paragraph 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 paragraph 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* (Law on General Insurance Against Special Medical Expenses) concerning liability for the payment of contributions shall apply to the persons referred to under paragraph 1(a) and the members of their families. In respect of family members, the contributions shall be levied on the person from whom the right to health care is derived.

(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 paragraph 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* (Law on General Insurance Against Special Medical Expenses).

(f) For the purposes of Articles 23 to 30, the following benefits shall be treated as pensions due under Netherlands 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 (*Wet arbeidsongeschiktheidsvoorziening 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* (Netherlands 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 whereby the percentage benefit is set at at least 70% of the latest salary.

(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.

(h) When applying Article 34, the Netherlands will provide a list of estimates of the amounts which are as close as possible to the actual expenditure incurred.

2. *Application of the Algemene Ouderdomswet (AOW) (Netherlands legislation on general old-age insurance)*

(a) The reduction referred to in Article 13(1) of the *Algemene Ouderdomswet* (AOW) (Netherlands 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 Netherlands 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, whilst 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 paragraph 2(a), provided that the couple's marriage subsisted during that time.

By way of derogation from Article 7 of the AOW, such 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 paragraph 2(a), provided that the couple's marriage subsisted during that time.

(e) Paragraphs 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) Paragraphs 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 six 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* (Netherlands 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 paragraph 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 paragraph 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 paragraph 2(g) shall be required to apply for it to the Social Insurance Bank (*Sociale Verzekeringsbank*) not later than one year after the date on which the conditions for participation are fulfilled.

(j) For the purposes of Article 52(1)(b), only periods of insurance completed under the AOW after the age of 15 shall be taken into account as periods of insurance.

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

(a) A person who has been compulsorily insured under the *Algemene nabestaandenwet* (ANW) (Netherlands general law on insurance for surviving dependants) shall be deemed, for the purposes of Chapter 5 of Title III, to be insured under that legislation at the time when the risk materialises, if that person is insured under the legislation of another Member State for the same risk or, failing that, in the case where a survivor's pension is due under the legislation of another Member State. The latter condition shall be deemed to have been fulfilled, however, in the case referred to in Article 57(1).

(b) Where the surviving spouse is entitled to a survivor's pension under the ANW pursuant to paragraph 3(a), that pension shall be calculated in accordance with Article 52(1)(b).

For the application of these provisions, periods of insurance prior to 1 October 1959 shall also be regarded as periods of insurance completed under Netherlands 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 Netherlands social security system.

(c) Account shall not be taken of the periods to be taken into consideration under paragraph 3(b) which coincide with periods of compulsory insurance completed under the legislation of another Member State in respect of survivor's pensions.

(d) For the purposes of Article 52(1)(b), only periods of insurance completed under Netherlands legislation after the age of 15 shall be taken into account as periods of insurance.

(e) 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 [*date of Regulation 883/04 becoming applicable*], 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 paragraph 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 Netherlands legislation relating to incapacity for work*

(a) A person who is no longer insured under the *Algemene Arbeidsongeschiktheidswet* (AAW) (General Act on Incapacity for Work), the *Wet arbeidsongeschiktheidsverzekering zelfstandigen* (WAZ) (Self-Employed Persons Act on Incapacity for Work) and/or the *Wet op de arbeidsongeschiktheidsverzekering* (WAO) (Act on Incapacity for Work) shall be deemed, for the purposes of Chapter 5 of Title III, to be still insured at the time when the risk materialises, if that person is insured for the same risk under the legislation of another Member State or, failing that, is entitled to a benefit under the legislation of another Member State for the same risk. The latter condition shall, however, be deemed to be fulfilled in the case referred to in Article 57(1).

(b) If, pursuant to paragraph 4(a), the person concerned is entitled to a Netherlands invalidity benefit, the amount referred to in Article 52(1)(b) for calculating that benefit shall be determined:

(i) in accordance with the provisions laid down in the WAO if, 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);

(ii) in accordance with the provisions laid down in the WAZ if, prior to the occurrence of incapacity for work, the person concerned last exercised an activity as a self-employed person within the meaning of Article 1(b).

(c) In calculating benefits under either the WAO or the WAZ, 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 AAW, insofar as these do not coincide with the periods of insurance completed under the WAO;

- periods of insurance completed under the WAZ.

5. *Application of Netherlands legislation on family benefits*

(a) A person to whom the *Algemene Kinderbijslagwet* (AKW) (General Family Benefits Act) becomes applicable during a quarter and who was, on the first day of that quarter, subject to the corresponding legislation of another Member State, shall be regarded as being insured by the Netherlands legislation as from that first day.

(b) The amount of family benefits which may be claimed by a person who is considered, pursuant to paragraph 5(a), as being insured by the AKW, shall be determined in accordance with the arrangements laid down in the implementing Regulation referred to in Article 89.

R. AUSTRIA

1. 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 any time to Austrian legislation on the grounds that he pursued an activity as an employed or self-employed person, and the contributions provided for under Article 227(3) of the ASVG, Article 116(9) of the GSVG and Article 107(9) of the BSGV are paid.

2. Where [*DG 12 of the new Implementing Regulation*] leads to periods of childcare pursuant to Articles 227a and 228a of the *Allgemeines Sozialversicherungsgesetz (*ASVG) (general social security act), Articles 116a and 116b of the *Gewerbliches Sozialversicherungsgesetz (*GSVG) (Federal Act on Social Insurance for Persons engaged in Trade and Commerce) and Articles 107a and 107b of the *Bauern-Sozialversicherungsgesetz (*BSVG) (social security act for farmers) being superseded by insurance periods completed in another Member State, the theoretical amount calculated pursuant to Article 52(1)(b)(i) must be increased by the amount which would arise under Austrian legislation if the periods of childcare were taken into account for those insurance periods.

3. For the calculation of the pro rata benefit referred to in Article 52(1)(b), special increments for contributions for supplementary insurance and the miner's 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 miner's supplementary benefit.

4. Where pursuant to Article 6 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.

5. The application of this Regulation shall not have the effect of reducing any entitlement to benefits for persons who have suffered in their social security situation for political or religious reasons or for reasons of their descent.

S. POLAND.

None.

T. PORTUGAL

None.

U. SLOVENIA

None.

V. SLOVAKIA

None.

W. FINLAND

1. A person who is no longer insured under the National Pensions scheme is regarded, when applying the provisions of Chapter 5 of Title III of this Regulation, as retaining the status of an insured person if, when the risk materialises, he or she is insured for the same risk under the legislation of another Member State or, failing that, is entitled to a benefit for the same risk under the legislation of another Member State. The latter condition shall, however, be deemed to be fulfilled in the case referred to in Article 57(1).

2. For the purposes of determining entitlement and of calculating the amount of the Finnish national pension under Articles 52 to 54, pensions acquired under the legislation of another Member State are treated in the same way as pensions acquired under Finnish legislation.

3. When applying Article 52(1)(b)(i) for the purpose of calculating of 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.

X. SWEDEN

1. When parental leave allowance is paid under the provisions in Article 67 to a family member who is not employed, the parental leave allowance is paid at a level corresponding to the basic or lowest level.

2. The provisions of this Regulation on the aggregation of insurance periods 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).

3. For the purpose of calculating notional income for earnings-related sickness benefit and earnings-related activity allowance in accordance with Chapter 8 of

the *Lag (1962:381) om allmän försäkrings* (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 months over which those earnings accrued;

(b) where the benefits are calculated pursuant to Article 46 and persons are not insured in Sweden, the reference period shall be determined in accordance with Chapter 8, paragraphs 2 and 8 of the abovementioned 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 earnings-related 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 employment in Sweden.

4. a) For the purpose of calculating notional pension income for earnings-related survivor's pension (Act 2000:461), if the requirement in Swedish legislation for pension entitlement in respect of at least three out of the five 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 one 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 widow's 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 four 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.

Y. 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), 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 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 insofar as is necessary to satisfy conditions as to presence in the United Kingdom, prior to the day on which entitlement to the benefit in question first arises.

3. Article 7 shall apply to any beneficiary of United Kingdom invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants, who is staying in the territory of another Member State.

4. Where Article 46 applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, the United Kingdom shall, for the purposes of Section 30A (5) of the Social Security Contributions and Benefits Act 1992, take account of any periods during which the person concerned has received, in respect of that incapacity for work:

(i) cash sickness benefits or wages or salary in lieu thereof,

(ii) benefits within the meaning of Chapters 4 and 5 of Title III 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.

5. In applying Article 46, account shall only be taken of periods during which the person was incapable of work within the meaning of United Kingdom legislation.

6. (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), 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 paragraph 6(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), 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), 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.".