

Coordination of Social Security Systems in the European Union:

An explanatory report on EC Regulation No 883/2004 and its
Implementing Regulation No 987/2009

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Coordination of Social Security Systems in the European Union. An explanatory report on EC Regulation No. 883/2004 and its Implementing Regulation No. 987/2009

Coordonarea sistemelor de securitate socială în Uniunea Europeană. Raport explicativ asupra Regulamentului (CE) nr. 883/2004 și al Regulamentului (CE) său de implementare nr. 987/2009 /

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Foreword

In the context of globalization and the expansion of the free movement of labour in Europe, the number of migrant workers is likely to continually increase in the future. In these circumstances, it is of critical importance to ensure the equality of social security treatment for migrant workers through effective coordination between countries.

The ILO has been supporting the Republic of Moldova in building its capacity for planning, negotiating, and implementing bilateral and multilateral social security agreements through the Romanian-funded technical cooperation project “Republic of Moldova: Building capacity for coordination of social security for migrant workers”. This report has been prepared in the framework of this project.

The European Union (EU) has a long history of the coordination of social security systems which aims at facilitating the free movement of citizens. The first European Economic Community (EEC) regulation on social security coordination dates back to 1958. Over the years, several amendments have been carried out to enlarge the personal and material fields of application. With the continuing enlargement of the EU, a new set of regulations were adopted which entered into force on 1 May 2010. These new regulations improve and complete the basic principles established in the previous regulations, and place an emphasis on coordination and cooperation among national social security administrations.

The aim of this report is to provide an overview of the new EU social security coordination framework through an explanation of the key provisions of the regulations. This report will present an advanced model for social security coordination at the regional level. It is hoped that this report will be useful for national authorities and experts in the Republic of Moldova and other countries, who work in the area of social security coordination.

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We would like to express our appreciation to all those who have made a valuable contribution to this report. In particular, we thank the Government of Romania for its support throughout the project.

Budapest, December 2010

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Contents

Foreword.....	iii
1. Introduction.....	1
1.1. Free movement of workers in the EU	1
1.2. The need of a new Regulation in the field of coordination of social security systems	3
1.3. Main changes in the new Regulation	4
1.4. Structure of the report	5
2. General provisions	6
2.1. Definitions.....	6
2.2. The personal scope.....	7
2.3. The material scope	7
2.4. Equality of treatment.....	8
2.5. Equal treatment of benefits, income, facts or events	8
2.6. Aggregation of periods	8
2.7. Waiving of residence rules (export of benefits).....	9
2.8. Relations with other coordination instruments	9
2.9. Declarations by the Member States on the scope of this Regulation	10
2.10. Prevention of overlapping of benefits.....	10
3. Applicable legislation.....	11
3.1. General rules	11
3.2. Posted workers	11
3.3. Persons who pursue activities in two or more States	12
3.4. Voluntary insurance or optional continued insurance.....	13
3.5. Contract staff of the European Communities.....	13
3.6. Derogations	13
3.7. Provisional determination of the applicable legislation	14
3.8. Obligation of information	14
3.9. Period of transition.....	14
4. Special provisions for different benefits.....	15
4.1. Sickness, maternity and equivalent paternity benefits	15
4.2. Benefits in respect of accidents at work and occupational diseases	19
4.3. Death grants	22
4.4. Invalidity benefits	22
4.5. Old-age and survivors' pensions.....	24
4.6. Unemployment benefits	26
4.7. Pre-retirement benefits	28

4.8.	Family benefits.....	29
4.9.	Special non-contributory cash benefits.....	30
5.	Cooperation and provision of information	32
5.1.	The Administrative Commission	32
5.2.	Cooperation between institutions.....	32
5.3.	Exchanges between institutions	33
5.4.	Exchanges between the persons concerned and institutions.....	33
5.5.	Format and method of exchanging data.....	34
5.6.	Provisional application of legislation and provisional granting of benefits.....	34
6.	Electronic exchange of data	36
6.1.	Overview.....	36
6.2.	Format and method of exchanging data.....	36
6.3.	Electronic Exchange of Social Security Information (EESSI).....	37
6.4.	Structured Electronic Documents (SEDs).....	38
6.5.	Portable documents.....	38
7.	Concluding remarks	40
	References.....	41

1. Introduction

1.1. Free movement of workers in the EU

Freedom of movement of workers is one of the founding principles of the European Community, as laid down in Article 39 of the EC Treaty. It is a fundamental right of individuals, and an essential element of European citizenship. Free movement of workers entitles EU citizens to search for a job in another Member State, to work there without needing a work permit, to live there for that purpose, to stay there even after the employment has finished and to enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages that may help them integrate in the host country.

It is estimated that there are 10.5 million migrant workers in the EU, one million people crossing EU borders for work every day and about 250,000 people who have worked in more than one Member State and need to export a part of their pension rights every year.

Ensuring the right of social security when the right of freedom of movement is exercised has been one of the major concerns for the EU Member States. To achieve this, it was necessary to adopt social security measures which prevent EU citizens working and residing in a Member State other than their own from losing some or all of their social security rights. This contributes to improving the standard of living of the migrant persons.

Recognizing the importance of this issue, the Council adopted two regulations on social security for migrant workers in 1958, Regulations 3/1958 and 4/1958, which were replaced by Regulation (EEC) No 1408/71, supplemented by Implementing Regulation (EEC) No 574/72. Nationals from Iceland, Liechtenstein and Norway are also covered by way of the European Economic Area (EEA) Agreement, and from Switzerland by the EU-Swiss Agreement.

In 2004, Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems was adopted to replace Regulation (EEC) No 1408/71. On 16 September 2009, Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for Implementing Regulation (EC) No 883/2004 on the coordination of social security systems was adopted to replace Regulation (EEC) No 574/72.

The EU provisions on social security coordination do not replace national social security systems with a single European one. Such a harmonization would not be possible, as the social security systems of the Member States are the result of long-standing traditions deeply rooted in national culture and preferences. Hence, rather than harmonizing the national social security systems, the EU provisions provide for their coordination. Every Member state is free to decide who is to be insured under its legislation, which benefits are granted and under what conditions, how these benefits are calculated and what contributions should be paid.

The coordination provisions establish common rules and principles which have to be observed by all national authorities, social security institutions, courts and tribunals when applying national laws. By doing so, they ensure that the application of different national legislations does not adversely affect persons exercising their right to move and to stay within EU Member States. In other words, a person who has exercised the right to move within Europe may not be placed in a worse position than a person who has always resided and worked in one single Member State. A migrant worker could face problems due to the fact that in some Member States, access to social security coverage is based on residence, whilst in others only persons exercising an occupational activity (and the members of their families) are insured. In order to avoid a situation where migrant workers are either insured in more than one Member State or not at all, the coordination provisions determine which national legislation applies to a migrant worker in each particular case.

Under national legislation, entitlement to benefits is sometimes conditional upon the completion of certain periods of insurance, employment or residence (depending on the Member State and the type of benefit, from six months up to 15 years). The coordination provisions provide for the “aggregation of periods”. This means that periods of insurance, employment or residence completed under the legislation of one Member state are taken into account, when necessary, for the entitlement to a benefit under the legislation of another Member State.

The principles of coordination of social security systems which were first established by the EU rules in 1957 remain the same today, though the text of the regulations has been changed several times. These principles are:

- **only one legislation applicable;**
- **equality of treatment;**
- **aggregation of the insurance, residence or work periods; and**
- **export of benefits.**

In the new Regulation a new principle has been added – namely, the **principle of good administration**. This refers to the obligation of the institutions of Member States to cooperate with one another and provide mutual assistance for the benefit of citizens.

Since 1 May 2010 the legislation in force in the field of coordination of social security systems in the EU includes:

- Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems, as amended by Regulation (EC) No 988/2009, hereinafter called the **new Regulation**;
- Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, hereinafter called the **Implementing Regulation**; and,
- Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality.

An agreement has also been made to extend the personal scope of the new Regulation to nationals of third countries who are not yet covered by those provisions solely on grounds of their nationality.

Relation with the European Economic Area (EEA) countries and Switzerland

In relation to EEA countries (Norway, Iceland and Liechtenstein) and Switzerland, the following agreements are currently in force:

- EU-Switzerland agreement on the free movement of persons;
- Agreement on the European Economic Area (EEA Agreement).

The new Regulations will apply once the current agreements with these countries are amended. Until then, Regulation (EEC) No 1408/71 and its implementing Regulation (EEC) No 574/72 remain valid.

Relation with other non-EU countries

Some agreements between the EU and non-EU countries (“third countries”) contain provisions on cooperation in the field of social security. The following provides a list of such agreements:

- Partnership and Co-operation Agreements (CIS Countries);
- Stabilisation and Association Agreements (Former Yugoslav Republic of Macedonia and Croatia);
- Euro-Mediterranean Association Agreements (Southern Mediterranean Region);

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- Cooperation Agreements (Syria);
 - Cooperation and Customs Union Agreement (San Marino);
 - Association Agreement with Turkey.

The EU has agreed on a decision of the Council regarding its association agreements with Algeria, Morocco, Tunisia, Croatia, Former Yugoslav Republic of Macedonia and Israel. The decision will ensure the exportability of certain benefits, such as pensions, on the basis of reciprocity towards EU nationals. Currently, the benefits are exported only if provided for by national legislation or by a bilateral agreement.

1.2. The need of a new Regulation in the field of coordination of social security systems

The European Union provisions on social security coordination have a history of more than 50 years, during which the rules have been constantly adapted to social and juridical developments. The new Regulations (EC) No 883/2004 and 987/2009, referred to as “modernized EU social security coordination”, are built upon this experience. They simplify and enhance the EU law, improving the rights of the persons concerned.

The national social security legislation in the EU Member States has been developed and changed over many years. The number of EU Member States has increased, hence the diversity of the social security legislation has also increased. It was thus necessary to take all of these changes into account in the text of the EU legislation.

The Court of Justice of the European Union has delivered several hundred judgments on the interpretation of Regulation (EEC) No 1408/71, making its implementation sometimes rather complicated and lengthy. Thus the new Regulations were necessary to ensure clarity of the rules on the coordination of social security.

In recent years, electronic communication has been widely introduced in the administration of the social security institutions. Efficiency, timely delivery and accessibility are considered integral for the social security institutions. This technological development also needed to be taken into account by the new rules in the field of EU coordination of social security systems.

Electronic communication is a suitable means of rapid and reliable data exchange between Member States’ institutions. Processing data electronically should help speed up the procedures. The persons concerned should also benefit from the guarantees provided for in the Community provisions on the protection of natural persons with regard to the processing and free movement of personal data. A more effective and transparent implementation of the rules has been also considered necessary.

Other concerns related to the new regulation have prompted suggestions to set common deadlines for fulfilling certain obligations, or completing certain administrative tasks in clarifying and structuring relations between insured persons and institutions.

The objectives of the “modernized EU social security coordination” are summarized as follows:

- Extension of coverage in respect of the number of persons covered, the scope of coverage, and areas of social security covered. The population covered by the Regulation will include all nationals of Member States who are covered by the social security legislation of a Member State. This means that not only employees, self-employed persons, civil servants, students and pensioners will be protected by the coordination rules, but also persons who are not part of the active population. This simplifies and clarifies the rules determining the legislation applicable in cross-border situations;

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- The material coverage of the Regulation is extended to statutory pre-retirement schemes. This means that the beneficiaries of such schemes will be guaranteed payment of their benefits, covered for medical care and entitled to receive family benefits even when they are residents of another Member State;
 - Amendment of certain provisions relating to unemployment, including retention for a certain period (three months which can be extended to a maximum of six months) of the right to receive unemployment benefit by persons moving to another Member State in order to seek for employment;
 - Strengthening of the general principle of equal treatment;
 - Strengthening of the principle of exportability of benefits, meaning that insured persons temporarily staying in another Member State will be entitled to health care which may prove medically necessary during their stay;
 - Introduction of the principle of good administration, which places an obligation on the institutions of Member States to cooperate with one another and provide mutual assistance for the benefit of citizens.

The objective of “good administration” will be supported by the electronic exchange of data between institutions. The Commission is working to establish and manage a database through the Electronic Exchange of Social Security Information (EESSI) system which will network more than 50,000 branches of national institutions. Former paper E-forms will be no longer used, though some will be replaced by new portable documents. Citizens will also have access to the EESSI system through a directory, listing all of the national and local institutions involved with social security coordination.

1.3. Main changes in the new Regulation

A number of significant changes have been incorporated in the new Regulation and implementing Regulation. A short summary of these changes is as follows:

- Extension of the personal scope of application to all nationals, active or non active persons;
- Extension of the material scope, including the pre retirement benefits and the paternity benefits;
- Extension of the principle of export of all cash benefits;
- Inclusion of only one general article concerning the aggregation of periods of insurance, employment or residence (except for unemployment benefits, where for technical reasons the original principle was maintained);
- Introduction of the new principle of the assimilation of benefits, income, facts and events;
- Replacement of all social security conventions applicable between the Member States;
- Extension of the initial period from 12 to 24 months in the case of posting;
- The provisional application of legislation and provisional granting of benefits;
- Inclusion of a provision about health care for the family members of a frontier worker, which constitutes a real improvement;
- Introduction of new dispositions regarding cross border health care;
- Special reference to long-term care benefits;
- Introduction of the concept of a contact institution for pensions and the introduction of a summary note, which could be basis for a review request;
- Introduction of special rules for taking into account the child raising periods in pension calculation;

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- Introduction of the possibility of coordination of unemployment benefits for self employed persons, and extension of the possibility for unemployed person to find jobs both in their State of residence and in the State of their last employment or in any other Member States, especially in the case of frontier workers;
 - Introduction of clearer rules for the coordination of family benefits;
 - Explicit introduction of the principle of good administration and establishing clear rules;
 - Special attention paid to providing information to citizens and employers;
 - Introduction of clear rules regarding the responsibility of persons to provide information;
 - Exchange of electronic data between the social security institutions through a database which will be maintained by the European Commission.

1.4. Structure of the report

This report aims to provide a general overview of the modernized EU social security coordination through explanation of key provisions of the Regulation (EC) No 883/2004 and its Implementing Regulation (EC) No 987/2009.

The remainder of this report has been organized as follows. Section 2 presents the general provisions of the new Regulation. Section 3 explains the general and special rules on the applicable legislation. Section 4 covers specific rules and procedures of the coordination for each branch of social security. Section 5 presents the obligation, scope and rules of mutual cooperation to ensure a good administration in implementing the new Regulation. Section 6 summarizes main features of the newly introduced electronic data exchange system between institutions. Section 7 concludes with a few remarks on the future challenges.

2. General provisions

2.1. Definitions

Article 1 of the new Regulation defines the terms “activity as an employed person”, “activity as a self-employed person”, “insured person”, “civil servant”, “special scheme for civil servants”, “frontier worker”, “refugee”, “stateless person”, “family member”, “residence”, “stay”, “legislation”, “Administrative Commission”, “Implementing Regulation”, “competent institution”, “institution of the place of residence”, “institution of the place of stay”, “competent Member State”, “period of insurance”, “period of employment”, “period of self-employment”, “period of residence”, “benefits in kind”, “pension”, “pre-retirement benefit”, “death grant” and “family benefit”.

These definitions reflect the changes in the personal scope of the Regulation and the introduction of the new benefits in the material scope. The following remarks are in order.

- The new Regulation provides definitions of “activity as an employed person” and “activity as a self-employed person” rather than definitions of a “worker” or “self-employed person”.
- Some newly introduced terms include “pre-retirement benefit”, meaning all cash benefits, other than unemployment or early old-age benefits, provided from a specified age to workers who have reduced, ceased or suspended their remunerative activities until the age at which they qualify for an old-age pension or an early retirement pension, the receipt of which is not conditional upon the person concerned being available to the employment services of the competent State; and “early old-age benefit”, meaning a benefit provided before the normal pension entitlement age is reached and which either continues to be provided once the said age is reached or is replaced by another old-age benefit.
- The term “family allowance” is no longer used. There remains only the definition of the term “family benefit” which refers to all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I.
- Reference to paternity benefits is made in the preamble of the new Regulation, noting that paternity benefits may be enjoyed by the father. Since these benefits are different from parental benefits and can be assimilated into maternity benefits *strictu sensu* since they are provided during the first months of a newborn child, it is appropriate that maternity and their equivalent paternity benefits be regulated jointly.
- The definition of “special non-contributory cash benefits” is mentioned not in Article 1 but in Article 70, in the Chapter dealing with this issue.

The implementing Regulation also defines additional terms such as “access point”, “liaison body”, “document”, “Structured Electronic Document”, “transmission by electronic means” and “Audit Board”.

Article 11 of the Implementing Regulation contains new elements for determining residence to be used by the competent institution. This Article provides that in the case of a difference of views between the institutions of two or more Member States about the determination of the residence of a person to whom the basic Regulation applies, these institutions shall establish by common agreement the centre of interests of the person concerned, based on an overall assessment of all available information relating to the relevant facts about that person, which may include, as appropriate:

- the duration and continuity of their presence in the territory of the Member States concerned;
- the person’s situation, including:
 - (i) the nature and specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity and the duration of any work contract;

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- (ii) their family status and family ties;
 - (iii) the exercise of any non-remunerated activity;
 - (iv) in the case of students, the source of their income;
 - (v) their family status housing situation, in particular its permanency;
 - (vi) the Member State in which the person is deemed to reside for taxation purposes.

Where the consideration of the various criteria based on relevant facts does not lead to agreement between the institutions concerned, the person's intention, as it appears from such facts and circumstances, especially the reasons that led the person to move, is considered to be decisive for establishing that person's actual place of residence.

2.2. The personal scope

Article 2, "Persons covered", defines the personal scope of the Regulation. The new rules of coordination of social security systems are applicable to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors. They also apply to the survivors of persons who have been subject to the legislation of one or more Member States, irrespective of the nationality of such persons, where their survivors are nationals of a Member State, stateless persons or refugees residing in one of the Member States.

This Article is the result of the continuous development of the personal scope of the EU rules on the coordination of social security. Originally, Regulation (EEC) No 1408/71 only covered workers, but since 1 July 1982 its scope has been extended to cover the self-employed. Council Regulation (EC) No 1606/98 extended the scope of Regulation (EEC) No 1408/71 in order to set civil servants on an equal footing with the rest of the population as regards the general statutory pension rights provided by the Member States. Regulation (EC) No 307/1999 extended the scope of the Regulation to include all insured persons, particularly students and persons not in gainful employment. Council Regulation (EC) No 895/2003 extended the scope of the Regulation to cover nationals of third countries, provided that they are legal residents in the Union territory.

With regard to Iceland, Liechtenstein, Norway (EEA countries) and Switzerland, the new regulations will not apply until the agreements between the EU and those countries are modified in light of the new regulations. Until then, Regulations (EEC) No 1408/71 and 574/72 continue to apply with regard to those countries.

However, third-country nationals are not yet covered by the provisions of the new Regulation. They therefore remain subject to the old coordination rules (Regulations (EEC) No 1408/71 and 574/72) even after the date of entry into force of the new ones (1 May 2010) until the draft Regulation extending the new regulations to non-EU nationals comes into force.

2.3. The material scope

Article 3 of the new Regulation, "Matters covered", lists the branches of social security for which the Regulation is applicable. These are as follows:

- (a) sickness benefits;
- (b) maternity and equivalent paternity benefits;
- (c) invalidity benefits;
- (d) old-age benefits;
- (e) survivors' benefits;
- (f) benefits in respect of accidents at work and occupational diseases;
- (g) death grants;
- (h) unemployment benefits;
- (i) pre-retirement benefits; and
- (j) family benefits.

The Regulation applies to general and special social security schemes, whether contributory or non-contributory, and to schemes relating to the obligations of an employer or shipowner. Annex XI provides for special provisions for the application of the legislation of the Member States mentioned in Articles 51(3), 56(1) and 83 of the new Regulation.

The new Regulation also applies to the special non-contributory cash benefits covered by Article 70, but it is not applicable to social and medical assistance or benefits where a Member State assumes the liability for damages to persons and provides for compensation, such as those for victims of war or military action; 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 reason of their descent.

As noted earlier, the paternity benefits and pre-retirement benefits have been newly added in the material scope of the new Regulation.

Each State coordinates only the benefits existing in the country, meaning that a State which does not have all of the benefits listed in Article 3 will not have to introduce them.

2.4. Equality of treatment

Equality of treatment is provided for in Article 4. This refers to a principle that persons to whom the Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof. The principle applies even when a person is residing in a third country. This means that all the persons, whether residents of EU Member States or not, have the same social security rights and obligation in a Member State as the citizens of that Member State. This also means that in the legislation of a Member State it is not possible to include provisions allowing direct or indirect discrimination against the citizens of other Member States.

2.5. Equal treatment of benefits, income, facts or events

Article 5 of the new Regulation, “Equal treatment of benefits, income, facts or events”, introduces a new associated principle of the assimilation of benefits, incomes, facts or events. This means that if, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation will also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State. If under the legislation of the competent Member State legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory. This Article is considered an important simplification of the rules of coordination and is a new element of the new Regulation.

2.6. Aggregation of periods

There is now only one Article – Article 6 in the new Regulation – regarding the aggregation of periods, rather than having aggregation provisions for every chapter (except, for technical reasons, in the chapter on the unemployment benefits). It is considered a major simplification of the rules. If in the application of legislation of a Member State the acquisition, retention, duration or recovery of the right to benefits, the coverage by legislation, or the access to or the exemption from compulsory, optional continued or voluntary insurance is conditional upon the completion of periods of insurance, employment, self-employment or residence, the concerned institutions, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were periods completed under the legislation to which it applies.

Article 12 of the Implementing Regulation describes the procedure followed by the institutions in order to aggregate the periods. The competent institution shall contact the institutions of the Member States whose legislation the person concerned has also been subject to in order to determine all of the periods completed under their legislation. The respective periods of insurance, employment, self-employment or residence completed under the legislation of a Member State shall be added to those completed under the legislation of any other Member State, provided that these periods do not overlap.

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

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

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

Article 13 of the Implementing Regulation provides rules for the conversion of periods when they are expressed in different units under the legislation of different Member States.

2.7. Waiving of residence rules (export of benefits)

Another major principle of the coordination, the export of benefits, is provided for in Article 7, “Waiving of residence rules”, of the new Regulation.

This principle provides that cash benefits payable under the legislation of one or more Member States or under the Regulation shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of their family status family reside in a Member State other than that in which the institution responsible for providing benefits is situated. The major difference of the Regulation (EEC) No 1408/71 from previous legislation is that it is applicable to all cash benefits and not only pensions.

2.8. Relations with other coordination instruments

Article 8 specifies the relations between the new Regulation and other coordination instruments. The new Regulation replaces any social security convention applicable between Member States falling under its scope. Certain provisions of social security conventions entered into by the Member States before the date of application of the Regulation shall, however, continue to apply if they are more favourable to the beneficiaries, if they arise from specific historical circumstances and if they are listed in Annex II. The Member States have to specify if there are provisions that cannot be extended to all persons to whom the Regulation applies. Two or more Member States may, as the need arises, conclude conventions with one another based on the principles of this Regulation and in keeping with the spirit thereof.

Annex II lists certain provisions of 38 bilateral agreements concluded between Member States. These provisions refer to the reckoning of insurance periods completed in some border regions before, during and after the Second World War, or the date of the dissolution of a State; complementary flat rate reimbursement in the case of frontier workers; export of unemployment benefits; recognition of decisions by institutions in one contracting party concerning the State of invalidity of applicants from institutions in the other contracting party; reckoning of pension insurance periods for political refugees; and coverage of extra travel expenses in case of sickness during stay in another country, increasing the cost of return travel to the country of residence.

2.9. Declarations by the Member States on the scope of this Regulation

Article 1 states that the term “legislation” excludes contractual provisions other than those which serve to implement an insurance obligation arising from laws and regulations or which have been the subject of a decision by the public authorities which makes them obligatory or extends their scope, provided that the Member State concerned makes a declaration to that effect, notifying the President of the European Parliament and the President of the Council of the European Union. Such declarations shall be published in the Official Journal of the European Union.

Article 9 mentions the obligation of the Member States to notify the Commission of the European Communities, through the written declarations mentioned above, of legislation and schemes referred to in Article 3, the conventions entered into as referred to in Article 8(2) and the minimum benefits referred to in Article 58, as well as substantive amendments made subsequently. Such notifications shall indicate the date of entry into force of the laws and schemes in question, or – in the case of declarations concerning contractual provisions – the date from which the Regulation will apply to the schemes specified in the declarations by the Member States. These notifications shall be submitted to the Commission of the European Communities every year and published in the Official Journal of the European Union.

2.10. Prevention of overlapping of benefits

Article 10 of the new Regulation mentions the general principle of the prevention of the overlapping of benefits, meaning that the Regulation neither confers nor maintains the right to several benefits of the same kind during a single period of compulsory insurance.

Article 10 of the Implementing Regulation regarding the prevention of the overlapping of benefits specifies that when benefits due under the legislation of two or more Member States are mutually reduced, suspended or withdrawn, any amount that would not be paid in the event of strict application of the rules concerning reduction, suspension or withdrawal laid down by the legislation of the Member States concerned shall be divided by the number of benefits subjected to reduction, suspension or withdrawal.

In the new Regulation, there are also provisions regarding the overlapping of specific benefits, including long-term care benefits (Article 34), old age pensions (of the same kind or of a different kind) calculated or provided on the basis of the same insurance, employment or residence periods (Articles 53-55), family benefits, and establishing priority rules in the event of overlapping (Article 68).

3. Applicable legislation

Determination of the applicable legislation is regulated in Articles 11-16, Title II of the new Regulation, and Articles 14-21 of the Implementing Regulation. Details are also set out in the decisions of the Administrative Commission for the Coordination of Social Security Systems.

3.1. General rules

Article 11 of the new Regulation lays down the general rules, maintaining and reinforcing the principle that persons shall be subject to the legislation of a single Member State only. There are no exceptions provided to the general rules as in Regulation (ECC) No 1408/71. The principle of *lex loci laboris* is maintained, establishing that economically active people (persons pursuing an activity as employed or self-employed persons, civil servants, persons receiving unemployment benefits, and persons called upon or recalled for service in the armed forces or for civilian service) are subject to the legislation of the Member State in which they work. People who are not active are subject to the legislation of their Member State of residence.

It is established that persons receiving cash benefits because of or as a consequence of their activity as employed or self-employed persons shall be considered to be pursuing the said activity. This shall not apply to invalidity, old-age or survivors' pensions, or to pensions in respect of accidents at work, occupational diseases, or to sickness benefits in cash covering treatment for an unlimited period.

3.2. Posted workers

A major exception of the general rules concerns the posting which is regulated in Article 12 on "Special rules". What is new here is that employees and self-employed persons can be posted for maximum of two years, and cannot be sent to replace a person who has completed their posting. Former Regulation (EEC) No 1408/71 provided for one year, which could be prolonged by another year.

Posting of employees

A person who carries on business in a Member State may be sent by their employer in the territory of another Member State and remain subject to social security legislation of the first Member State, provided that the duration of the work to be performed does not exceed 24 months and that the person is not sent to replace a person who has completed their posting (Article 12 of the new Regulation).

Clarifications in the application of Article 12 are set out in the Implementing Regulation and in the decisions of the Administrative Commission for the Coordination of Social Security Systems (the Administrative Commission). The work to be performed on behalf of the employer normally requires that there exists a direct relationship between the employer and the employee. Rules for determining whether this direct relationship exists are provided by Decision A2 of the Administrative Commission (12 June 2009).

An employer can hire workers for posting, if the workers, at the time directly preceding their employment, were subject to the legislation of the Member State where their employer is established (Article 14 of the Implementing Regulation) for at least one month (Decision A2 of the Administrative Commission, point 1).

In order to post workers, the employer must normally carry on their activity in the State where they are established. The activity must be a substantial and not purely administrative (Article 14 of the Implementing Regulation). The conditions determining whether or not substantial activity is carried out are outlined in the Decision A2 of the Administrative Commission (point 1). There must be at

least two months between two periods of the same company posting the same worker in the same State.

Posting of the self-employed

Self-employed persons who are normally self-employed in the territory of a Member State and exercise a similar activity in the territory of another Member State, for an expected period of 24 months maximum, may remain subject to the social security legislation of the first State (Article 12 of the new Regulation).

To qualify for posting, the person must exert substantial activity in the State where they are established (Article 14 of the Implementing Regulation). The self-employed person must have carried on business for at least two months (Decision A2 of the Administrative Commission) in the State where they are established before qualifying for posting. During the period of posting, they must continue to fulfill the conditions for the continuation of their activity upon return such as maintaining an office and paying business taxes (Article 14(3) of the Implementing Regulation, Decision A2 of the Administrative Commission).

The activity in the other State must be similar to that normally exercised in their State of origin. To examine this criterion it will be necessary to look at the real nature of the activity and not the qualification that may be given to it in the State where the activity is performed (Article 14(4) of the Implementing Regulation).

Formalities

When an employer posts a worker to another Member State or when self-employed persons post themselves, they must contact the competent institution in the posting State, and this should be done in advance whenever possible.

The competent institution in the posting State shall, without delay, make information available to the institution in the State of employment on the legislation that is to apply. The competent institution in the posting State must also inform the person concerned, and their employer in the case of employed persons, of the conditions under which they may continue to be subject to its legislation and the possibility of checks being made throughout the posting period to ensure these conditions are met.

An employee or self-employed person to be posted to another Member State shall be provided with the portable document A1 (formerly E 101 form) by the competent institution. This document certifies that the worker qualifies to be a posted worker up to a certain date. It should also indicate, where appropriate, under what conditions the worker comes within the special rules for posted workers.

3.3. Persons who pursue activities in two or more States

Article 13 of the new Regulation regulates persons who pursue activities in two or more States. In this case, the legislation applicable will depend on where the substantial part of their activity takes place.

Article 13 provides rules for persons who normally pursue activities as employed persons in two or more Member States. Such persons are subject to the legislation of the Member State where:

- the person resides, if they work for several employers;
- the person resides, is they work for one employer and pursue a “substantial part” of their activities there;
- their employer is established, if the person works for one employer but does not pursue a “substantial part” of their activities in their State of residence. If their employer is established outside the EU, the person is subject to the legislation of their Member State of residence (Article 14(11) of the Implementing Regulation).

In Article 14(8) of the Implementing Regulation, “substantial part” refers to a quantitatively substantial part. Indicative criteria for employed persons are working time and remuneration, and for self-employed persons criteria are turnover, working time, number of services and income. If a person’s activity involves less than 25 per cent of these criteria, it is presumed that no “substantial part” exists.

A person who normally pursues activities as a self-employed person in two or more Member States is subject to the legislation of their Member State of residence if they pursue a “substantial part” of their activities in the Member State in which is situated the “centre of interest” of their activities if they do not pursue a “substantial part” of their activities in their Member State of residence.

Article 14(9) of the Implementing Regulation determines what factors shall be taken into account for determining the “centre of interest”. These include permanent place of business, habitual nature or duration of activities, number of services rendered and the intention of the person as revealed by circumstances.

3.4. Voluntary insurance or optional continued insurance

Article 14 stipulates that if a person is subject to compulsory insurance in a Member State, they may not be subject to a voluntary insurance scheme or an optional continued insurance scheme in another Member State. In all other cases in which, for a given branch, there is a choice between several voluntary insurance schemes or optional continued insurance schemes, the person concerned shall join only the scheme of their choice.

In respect of invalidity, old age and survivors’ benefits, the person concerned may join the voluntary or optional continued insurance scheme of a Member State, even if they are compulsorily subject to the legislation of another Member State, provided that they have been subject, at some stage in their career, to the legislation of the first Member State because of or as a consequence of an activity as an employed or self-employed person, if such overlapping is explicitly or implicitly allowed under the legislation of the first Member State.

If 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.

3.5. Contract staff of the European Communities

Article 15 provides that the contract staff of the European Communities may opt to be subject to the legislation of the Member State in which they are employed, the Member State to which they were last subject, or the Member State of which they are nationals, in respect of provisions other than those relating to family allowances, provided under the scheme applicable to such staff. This right of option, which may be exercised only once, shall take effect from the date of entry into employment.

3.6. Derogations

It is still possible to derogate from these common EU rules so long as the derogation is in the interest of the persons concerned (Article 16). Two or more Member States may then provide for national derogations by common agreement.

3.7. Provisional determination of the applicable legislation

The Implementing Regulation (Article 16) stipulates a procedure for the provisional determination of applicable legislation that becomes definitive within two months if no other information emerges. In case of uncertainty in determining the applicable legislation, the legislation applicable to the person concerned shall be determined by common agreement between the institutions or authorities of two or more Member States involved.

3.8. Obligation of information

Article 19 of the Implementing Regulation lays down the obligation for the competent institution of the Member State whose legislation becomes applicable to provide information to persons and employers concerned regarding the obligations laid down in that legislation and the necessary assistance to complete the formalities associated therewith, such as the contributions which that person and their employer are liable to pay.

Article 20 of the Implementing Regulation lays down the obligation of cooperation between the institutions of the two Member States by communicating the necessary information related to the application of the legislation to persons and to employers.

Article 21 establishes that the employer who has their registered office or place of business outside the competent Member State shall fulfil all of the obligations laid down by the legislation applicable to their employees, notably the obligation to pay the contributions provided for by that legislation, as if they had their registered office or place of business in that competent Member State. Article 21 also mentions the possibility for an employee and an employer who does not have a place of business in the Member State whose legislation is applicable to agree that the latter may fulfil the employer's obligations on its behalf as regards the payment of contributions, without prejudice to the employer's underlying obligations. The employer shall send notice of such an arrangement to the competent institution of that Member State.

3.9. Period of transition

Article 87(8) of the new Regulation protects situations established before the entry into force of the new Regulation and provides that persons subject to legislation under Regulation (EEC) No 1408/71 continue to be so, unless they introduce an application to be submitted to the applicable legislation under Regulation (EC) No 883/2004. If the situation of the person is unchanged, the old legislation may be maintained for up to ten years, starting on 1 May 2010.

All periods of posting completed under Regulations (EEC) No 1408/71 and 574/72 must be taken into account in the calculation of the period posting under Regulation (EC) No 883/2004 within a total period of 24 months. Moreover, the derogating agreements given on the basis of Article 17 of Regulation (EEC) No 1408/71 continue to have effect beyond 1 May 2010.

4. Special provisions for different benefits

4.1. Sickness, maternity and equivalent paternity benefits

The rules for coordination of health insurance, maternity and paternity benefits are determined in Title III, Chapter 1, Articles 17-35 of the new Regulation and under Title III, Chapter I, Articles 22-32 of the Implementing Regulation.

The provisions are based on the notion that insured persons and their family members are to receive health insurance benefits and maternity or paternity benefits regardless of their circumstances and where they reside. The benefits in kind (including benefits in kind for long-term care) are defined and provided for in Article 1 of the new Regulation.

Aggregation of the periods of insurance

When the legislation of a Member State makes the granting of benefits for sickness, maternity and paternity conditional on a minimum insurance period of employment, self-employment or residence, the competent institution may appeal to the periods completed under the legislation of another Member State as if they were periods completed under its legislation (Article 6 of the new Regulation and Articles 12 and 13 of the Implementing Regulation).

Residence in a Member State other than the competent State

The provision of health benefits in kind in case of residence in a Member State other than the competent State is outlined in Article 17 of the new Regulation. In this case, insured persons and/or their family members who reside in a State other than the competent State are entitled to health care benefits in kind provided by their institution of residence on behalf of the competent institution, under the same conditions that prevail for the insured persons of that State. The person must register with the institution of their place of residence by presenting a document issued by the competent institution (portable document S1).

Stay in the competent State when residence is in other State

When insured persons and/or their family members travel from their State of residence (other than the competent State) to the competent State, they receive health care benefits in kind provided by the competent institution as if they resided in that territory (Article 18(1) of the new Regulation).

The family members of a frontier worker are entitled to benefits in kind during their stay in the competent Member State, except when the Member State is one of the following: Denmark, Estonia, Ireland, Spain, Italy, Lithuania, Hungary, Netherlands, Finland, Sweden or the United Kingdom (Article 18 (2) and Annex III of the new Regulation). When this is the case, benefits are provided only for necessary medical care on the basis of Article 19 (“temporary residence outside the State jurisdiction”). These restrictive provisions should be temporary according to Article 87(10(a-b)) of the new Regulation.

Stay outside the competent State

Insured persons and their family members staying outside the competent State are regulated by the Article 19 of the new Regulation and Article 25 of the Implementing Regulation.

The insured person and/or their family members staying in a Member State other than the competent State can benefit from their State of residence’s benefits in kind which become necessary for medical reasons during their stay. Benefits are provided for on behalf of the competent institution by the institution of their place of residence, under the provisions of the legislation as it applies, as if the persons were subject to that legislation.

The scope of benefits in kind which can be provided includes benefits relating to chronic diseases or preexistent diseases, pregnancy, and childbirth, provided that the person has not moved solely to receive care (Decision S3 of the Administrative Commission).

Decision S3 of the Administrative Commission lists the benefits in kind for which a prior agreement between the person concerned and the institution providing the care is needed to ensure that the treatment will be available during their stay. The benefits in kind are provided in the following cases (but are not limited to these cases): kidney dialysis, oxygen therapy, particularly asthma therapy, echocardiography in cases of chronic autoimmune disease or chemotherapy.

Formalities

As evidence of their rights, the applicant shall present their European Health Insurance Card (EHIC) or their temporary provisional certificate, issued before departure by the institution of affiliation. The EHIC is nominal and personal and its validity is determined by its issuing institution. If unable to deliver the EHIC (in case of a short deadline, for example), the competent institution may issue a provisional certificate that limits its duration. The EHIC can be used independently of the nature of the applicant's stay, i.e. for tourism or for business studies (Decision S1 of the Administrative Commission).

The EHIC or provisional replacement certificate must be presented to the provider. It is possible for the person to pay the cost directly to the provider and then send a claim to the institution of their place of stay. In that case, the institution of their place of stay reimburses the person directly for the amount of the costs corresponding to those benefits that are within the limits of, and under the conditions of, the reimbursement rates laid down in that State's legislation (Article 25(4) of the Implementing Regulation). If the reimbursement of the costs is not directly requested by the institution of the place of stay, the costs incurred shall be reimbursed to the person concerned by the competent institution in accordance with the reimbursement rates administered by the institution of their place of stay or in the amount which would have been subject to reimbursement by the institution of their place of stay (Article 25(5) of the Implementing Regulation).

The EHIC and the provisional certificate cannot be used when the purpose of the temporary stay is to obtain medical treatment (Decision S1 of the Administrative Commission).

Travel to receive scheduled treatment

To qualify for scheduled treatment, authorization must be issued by the competent institution that will bear the costs (Article 20 of the new Regulation). When the person does not reside in that State's jurisdiction, they must request authorization from the institution of their place of residence, which transmits the request without delay to the competent institution (Article 26 of the Implementing Regulation).

Permission is granted if the care is among those benefits provided for in the legislation of the Member State in whose territory the person resides and can be provided within a time limit which is medically acceptable, given the person's state of health and the probable course of their disease (Article 20 of the new Regulation). If emergency care is vitally necessary and provided for in the legislation of the Member State of residence but cannot be provided within a time-limit which is medically acceptable, permission shall first be granted by the institution of the place of residence on behalf of the competent institution (Article 26(3) of the Implementing Regulation).

Formalities in case of scheduled treatment

If the competent institution authorizes the scheduled treatment, it issues a portable document S2 ("Entitlement to scheduled treatment") to be presented to the institution of the State of residence. It is possible for the person to pay the cost directly to the provider and then to send a claim to the institution of the place of stay. In that case, the institution of the place of stay directly reimburses that person for the amount of the costs corresponding to those benefits within the limits of, and under the conditions of, the reimbursement rates laid down in that State's legislation (Article 25(4) of the

Implementing Regulation). If the reimbursement of the costs is not requested directly from the institution of the place of stay, the costs incurred shall be reimbursed to the person concerned by the competent institution in accordance with the reimbursement rates administered by the institution of the place of stay, or in the amount which would have been subject to reimbursement by the institution of the place of stay (Article 25(5) of the Implementing Regulation).

Benefits may be recovered from the institution of the State of stay on behalf of the competent institution upon presentation of a portable document S2 or a certificate sent directly by the competent institution. The institutional authority may be required to pay a supplemental fee if the amount paid by the institution of stay for treatment is less than the authorized amount that would have been borne by the competent institution for such treatment in the competent State (Article 26 of the Implementing Regulation).

A special situation arises when the family members are residing in the territory of the State that has opted for reimbursement on the basis of fixed amount. In that case, the competent institution is the institution of the place of residence because it bears the burden of the scheduled treatments (Article 20(4) of the new Regulation).

Cash benefits

The provision of the cash benefits is outlined in Article 21 of the new Regulation and Article 27 of the Implementing Regulation. In the event of incapacity for work in the Member State of residence or stay other than the competent State, the insured person transmits, within the time prescribed by the legislation which applies to it, their certificate of incapacity for work prepared by a doctor directly to the competent institution. If the doctors of the State of residence or stay do not issue certificates of incapacity for work, the insured must contact the institution of the place of residence or stay, which will immediately proceed to undertake a medical assessment of the insured's incapacity for work and prepare a certificate based on that assessment. At the same time the person notifies the employer of their incapacity to work.

The competent institution may ask the institution of the place of residence or stay to carry out administrative or medical checks. It can also have the injured person examined by a physician chosen by the injured person.

Cash benefits are paid directly to the insured by the competent institution. The calculation of benefits takes into account the income received under the relevant legislation, even if for entitlement purposes it uses periods completed in another Member State (Article 21(2-4) of the new Regulation).

Cash benefits for long-term care (dependency)

The rules for the provision of cash benefits for long-term care (dependency) are provided for by Article 21 of the new Regulation and Article 28 of the Implementing Regulation. Claims for long-term care must be made directly to the competent institution, which may apply to the institution of the place of residence or stay to proceed with the examination to determine the need of long-term care. The competent institution may also have the dependents examined by a doctor of their choice. Benefits are paid directly by the competent institution to the insured.

Rules for overlapping of long-term care benefits

Rules exist to prevent an institution from bearing a double burden by paying the benefits in kind for long-term care as the institution of the place of residence or stay while also providing policyholder cash benefits for long-term care. To avoid such overlapping, the sum of the cash benefits is reduced to the amount of the benefit in kind which was paid by the institution of stay or residence (Article 34 of the new Regulation).

Article 31 of the Implementing Regulation lays down rules for providing information on the existence of rules of non-cumulation and the procedure to be followed between the competent institution and the institution of the place of residence or stay to enforce these rules.

Pension claimants

If an insured person loses entitlement to sickness and maternity benefits under the legislation of their last State of affiliation during the process of solving the claim for their pension, the person retains the right to benefits in their State of residence, provided that they are entitled to benefits in that Member State (Article 22 of the new Regulation).

Pensioners and their family members

The provisions for pensioners and their family members are addressed in Articles 23-29 of the new Regulation and Articles 28 and 29 of the Implementing Regulation.

Entitlement to benefits of a pension in the State of residence

The pensioner under the legislation of two or more Member States – one of which is their State of residence – who is entitled to benefits in kind under the legislation of that Member State receives, along with their family members, benefits in kind at the expense of the institution of their place of residence as if they were receiving a pension only from that State (Article 23 of the new Regulation).

No right to benefits of a pension in the State of residence

A pensioner who lives within the territory of a Member State where they have no entitlement to benefits but holds, under the legislation of one or more Member States, a pension entitling them to health care benefits for themselves and their family, receives the benefits in kind provided by the institution of the place of residence on behalf of the competent institution (Article 24(1) of the new Regulation). Where the pensioner is entitled to benefits in kind under the legislation of a single Member State, the cost shall be borne by the competent institution of that Member State. Where entitlement to benefits in kind is available from more than one legislation, the cost of benefits will be the responsibility of the institution of the State where the individual has completed the longest portion of their career (Article 24(2) of the new Regulation).

Residence of family members in a Member State other than the one in which the pensioner resides

The family members of a pensioner residing in the territory of a Member State different from the State where the pensioner resides are entitled to health benefits in kind in that State, provided that the holder of the pension is also entitled to benefits. Benefits in kind are provided for under the legislation of their State of residence, as if the pensioner resided in the same territory as the family members. The cost of the benefits is borne by the institution responsible for the benefits provided to the pensioner (Article 26 of the new Regulation).

Formalities

To qualify for benefits, individuals must register with the institution of their place of residence by presenting the portable document S1 (“Registering for healthcare cover”). The institution of the place of residence shall inform the competent institution of these registrations (Article 24 of the Implementing Regulation). This document replaces the E121 form, which was used by the pensioner and their family members under Regulation (EEC) No 1408/71.

Stay of the pensioner or their family members in a Member State other than their Member State of residence

Pensioners and their family members staying in a Member State other than the competent Member State are entitled to the benefits in kind which become necessary on medical grounds during their stay.

For the States listed in Annex IV of the new Regulation (namely, Belgium, Bulgaria, Czech Republic, Germany, Greece, Spain, France, Cyprus, Luxembourg, Hungary, Netherlands, Austria, Poland, Slovenia and Sweden), the situation for pensioners is more favorable in the case of their temporary stay. The pensioner and their family staying in one of the aforementioned countries qualify to receive benefits in kind provided by the institution of the State of their stay as if they resided in the territory (Article 27 of the new Regulation).

A pensioner and their family members temporarily staying outside the competent State in a State not mentioned in Annex IV, may receive benefits for sickness and maternity insurance for the duration of their stay, according to their condition (Article 27(1), Regulation (EC) No 883/2004).

Specific provisions for retired frontier workers

Further treatment

Former frontier workers receiving a pension may continue to receive benefits in kind in the States where they performed their activity if the treatment began in that State. “Continuation of treatment” is defined as the continued investigation, diagnosis and treatment of an illness for its entire duration (Article 28 of the new Regulation).

The family members of former frontier workers enjoy the same benefits, provided that the location of their activity and treatment is one of the States listed in Annex III. These countries include Denmark, Estonia, Ireland, Spain, Italy, Lithuania, Hungary, Netherlands, Finland, Sweden and the United Kingdom (Article 28(1), para. 2, Annex III of the new Regulation).

Care in two territories

A pensioner who qualified as a frontier worker for at least two of the five years preceding the effective date of their old-age or invalidity pension is entitled to benefits in kind in the Member State in which they pursued activity as a frontier worker, if this Member State and the Member State in which the competent institution responsible for the costs of the benefits in kind provided to the pensioner in their Member State of residence have opted for this and are both listed in Annex V of the new Regulation. These countries include Belgium, Germany, Spain, France, Luxembourg, Austria and Portugal (Article 28 of the new Regulation).

Contributions of the pensioners

The institution responsible for meeting the health costs for pensioners may deduct contributions on pensions where the legislation provides for such deductions. However, the amount of contributions deducted from all of the pensions paid may not, under any circumstances, be greater than the amount deducted in respect of a person who receives the same amount of pension from the competent Member State (Article 30 of the new Regulation and Article 30 of the Implementing Regulation).

Priority rules

Articles 31 and 32 of the new Regulation set out priority rules when the pensioner or their family members reside in a State where health insurance legislation is linked to residency or when their benefits in kind are considered personal rights or derivative rights (Articles 31 and 32 of the new Regulation).

4.2. Benefits in respect of accidents at work and occupational diseases

The provisions concerning accidents at work and occupational diseases are specified in Title III, Chapter 2, Articles 36-41 of the new Regulation and Title III, Chapter II, Articles 33-41 of the Implementing Regulation. There are no changes in this field from Regulation (EEC) No 1408/71.

Right to benefits in kind and in cash

The provisions of the new Regulation on benefits in kind (medical treatment) are also applicable in the case of accidents at work or occupational diseases. The victim of an accident at work or occupational disease who resides or stays in a State other than the competent State receives special benefits in kind through the scheme covering accidents at work and occupational diseases. These are provided for on behalf of the competent institution by the institution of their place of residence or stay, in accordance to the legislation to which it is subject (Article 36 of the new Regulation).

Scheduled Care

The victim of an occupational accident may apply to transfer their residence to the territory of another Member State to seek care. The permission of the competent institution cannot be denied when recommended treatment cannot be given in the Member State in which the person resides within a time limit which is medically justifiable, taking into account the current state of their health and the probable course of the illness (Article 36(3) of the new Regulation).

Costs of transport

If the legislation of a Member State provides for reimbursement of the cost of transporting a victim of an accident at work to the hospital or to their residence, the equivalent costs are borne by the corresponding institution in the territory of the other Member State in which the person resides, provided that the competent institution has given its consent for such transportation. Such authorization is not necessary in the case of a frontier worker.

Similarly, if the legislation of a Member State provides to reimburse the costs for transporting the body of a person who has died due to an accident at work to their place of burial, it covers the costs of transport to another Member State where the deceased resided at the time of the accident (Article 37 of the new Regulation).

Cash benefits

In the case of incapacity for work resulting from an accident at work or occupational disease during a stay or residency in a Member State other the competent State, the insured shall forward the certificate of their incapacity for work directly to its competent institution, within the time prescribed by the relevant legislation. If physicians in the State of residence or stay do not issue certificates for incapacity for work, the insured person should go directly to the institution of their place of residence or stay, which shall immediately make a medical assessment of their incapacity for work and prepare a certificate. At the same time the person should notify the employer of their incapacity to work.

The competent institution may ask the institution of the place of residence or stay to carry out administrative or medical checks. It can also have the injured person examined by a physician of its choice.

Cash benefits are paid directly to the insured person by the competent institution. For the calculation of benefits, the income received under the relevant legislation is taken into account even if periods completed in another Member State have been used for entitlement purposes (Articles 36 and 20 of the new Regulation).

Occupational diseases

When a worker has been subject to the legislation of two or more Member States in which they performed an activity likely to have caused their occupational disease, benefits are paid only under the legislation of the last Member State in which the conditions are met (Article 38 of the new Regulation). In this case the declaration or notification of the worker's occupational disease is addressed to the competent institution for occupational diseases in the State where the person concerned has last exercised activity likely to have caused the disease. If the institution to which the

declaration has been transmitted finds that the activity likely to have caused the disease was last carried on in the territory of another State, it forwards the case to the competent institution of that Member State.

If the person does not meet the requirements for obtaining benefits under the legislation of the State where they were last engaged in activity likely to have caused their occupational disease, their application is forwarded to the institution of their previous State of employment (Article 36 of the Implementing Regulation).

In case of an appeal against a decision refusing benefits, the institution is required to inform the institution to which the declaration or notification was sent of the action. If there is a right under the legislation administered by the last competent institution it pays the benefits in advance, and the payments will be reimbursed, where appropriate, by the previous institution if it is required to provide benefits after the action (Article 37 of the Implementing Regulation).

Aggravation of an occupational disease

Where the beneficiary of an occupational disease benefit under the legislation of a Member State who resides in the territory of another State suffers an aggravation of their disease, the following rules will apply (Article 39 of the new Regulation):

- if the person concerned, while in receipt of benefits, has not pursued, under the legislation of another Member State, an activity as an employed or self-employed person likely to cause or aggravate the disease in question, the competent institution of the first Member State shall bear the cost of the benefits under the provisions of the legislation which it applies, taking into account the aggravation;
- if the person concerned, while in receipt of benefits, has pursued such an activity under the legislation of another Member State, the competent institution of the first Member State shall bear the cost of the benefits under the legislation it applies without taking the aggravation into account. The competent institution of the second Member State shall grant a supplement to the person concerned. The amount of the supplement is equal to the difference between the amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the relevant legislation, if the disease in question had occurred under the legislation of that Member State.

Cumulation rules

Community regulations establish specific rules of cumulation to mitigate the aggregation rules that exist in various national laws.

Reimbursement between the institutions

Benefits in kind in case of accidents at work and occupational diseases provided by the institution of a Member State on behalf of the institution of another Member State are to be fully reimbursed (Article 35 of the new Regulation). The reimbursements are determined and effected in accordance with the arrangements set out in the Implementing Regulation, either on the presentation of proof of actual expenditure, or on the basis of fixed amounts for Member States where the legal or administrative structures are such that the use of reimbursement on the basis of actual expenditure is not appropriate. It is also possible that two or more Member States, and their competent authorities, provide for other methods of reimbursement or waive all reimbursements between the institutions under their jurisdiction.

Formalities

When an accident at work or an occupational disease is diagnosed for the first time in the territory of a Member State other than the competent State, a declaration or notification must be sent to the

competent institution (Article 34(1) of the Implementing Regulation). The institution of the Member State where the accident occurred or the occupational disease was recorded is to send medical certificates drawn up in its territory to the competent institution (Article 34(2) of the Implementing Regulation).

The competent institution can ask the institution of the place of residence to send a detailed report on the current state of the victim and their findings related to the recovery or stabilization of the victim's injury (Article 34(4) of the Implementing Regulation).

As proof of its entitlement, the applicant shall submit to the institution of residence or stay the DA1 form ("Certificate of entitlement to benefits in kind insurance against accidents at work and occupational diseases"), prepared before departure by the competent institution responsible for insurance for accidents at work and occupational diseases. This document can be used in case of residence, temporary residence or a scheduled care transfer of permanent residence to obtain benefits in kind under their insurance for accidents at work and occupational diseases in their new country of residence or stay.

If the insured person has actually borne all or part of the costs of the benefits in kind, and if the reimbursement of such costs has not been requested directly from the institution of their place of stay, the costs are reimbursed to the person concerned by the competent institution in accordance with the reimbursement rates administered by the institution of the place of stay or in the amount which would have been subject to reimbursement by the institution of their place of stay. The institution of their place of stay shall provide the competent institution, upon request, with all of the necessary information about these rates or amounts.

4.3. Death grants

Death benefits are subject to provisions Title III, Chapter 3, Articles 42 and 43 of the new Regulation and Title III, Chapter III, Article 42 of the Implementing Regulation.

Aggregation of insurance periods

When a Member State requires a minimum period of insurance or residence for the award of a death grant, the competent institution of that Member State may appeal to the periods completed under the legislation of another Member State in order to decide on the entitlement of the death grant (Article 6 of the new Regulation, Articles 12 and 13 of the Implementing Regulation).

Payment of the benefits

When the insured person, their family member, or a pensioner dies in the territory of a Member State other than the competent State, the death grant is paid in the same manner as if the death had occurred in the territory of the competent State (Articles 42 and 43 of the new Regulation).

The application of the death grant is sent either to the competent institution or to the institution of the applicant's residence, which sends it to the competent institution (Article 42 of the Implementing Regulation).

4.4. Invalidity benefits

The rules for the coordination of invalidity benefits in the EU are provided for in Title III, Chapters 4 and 5, Articles 44-60 of the new Regulation and Chapters IV and V, Articles 43-53 of the Implementing Regulation.

Type A and type B legislation

Article 44 of the new Regulation distinguishes type A from type B legislation concerning invalidity. “Type A legislation” refers to any legislation under which the amount of invalidity benefits is independent of the duration of the periods of insurance or residence and which is expressly included by the competent Member State in Annex VI. Annex VI includes the invalidity benefits of Czech Republic, Ireland, Greece, Latvia, Finland, Sweden and the United Kingdom. “Type B legislation” refers to any other legislation.

A person who has been subject to the legislation of two or more Member States and who has completed periods of insurance or residence exclusively under type A legislation shall be entitled to benefits only from the institution of the Member State whose legislation was applicable at the time when the incapacity for work and subsequent invalidity occurred. They receive such benefits in accordance with that legislation (Article 44 of the new Regulation).

When a person was subject only to type B legislation or to types A and B legislation, their invalidity pension is awarded in accordance with Chapter 5 (“Old Age and Survivors”) (Article 46(1) of the new Regulation), meaning that the insurance periods will be aggregated and the benefits shall be calculated using the pro-rata principle (Article 46 of the new Regulation).

If the person is not eligible for benefits under the legislation of last Member State, the rights are examined under the previous legislation on the basis of the rights to which the person is still entitled, aggregating the periods of insurance when necessary (Article 44(3) of the new Regulation).

Determination of the degree of invalidity

The institution which the claim for benefits is submitted or forwarded to is called the “contact institution” (Article 47 of the Implementing Regulation). The institution of the place of residence cannot be the contact institution if the person concerned has not, at any time, been subject to the legislation which applies to that institution.

The only institution authorized to make a decision concerning the claimant’s degree of invalidity is the contact institution (Article 49 of the Implementing Regulation). A decision taken by the contact institution of a Member State concerning the degree of invalidity of a claimant is binding on the institutions of any other Member State concerned only if there is concordance between the legislation of those Member States on conditions relating to the degrees of invalidity (Article 46 of the new Regulation). These cases of concordance are listed in Annex VII of the new Regulation. The decision will be made by the national institutions. The institutions of other Member States may have the claimant examined by a medical doctor or other expert of their choice to determine their degree of invalidity. However, the institution of a Member State shall take into consideration the documents, medical reports and administrative information collected by the institution of any other Member State as if they had been drawn up by its own institution.

Aggravation of the invalidity

In the case of aggravation of the invalidity, a person’s entitlement to benefits depends on the type of legislation to which that person has been subject. If the person has been subject only to type A legislation and since receiving the benefit has not been subject to the legislation of another Member State, the benefit is granted by the institution of the Member State in which the aggravation occurred. If the total amount of the benefit or benefits payable is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously competent for payment that institution is to pay the person a supplement equal to the difference between the two amounts. If the person concerned is not entitled to benefits at the expense of an institution of another Member State, the competent institution of the Member State previously competent shall provide the benefits in accordance with the legislation it applies, taking the aggravation into account (Article 47 of the new Regulation).

Conversion of invalidity benefits into old-age benefits

Invalidity benefits shall be converted into old-age benefits, where appropriate, under the conditions laid down by the legislation under which they are provided.

Complement for the minimum pension

If the amount of an insured's pension is less than the minimum pension in their country of residence, the amount of their pension in the country of residence is increased so that the total pension reaches the minimum in the respective Member State (Article 58 of the new Regulation).

Formalities

The application for benefits must be filed either with the institution of residence of the insured, or with the institution of the Member State whose legislation was last applicable (Article 45 of the Implementing Regulation). If the person was subjected during their career to the legislation applied by the institution of the State, that institution becomes the contact institution and therefore serves as the liaison between the institutions of other Member States to whose legislation the person has been subjected.

The contact institution forwards the claim with all of the documents in its possession to all of the relevant institutions so that they can process the application. Each institution conducts benefit calculation twice, and notifies the contact institution of the amount of benefits due (Article 47 of the new Regulation).

Each institution shall notify the applicant of its decision, stating the ways to appeal and the time limits for doing so. When the contact institution is in possession of all of the decisions, it communicates a summary of those decisions to the applicant and the other institutions using the portable document P1 ("Summary of pension rights") (Article 48 of the Implementing Regulation).

Transitional measures – Review

People who receive an invalidity pension awarded by Regulation (EEC) No 1408/71 may request a review of their rights under the new Regulation. If this request is made within two years from 1 May 2010, the rights will be considered from 1 May 2010. If the request is made more than two years after 1 May 2010, the rights will be considered from the date of the request (Article 87 of the new Regulation). In the case of application for review, there is no need to conduct a further medical examination to the extent that the information on the person contained in the file may be regarded as sufficient.

4.5. Old-age and survivors' pensions

As defined in Article 1(w) of the new Regulation, "pension", covers not only pensions but lump-sum benefits. These can be substituted for pensions and payments in the form of reimbursement of contributions or for revaluation increases or supplementary allowances, subject to the provisions of Title III.

The coordination of pensions is regulated by Title III, Chapter 5, Articles 50-60 of the new Regulation and Title III, Chapter IV, Articles 43-53 of the Implementing Regulation. The legislation states that people who have worked professionally in the territory of two or more Member States are allowed to retain their accrued benefits under the pension insurance legislation.

There are no major changes in the rules of the coordination of pensions in the EU. The principles of the calculation of pensions remain almost the same as those in Regulation (EEC) No 1408/71.

Aggregation of periods of insurance or residence

The aggregation of insurance periods shall take into account periods of insurance or residence completed in the legislation of another Member State. There are also special provisions on the aggregation of periods for different situations, i.e. in a specific activity, in an occupation which is subject to a special scheme for employed or self-employed persons (Articles 6 and 51 of the new Regulation, Articles 12 and 13 of the Implementing Regulation) and specific provisions for civil servants (Article 60 of the new Regulation). Article 44 of the Implementing Regulation outlines the rules for taking child raising-periods into account when calculating a pension.

Claiming the benefit

When a person claims a benefit in a Member State, all of the institutions of other Member States where the person carried out their activity must start the procedure of establishing rights and calculating benefits for that person unless the person expressly requests that the award of old-age benefits under the legislation of one or more Member States be deferred (Article 50 of the new Regulation). The institutions have to advise the person on the consequences of deferment in order to assess whether to exercise the right or not (Article 46(2) of the Implementing Regulation).

Calculation of benefits

Every Member State first calculates the amount of benefits due under national legislation, taking into account the anti-overlapping provisions. Then, every Member State calculates the pro-rata pension amount due. Each State is to grant the higher amount between the two benefits (Article 56(1(a)) of the new Regulation).

Pro-rata calculation of a pension requires that the institution calculate the amount of the pension which the person could claim if all periods of insurance or residence had been completed under its legislation when the periods completed under all periods under all Member State legislations is longer than the maximum period required to receive full benefit. This is limited to the maximum benefit amount under its legislation (Article 56(1(a)) of the new Regulation).

Member States may waive the pro-rata pension calculation if certain conditions are fulfilled, as mentioned in Article 52(4) of the new Regulation. In part 1 of Annex VIII, Member States may list their schemes providing benefits in which periods of time are of no relevance to the calculation, and in these cases can waive the pro-rata calculation.

Period of insurance for less than a year

If a person has been insured in a Member State for less than one year and this Member State does not grant a pension, another Member State may not waive the pro-rata calculation. To guarantee that this period is not lost, the new Regulation takes into account the existence of “funded” schemes and schemes based on pension accounts simulating capitalized schemes. Article 52(5) of amended Regulation (EC) No 883/2004 provides that the pro-rata calculation shall not apply to schemes providing benefits in which periods of time are of no relevance to the calculation.

Article 51 regarding the aggregation of periods has also been added here, explaining how the benefit is calculated in the case of special schemes.

The institution of a Member State is not required to grant a benefit if the total periods completed under its legislation do not reach a year, and if no entitlement to a benefit is created under its legislation. The institutions of the other States concerned take those periods into account only for the calculation of the theoretical pension (Article 57 of the new Regulation).

For the calculation of a person’s benefit, their earnings under the legislation of the institution paying the pension will be taken into account (Article 56(1(c)) of the new Regulation).

Any benefit paid by the institution of a Member State can be reviewed when the rights were exercised under the legislation of another Member State or when the worker asked for deferment under the legislation of another Member State. This cannot be done if the periods have already been taken into account for the initial calculation (Article 50(4) of the new Regulation).

Rules to prevent overlapping

The coordination regulations establish specific rules to prevent the overlapping of benefits (of the same or of a different kind) calculated or provided on the basis of the same insurance, employment or residence periods (Articles 53-55 of the new Regulation).

Complement for the minimum pension

If the total amount of an insured's pension is less than the minimum pension in their country of residence, the amount of the pension in their country of residence is increased so that the total reaches the minimum pension in that State (Article 58 of the new Regulation).

Formalities

The application for benefits must be submitted either to the institution of residence of the insured person or to the institution of the Member State whose legislation was most recently applicable (Article 45(b) of the Implementing Regulation).

If the person has been subjected in their career to the legislation applied by the institution of the State, it becomes the contact institution and is responsible for the liaison between the institutions of all States whose legislations the person has been subjected to. The contact institution transmits the claim and all of the documents it has to all of the institutions concerned so that they can begin to examine the application. Each institution concerned shall calculate twice the benefits due and afterwards notify the contact institution of the amount of benefits due (Article 47 of the Implementing Regulation). Each institution shall notify the applicant of its decision, stating the ways it can appeal and the time limits for doing so. When the contact institution is in possession of all of the decisions, it communicates a summary of those decisions to the applicant and other institutions in the form of portable document P1 ("Summary note on pension rights") (Article 48 of the Implementing Regulation).

Provisional installments and advance payments of benefits

If while investigating a claim for benefits the institution establishes that the claimant is entitled to an independent benefit under the applicable legislation, it will pay that benefit provisionally. That payment shall be considered provisional if the amount may be affected by the result of the claim investigation procedure. Each institution paying the provisional benefits or advance payments are to inform the claimant without delay of the provisional nature of the measure and of any rights of appeal the claimant has in accordance with its legislation.

Survivors' pensions

In general, the rules which apply to pensions for surviving spouses or orphans are the same as the ones which apply to invalidity and old-age pensions. Survivors' pensions have to be paid without any reduction, modification or suspension regardless of where the surviving spouse or offspring reside in the EU, Iceland, Liechtenstein, Norway or Switzerland.

4.6. Unemployment benefits

The coordination of unemployment benefits are regulated by Title III, Chapter 6, Articles 61-65 of the new Regulation and Title III, Chapter V, Articles 54-57 of the Implementing Regulation.

A notable difference between Chapter 6 of the new Regulation and the Regulation (EEC) No 1408/71 is that the new Regulation now regulates self-employed persons as well.

Entitlement to benefits

Unlike the other chapters in the Regulation, the chapter concerning unemployment benefits contains a special Article – Article 61 – concerning the aggregation of insurance periods.

In order to be entitled to unemployment benefits in the new State of employment, a person can appeal to periods of insurance, employment, or self-employment completed under the legislation of another Member State, provided that the period in question is considered to be a period of insurance under the legislation. This cannot be applied in the case of an unemployed person who has no insurance periods in the State where they are claiming the benefits (Article 61 of the new Regulation, Articles 54 and 12 of the Implementing Regulation).

Calculation of benefits

The rules for the calculation of unemployment benefits are provided in Article 62 of the new Regulation. The amount of benefits is based on the salary or professional income received during the person's last activity in the Member State providing the benefit. This rule is applied if the legislation of the Member State providing the benefit provides some specific reference period for the determination of the salary as the basis of its calculation. This means that the salary to be taken into account is determined exclusively on the basis of the salary received for periods completed under the legislation of that Member State, even if these periods do not fall in the specific reference period. For all persons (not only frontier workers) residing in a Member State other than the competent State, the amount of the benefit is based on the salary or professional income received during the person's last activity.

Unemployed persons going to another Member State

The unemployed person in the territory of a Member State has the opportunity to go to the territory of another Member State to seek employment (Article 64 of the new Regulation), provided that the person is registered as an unemployed person in the competent State for at least four weeks (the length of time may be reduced at the discretion of the State institution). Within seven days after arrival, the unemployed person must register as a person seeking work with the employment services of the Member State to which they have gone to, remain subject to the control procedure organized there, and adhere to the conditions laid down in the legislation of that Member State. Their entitlement to benefits shall be retained for a period of three months, which may be extended up to a period of six months. If the person concerned does not return to the competent Member State on or before the expiry of the period during which they are entitled to benefits under the legislation of the first State, they will lose all entitlement to those benefits. The benefits are provided directly to the beneficiary by the competent institution in accordance with the legislation it applies and at its own expense. An unemployed person has the possibility to make use of this right several times within the maximum period.

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

There are special rules for unemployed persons who reside in a Member State other than the competent State, provided for in Articles 65 and 66.

The wholly unemployed frontier worker has to claim unemployment benefits in their Member State of residence. Although the person has not paid any contributions to the institution in their State of residence, they will receive the benefits as if they had been insured there during their last period of employment. If the amount of unemployment benefits depends on the previous salary or professional income, the institution granting the benefit must base their calculations on the salary or professional income the person actually received in the Member State in which they worked.

If the person wishes to search for a job in the State of their last employment as well as in their State of residence, they can, as a supplementary step, also register with the employment services there. The frontier workers will then have to comply with the control procedures and obligations of both Member States. However, as the benefits are always paid by the Member State of residence, the obligations and job-seeking activities there have priority.

Persons who are wholly unemployed, have been employed in one Member State, and are residing in another Member State to which they return less often than a frontier worker have two options. They can register with the employment services and claim unemployment benefits in the State of their last employment, or they can return to their State of residence to search for a job and receive unemployment benefits there.

In the case of partial or intermittent unemployment, the Member State where the person worked or works is responsible for granting unemployment benefits, regardless of their State of residence.

Formalities

Unemployed persons must request permission to seek work in the territory of another Member State from the institution of unemployment before their departure. The institution shall inform the unemployed person of their obligations and provide them with the portable document U2 (“Retention of rights to unemployment benefits”), which summarizes their situation and allows them to register with the employment services of the State of destination. The employment services of that State shall inform the unemployed person of their obligations, and send a portable document U3 (“Circumstances that may affect your benefit rights unemployment”) to the competent institution, which has the date of registration of the unemployed person, and their new address and information related to their situation. The State shall also inform the competent institution and the unemployed person through the said form of any changes that could affect the person’s entitlement to benefits (Article 55 of the Implementing Regulation).

Reimbursement of unemployment benefits between the institutions

Rules are laid down regarding the reimbursement of unemployment benefits between institutions in Article 70 of the Implementing Regulation. The institution of the place of residence is to request the reimbursement of unemployment benefits from the institution of the Member State to whose legislation the beneficiary was last subject. The request shall be made within six months of the end of the calendar half-year during which the last payment of unemployment benefits, for which reimbursement is requested, was made. The request shall indicate the amount of benefits paid during the three or five month-period referred to in Articles 65(6) and (7) of the new Regulation, the period for which the benefits were paid and the identification data of the unemployed person. The claims shall be introduced and paid by the liaison bodies of the Member States concerned. If after 18 months the benefits are not reimbursed, interest may be charged by the creditor institution on outstanding claims.

4.7. Pre-retirement benefits

As defined in Article 1(x), “pre-retirement benefits” are all cash benefits, other than unemployment or early old-age benefits, provided from a specified age to workers who have reduced, ceased or suspended their remunerative activities until the age at which they qualify for an old-age pension or an early retirement pension, the receipt of which is not conditional upon the person concerned being available to the employment services of the competent State. “Early old-age benefit” refers to a benefit provided before a person reaches the normal pension entitlement age, and which either continues to be provided once the said age is reached or is replaced by another old-age benefit. Not all the Member States have this type of benefit under their social security legislation.

Coordination rules for these different legislations are provided in Chapter 7, Article 66. This guarantees both equal treatment when granting these benefits to migrants and the possibility of

exporting pre-retirement benefits. The recipients of these benefits also have to be awarded family and health care benefits. However, the principle of aggregation of insurance periods does not apply in cases of pre-retirement benefits. This means that the periods of insurance, employment or residence completed in another State do not need to be taken into account when these benefits are awarded.

4.8. Family benefits

As mentioned in Article 1(z), “family benefits” means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I of the new Regulation.

The rules for coordination of the family benefits are provided in Title III, Chapter 7, Articles 67- 69(a) of the new Regulation and Title III, Chapter VI, Articles 58-61 of the Implementing Regulation.

Aggregation of insurance periods

When granting family benefits is conditional on a minimum period of insurance, employment or self-employment under national legislation, the competent institution may appeal to periods of insurance, employment or self-employment completed under the legislation of another Member State (Article 6 of the new Regulation, and Articles 12 and 13 of the Implementing Regulation).

Residence in a Member State other than the competent State

When a person is insured under the legislation a Member State while members of their family reside in another Member State, benefits shall be provided by the competent institution according to the legislation it applies as if the family members were residing in its territory. A pensioner is entitled to family benefits in accordance with the legislation of the Member State competent for their pension (Article 67 of the new Regulation).

Priority rules

When rights are established under the same period for the same family members under several legislations, the following priority rules apply. Rights available on the basis of an activity as an employed or self-employed person is given the first priority, followed by rights available on the basis of receipt of a pension, and rights obtained on the basis of residence are given the third priority.

In the case of benefits payable by more than one Member State on the same basis, the order of the priority of rights is established by the following subsidiary criteria:

- a) In the case of rights available on the basis of activity as an employed or self-employed person, the place of residence of the children takes precedence, provided that there is such activity. Additionally, the highest amount of the benefits provided for by the conflicting legislations may also take precedence where appropriate;
- b) In the case of rights available on the basis of a pension, the place of residence of the children takes precedence provided that a pension is payable under its legislation. Additionally, the longest period of insurance or residence under the conflicting legislations may also take precedence where appropriate;
- c) In the case of rights available on the basis of residence: the place of residence of the children takes precedence.

In the event that family benefits are not used by the person to whom they should be provided for, the competent institution shall discharge its legal obligations by providing those benefits to the natural or legal person in fact maintaining the family members. This is done at the request and through the agency of the institution in their State of residence, or by the designated institution or body appointed

for that purpose by the competent authority in their State of residence (Article 68(1) of the new Regulation).

Entitlements to family benefits by virtue of other conflicting legislation are suspended up to the amount provided for by the first legislation, and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount. However, such a differential supplement does not need to be provided to children residing in another Member State when such entitlement is based on residence only (Article 68(2) of the new Regulation).

Formalities

If the claim is sent to the competent institution, and after examining the rights of the applicant it concludes that its legislation is applicable with the priority rules, it provides the family benefits. If it appears that is a right for a differential supplement under the legislation of another Member State, it shall forward the record to the competent institution of that State and inform the applicant thereof (Article 60 of the Implementing Regulation).

If the legislation of an institution receiving a claim is the legislation applicable but does not have priority, the institution sends the claim to the institution whose legislation has priority, informs the applicant of this transmission, and provides, if applicable, any differential supplement (Article 68(3) of the new Regulation).

To ensure that people do not remain without family benefits in case of communication delays between institutions or failure to meet the deadline, the Regulation provides for the provisional payment of benefits (Article 60 and Article 6 of the Implementing Regulation).

If the person receiving the benefits does not use the benefits for the maintenance of their family members, the competent institution may provide benefits to the natural or legal person in fact maintaining their family members (Article 68(a) of the new Regulation).

Special family benefits for orphans

Some Member States' legislation provide for orphans payment of pensions, pension supplements or other special payments for family orphans. These benefits, paid in the form of pensions or additional pension rights, are dealt with in the pensions chapter (Chapter 5).

If the institution does not provide for special benefits for orphans, it transmits the case to the competent institution of the Member State where the person concerned has been subject to the legislation the longest and covers the administration of such benefits (Article 69 of the new Regulation and Article 61 of the Implementing Regulation).

4.9. Special non-contributory cash benefits

Special non-contributory cash benefits are a mixture of social security and social assistance benefits because of their personal scope, their objectives the conditions for entitlement.

Special non-contributory cash benefits are defined in Article 70 of the new Regulation. In order to be considered as a special non-contributory cash benefit, a benefit has to satisfy three conditions:

- a) It must be intended to provide either: (i) supplementary, substitute or ancillary coverage against the risks associated with social security covered by the new Regulation which guarantee the persons concerned a minimum subsistence income relative to the economic and social situation of the Member State concerned; or (ii) protection solely for the disabled, closely linked to the person's social environment in the Member State concerned;

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- b) It must be financed exclusively through taxation intended to cover general public expenditure, and the conditions for providing and calculating the benefits cannot depend on any contribution from the beneficiary. However, benefits provided as a supplement to a contributory benefit shall not be considered to be contributory benefits for this reason alone;
 - c) It must be listed in Annex X of the new Regulation.

These benefits are only provided to a person at the expense of the institution of their place of residence. In most cases these benefits are means-tested, meaning that they are paid to persons whose pensions or incomes are below a certain level. Thus the payment of these benefits will not be exported when a person transfers their residence to another State.

Almost all Member States have special non-contributory cash benefits listed in Annex X. These benefits include income replacement allowances, guaranteed incomes for elderly persons, social old age pensions, social allowances, accommodation expenses for pensioners, basic subsistence incomes for the elderly and for persons with reduced earning capacity, benefits to cover subsistence costs for jobseekers, disabled adult allowances, state unemployment allowances, jobseekers' allowances, state pensions (non-contributory), disability allowances, mobility allowances, blind pensions, minimum incomes, cash benefits to assist the elderly and invalid, non-contributory invalidity and retirement pensions, social pensions for persons without means, pensions and allowances for the deaf and mentally impaired, transport compensation for the disabled who have problems with mobility, housing allowances for pensioners, labour market support and special assistance for immigrants.

5. Cooperation and provision of information

The new Regulation and the Implementing Regulation are based on the principle of good administration through an enhanced cooperation between the institutions of the Member States. This enhanced cooperation concerns the information provided to citizens, problem solving, combating fraud, tackling errors and fast benefit delivery.

5.1. The Administrative Commission

The Administrative Commission, consisting of a government representative from each Member State, is specifically charged with dealing with all administrative questions or questions of interpretation arising from the provisions of this Regulation. It has the duty of fostering and developing cooperation between Member States and their institutions in social security matters in order to take into account particular questions regarding certain categories of persons, and of facilitating cross-border cooperation activities in the area of the coordination of social security systems (Article 72 of the new Regulation).

The Administrative Commission also plays a special role in the provision of information (Article 89 of the Implementing Regulation). It must prepare the information needed to ensure that the parties concerned are aware of their rights, and of the administrative formalities required in order to assert them. This information, whenever possible, shall be disseminated electronically through publication on websites accessible to the public. The Administrative Commission must ensure that the information is regularly updated and shall monitor the quality of services provided to customers.

The competent authorities shall ensure that their institutions are aware of and apply all of the Community provisions, legislative or otherwise, including the decisions of the Administrative Commission, in the areas covered by the new Regulation and Implementing Regulation.

5.2. Cooperation between institutions

Article 76 of the new Regulation provides obligations for the competent authorities to communicate all information regarding measures taken and changes in their legislation which may affect the implementation of the Regulation to one another. The authorities and institutions of the Member States must lend their offices to one another, and act as though they are implementing their own legislation. The administrative assistance given by the said authorities and institutions is, as a rule, free of charge. In special cases, as established by the Administrative Commission, it is possible to set the reimbursable expenses above the amount of reimbursement that is due.

The authorities and institutions of the Member States communicate directly with one another and with the persons involved, or with their representatives. The institutions and persons have a duty of mutual information and cooperation to ensure the correct implementation of the Regulation. The institution responsible for asking and responding to requests for information and assistance is the liaison body.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall provide the persons concerned with any information required for exercising the rights conferred on them by the Regulation.

If difficulties arise in the interpretation or application of the Regulation which could jeopardize the rights of a person covered by it, the institution of the competent Member State or of the person's Member State of residence shall contact the institution(s) of the Member State(s) concerned. If a solution cannot be found within a reasonable period, the authorities concerned may call on the Administrative Commission to intervene.

The authorities, institutions and tribunals of one Member State may not reject applications or other documents submitted to them on the grounds that they are written in an official language of another Member State, if that language is recognized as an official language of the Community institutions in accordance with Article 290 of the Treaty.

5.3. Exchanges between institutions

The Implementing Regulation establishes in Article 2 that exchanges between Member States' authorities, institutions and persons are based on the principles of public service, efficiency, active assistance, rapid delivery and accessibility, including e-accessibility, in particular for the disabled and the elderly. The institutions shall without delay provide or exchange all data necessary for establishing and determining the rights and obligations of persons to whom the basic Regulation applies. Such data shall be transferred between Member States directly by the institutions themselves or indirectly through the liaison bodies.

When a person mistakenly submits information, documents or claims to an institution in the territory of a Member State other than that in which the institution designated in accordance with the implementing Regulation is situated, the information, documents or claims shall be resubmitted without delay by the former institution to the institution designated in accordance with the implementing Regulation, indicating the date on which they were initially submitted. That date shall be binding on the latter institution. Member State institutions shall not, however, be held liable, or be deemed to have taken a decision by virtue of their failure to act as a result of the late transmission of information, documents or claims by other Member States' institutions. Where data are transferred indirectly via the liaison body of the Member State of destination, time limits for responding to claims shall start from the date when that liaison body received the claim, as if it had been received on that date by the institution in that Member State.

5.4. Exchanges between the persons concerned and institutions

Article 76 of the new Regulation stipulates that the institutions and persons covered by them have a duty of mutual information and cooperation to ensure the correct implementation of the Regulation. Thus obligations exist both for the institutions and the persons involved.

The duty of institutions for providing information

In accordance with the principle of good administration, the institutions must respond to all queries within a reasonable period of time and shall also provide the persons concerned with any information necessary for them to exercise their rights.

Member States must ensure that the necessary information is made available to the persons concerned, to inform them of the changes introduced by the new Regulation and the implementing Regulation and to enable them to assert their rights. They shall also provide user-friendly services for the persons concerned (Article 3 of the Implementing Regulation).

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

To the extent necessary for the application of the new Regulation and the Implementing Regulation, the relevant institutions shall forward the information and issue the documents to the persons concerned without delay and within the time limits specified under the legislation of the Member State in question.

The relevant institution shall notify the claimant residing or staying in another Member State of its decision either directly or through the liaison body of the Member State of residence or stay. When refusing to issue benefits, it shall indicate the reasons for its refusal, the remedies and the periods allowed for appeals. A copy of this decision shall be sent to the other institutions involved.

The duty of the persons for providing information

The persons concerned must inform the institutions of the competent Member State and of their Member State of residence as soon as possible of any change in their personal or family situation that may affect their right to benefits. If these obligations are not respected, proportionate measures may be taken against them in accordance with national law. These measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult for claimants to exercise the rights conferred on them by the new Regulation.

Persons for whom the basic Regulation applies shall be required to forward the information, documents or supporting evidence necessary to establish their situation or the situation of their families to the relevant institution. This is necessary to establish or maintain their rights and obligations, as well as to determine the applicable legislation and their obligations under it (Article 3 of the Implementing Regulation).

Article 87 of the new Regulation lays down the obligation for the Member States to ensure that the appropriate information is provided regarding the changes in rights and obligations introduced by the new Regulation and its Implementing Regulation.

In the preamble of the Implementing Regulation, informing the persons concerned of their rights and obligations is mentioned as a crucial component establishing a relationship of trust between the persons concerned and the competent authorities and Member States' institutions. Information should include guidance on administrative procedures.

Special rules are stipulated in the new Regulation and Implementing Regulation regarding the provision of information to persons and employers concerned on the formalities to be followed for different types of benefits, or regarding applicable legislation (Article 19 of the new Regulation, Article 22 of the Implementing Regulation).

5.5. Format and method of exchanging data

The Administrative Commission has the obligation to lay down the structure, content, format and detailed arrangements for the exchange of documents and structured electronic documents (Article 4 of the Implementing Regulation). The transmission of data between the institutions or the liaison bodies will be carried out by electronic means, either directly or indirectly, through the access points under a common secure framework that can guarantee the confidentiality and protection of exchanged data. In their communications with the persons concerned, the relevant institutions shall use the arrangements appropriate to each case, and favour the use of electronic means as much as possible. The Administrative Commission must lay down the practical arrangements for sending information, documents or decisions by electronic means to the persons concerned.

5.6. Provisional application of legislation and provisional granting of benefits

Where there is a difference of views between the institutions or authorities of two or more Member States concerning the determination of the applicable legislation, the person concerned shall be made provisionally subject to the legislation of one of those Member States, the order of priority being determined as follows:

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- The first priority is given to the legislation of the Member State where the person actually pursues their employment or self-employment, if the employment or self-employment is pursued in only one Member State;
 - The second priority is given to the legislation of their Member State of residence where the person concerned performs only part of their activity or where the person is not employed or self-employed;
 - The final priority is given to the legislation of the Member State whose application was first requested, when the person pursues an activity or activities in two or more Member States.

If there is a difference of views between the institutions or authorities of two or more Member States about which institution should provide the benefits in cash or in kind, the person concerned who could claim benefits if there was no dispute shall be entitled, on a provisional basis, to the benefits provided for by the legislation applied by the institution of their place of residence. If that person does not reside in the territory of one of the Member States concerned, the person is entitled to the benefits provided for by the legislation applied by the institution to which the request was first submitted.

6. Electronic exchange of data

6.1. Overview

The electronic exchange of data is one of the most significant novelties of the new Regulation. Though it poses some challenges, it will be useful for the social security institutions of the Member States, as well as their citizens.

Electronic communication enables rapid and reliable data exchange between Member States' institutions. Processing data electronically should help quicken the procedures for everyone involved. The persons concerned should also benefit from all of the guarantees provided for in the Community provisions on the protection of natural persons with regard to the processing and free movement of personal data.

The IT-based data exchanges will:

- facilitate and speed up decision-making for the calculation and payment of social security benefits;
- allow a more efficient verification of data;
- provide a more flexible and user-friendly interface between different systems; and
- provide an accurate collection of statistical data on European exchanges.

Using the electronic exchange of data, all information formerly exchanged through some 100 paper E forms (nearly 2,000 E forms were used in different languages) should now be processed electronically by 1 May 2012.

Article 78 of the new Regulation provides the obligation of the Member States to use new technologies for the exchange, access and processing of the data required to apply this Regulation and the Implementing Regulation. The Commission of the European Communities has established such data processing services (the Electronic Exchange of Social Security information, or EESSI), but each Member State is responsible for managing its own part of the data-processing services in accordance with the Community provisions on the protection of natural persons with regard to the processing and the free movement of personal data.

The data processing service must contain the safeguards necessary in order to prevent any alteration, disclosure or unauthorized access to the records. It shall at any time be possible to reproduce the recorded information in an immediately readable form. When an electronic document is transferred from one social security institution to another, appropriate security measures should be taken in accordance with the Community provisions on the protection of natural persons with regard to the processing and the free movement of personal data.

Article 95 of the Implementing Regulation provides for a transitional period of 24 months from the date of entry into force of the Implementing Regulation. This means that starting on 1 May 2012, the exchange of data between the social security institutions of the Member States shall be done exclusively in electronic format.

6.2. Format and method of exchanging data

The Administrative Commission is tasked to lay down the structure, content, format and detailed arrangements for the exchange of documents and structured electronic documents (Article 4 of the Implementing Regulation). The transmission of data between the institutions or the liaison bodies shall be made using EESSI, directly or indirectly, through the access points under a common secure framework that can guarantee the confidentiality and protection of exchanges of data.

The Implementing Regulation also provides that the communication between the institutions and the persons concerned will use an arrangement appropriate to each case, favouring the use of electronic means where possible. The Administrative Commission lays down the practical arrangements for sending information, documents or decisions by electronic means to the person concerned.

6.3. Electronic Exchange of Social Security Information (EESSI)

Electronic Exchange of Social Security Information (EESSI) has the following features:

- It is an institutional database with public access and a clerk interface to be used for document routing and as an online directory;
- It uses a format for the exchange of social security information through structured electronic documents (SEDs);
- It is supported by a secure communication protocol and the secure sTesta Network;
- It is accessible through a minimum of one and a maximum of five access points per EU country;
- It has an online transaction facility for handling the future electronic European Health Insurance Card;
- It is centrally hosted at the European Commission for inter-country distribution;
- It is flexible and user-friendly reference implementation (RI) software for EU countries developed by the Commission. The reference implementation includes a pre-defined international and national access points and a default web interface for clerks, the WebIC.

Details of the database are described as follows (Annex 4 of the Implementing Regulation):

1. Content of the database

An electronic directory of the institutional bodies concerned shall indicate:

- (a) the names of the bodies in the official language(s) of the Member State as well as in English;
- (b) the identification code and the EESSI electronic address of the bodies;
- (c) the function of the bodies in respect of the definitions in Articles 1(m), (q) and (r) of the basic Regulation and Articles 1(a) and (b) of the Implementing Regulation;
- (d) their competence as regards the different risks, types of benefits, schemes and geographical coverage;
- (e) which part of the basic Regulation the bodies are applying;
- (f) the following contact details: postal address, telephone, telefax, e-mail address and the relevant URL address;
- (g) any other information necessary for the application of the basic Regulation or the Implementing Regulation.

2. Administration of the database

- (a) The electronic directory is hosted by EESSI at the level of the European Commission.
- (b) Member States are responsible for collecting and checking the necessary information regarding the institutional bodies, and for the timely submission of any entry or change to the entries falling under their responsibility to the European Commission.

3. Access

Information used for operational or administrative purposes is not accessible to the public.

4. Security

All modifications to the database (insertions, updates and deletions) shall be recorded. Prior to accessing the directory for the purpose of modifying entries, users shall be identified and authenticated. Prior to any attempt of modifying an entry, the user's authorization to perform this action will be checked. Any unauthorized action shall be rejected and logged.

5. Language Regime

The general language regime of the database is English. The name of bodies and their contact details should also be inserted in the official language(s) of the Member State.

6.4. Structured Electronic Documents (SEDs)

Structured Electronic Documents (SEDs) have been designed to make the communication of data between institutions easier and more efficient. During the transitional period between 1 May 2010 and 1 May 2012, paper versions of the SEDs can be used.

There are paper versions of the SEDs for:

- applicable legislation (A series);
- pensions (P series);
- sickness (S series);
- family benefits (F series);
- accidents at work and occupational diseases (DA series);
- unemployment (U series); and
- horizontal issues (H series).

6.5. Portable documents

Former paper "E-forms" will disappear under the modernized coordination, but in some cases the information required by a citizen will be issued in the form of a portable document. There are in total ten portable documents, including the European Health Insurance Card. Apart from the card, the other documents are in paper form.

The European Health Insurance Card (EHIC) is a portable document which proves one's entitlement to necessary health care during a temporary stay abroad, i.e. in another country than the country of residence. All persons covered by a statutory health insurance scheme in one of the EU countries, Norway, Liechtenstein, Iceland or Switzerland has the right to obtain an EHIC.

The portable document S1 allows a person to register for health care if the person live in an EU country, Iceland, Liechtenstein, Norway or Switzerland but are insured in another one of these countries. This is typically the case for pensioners retiring abroad. It can also be used for family members of migrant workers who have stayed in their country of origin but are now covered by the social security insurance of the country where their family member currently works. This replaces the old E106, E109, E120 and E121 forms.

Currently the following portable documents are used for different cases:

Social security field	Document	Number	Former E-Form
Legislation applicable	Certificate concerning the social security legislation which applies to the holder	A1	E101/ E103
Sickness benefits	Registering for healthcare cover	S1	E106/E109/ E120/E121
	Entitlement to scheduled treatment	S2	E112
	Medical treatment for former crossborder worker in former country of work	S3	-
	Entitlement to healthcare cover under insurance against accidents at work and occupational diseases	DA1	E123
Pensions	Summary of pension decisions taken by institutions in the member states where the person has built up pension rights	P1	E205/E207 E211
Unemployment benefits	Periods to be taken into account for granting unemployment benefits	U1	E301
	Retention of unemployment benefits entitlement	U2	E303
	Circumstances likely to affect the entitlement to unemployment benefits	U3	-

7. Concluding remarks

Since the Commission proposed in 1998 to adopt a new regulation in the field of coordination of social security systems, a considerable amount of work has been undertaken by the Council and the European Parliament. Even if the result differs in certain respects from what was originally envisaged, there have been considerable advances, especially taking into account the constraints and characteristics of the various social security systems in the EU Member States and the enlargement of the EU.

Updating the rules was a necessary task. This has now been accomplished. Of all the objectives of the new regulation, simplification was not easy to achieve, though elements of simplification have been introduced. The new regulations also ensure improved protection of the rights of persons, clarify the rules, incorporate the ECJ case law, and – from an administrative point of view – strengthen and streamline the institutional procedure.

The implementation of these new rules will be seen in the future. A major challenge will be the implementation of the electronic exchange of data. Only after the full implementation of all of the new rules shall an assessment of the new Regulations in their entirety be possible.

References

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<http://ec.europa.eu/social-security-coordination>

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