



Explanatory Report to the Supplementary Agreement for the Application of the European Convention on Social Security

Paris, 14.XII.1972

I. The European Convention on Social Security and the Supplementary Agreement for the application thereof, drawn up within the Council of Europe by the Committee of Experts on Social Security, were opened to signature by the member States of the Council on 14 December 1972, at Paris, on the occasion of the 51st Session of the Committee of Ministers of the Council of Europe.

II. The text of the explanatory reports prepared by the committee of experts and submitted to the Committee of Ministers do not constitute instruments providing an authoritative interpretation of the text of the Convention and of the Supplementary Agreement, although they might be of such a nature as to facilitate the application of the provisions therein contained.

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Commentaries on the provisions of the Supplementary Agreement

TITLE 1 – General provisions

Introduction

1. The Supplementary Agreement for the application of the European Convention on Social Security has been conceived as a complete instrument, that is to say, as an instrument which will enable the rules of the Convention which are directly applicable to be applied and at the same time serve as a guide for those provisions which will be applicable only after the conclusion of bilateral or multilateral agreements. In order to make the application of the Convention as flexible as possible for the Contracting Parties, Article 5 of the Agreement provides that any Contracting Party which does not intend to make use of the Agreement may conclude other administrative agreements providing for different methods of application.

The Agreement shall, however, apply:

- in the absence of such administrative agreements;
- wherever the institution of a Contracting Party which is not a Party to such agreements is required to take action.

Article 1 – Definitions

2. This article defines the terms used in the Supplementary Agreement for the application of the European Convention on Social Security. All the definitions in Article 1 of the Convention shall also be applicable to the Agreement.

Article 2 – Issuing of instruments and documents necessary for the implementation of the Convention

3. The models of the documents referred to in the Agreement required for the application of the Convention and the Agreement shall be prepared by the Committee referred to under sub-paragraph (c) of Article 1 of the Agreement, i.e. the Committee of Experts on Social Security of the Council of Europe or any other committee which the Committee of Ministers of the Council of Europe may instruct to carry out the tasks described in this article. If two or more Contracting Parties agree on the use of different models, they shall inform the Committee.

4. Since on many occasions the institutions of the Contracting Parties may have to take account of the provisions of different social security schemes, this article provides that the Committee may for the benefit of the competent authorities of each Contracting Party, assemble information on social security legislations to which the Convention applies.

5. It also provides that the Committee may prepare explanatory leaflets for migrants written in as simple a way as possible and, if necessary, in their mother tongue in order to give them all appropriate information in support of their relevant rights.

Article 3 – Liaison bodies

6. This article provides that the competent authorities of each Contracting Party may designate liaison bodies empowered to communicate with one another and with the institutions of any Contracting Party, provided that they are authorised to do so by the competent authorities of the Party in whose territory the institution concerned is situated. Any person who resides or temporarily resides in the territory of a Contracting Party, and likewise any institutions of that Party, may approach the institution of another Contracting Party either directly or through the liaison bodies.

Article 4 – Annexes to the Agreement

7. This article recapitulates the contents of the Annexes.

8. As provided for under Article 92 of the Agreement, the Annexes are an integral part of the Agreement; Article 92 also describes the procedure for amending such Annexes.

Article 5 – Other administrative agreements between Contracting Parties

9. The Supplementary Agreement for the application of the Convention is intended to facilitate the application of those provisions of the Convention which are immediately applicable and also to serve as a guide for provisions which will be applicable only through bilateral or multilateral agreements between Contracting Parties. This article lays down a general rule whereby Contracting Parties may conclude other administrative agreements providing for different methods of application.

The Agreement shall, however, apply:

- in the absence of such administrative agreements;
- wherever the institution of a Contracting Party which is not a Party to such agreements is required to take action.

Article 6 – Replacement by the Supplementary Agreement of agreements for the application of such social security conventions as the Convention replaces

10. This article is based on the same principle as Article 5 of the Convention and provides that the Agreement shall replace the agreements for applying any previous conventions, unless such agreements are included in Annex 5 of the Agreement. It should be pointed out that governments will be able to include in this Annex only those agreements or parts of agreements for the application of social security conventions which they wish to maintain in force and which were included in Annex III of the European Convention on Social Security. The inclusion of multilateral agreements for the application of multilateral conventions will be subject to the unanimous agreement of those member States of the Council of Europe who are Parties to those agreements.

TITLE II – Application of the general provisions of the Convention

Article 7 – Conditions for admission to voluntary insurance or to optional continued insurance

11. This article deals with the application of Article 10 of the Convention. It covers the case where the person concerned satisfies the conditions for admission to optional continued insurance in respect of invalidity, old age or death (pensions) under more than one scheme, by virtue of the legislation of a Contracting Party, and has not been compulsorily insured under any of those schemes by virtue of his most recent employment. It provides that in such a case the person concerned may avail himself of the provisions of Article 10 of the Convention only for the purpose of admission to optional continued insurance under a scheme which would have been applied if under the legislation of that Contracting Party he had been in employment which was subject to compulsory insurance for pension purposes and was similar to his most recent employment under the legislation of another Contracting Party.

12. The second part of paragraph 1 of this article concerns any difficulties which may arise where conditions for admission to compulsory insurance are not the same under the legislations concerned, or where it is not possible to determine the precise nature of the employment. In such a case, the competent authority of the Party concerned or the institution designated by it shall decide the scheme under which optional insurance may be continued.

Article 8 – Accumulation of benefits

13. This article provides for the application of the provisions of Article 13 of the Convention which prevents accumulation of benefits of the same kind or benefits relating to the same period of compulsory insurance. Sub-paragraphs (a) and (b) contain rules to co-ordinate the application of national law relating to accumulation of benefits, in order to avoid discrimination as between migrants and nationals. Sub-paragraphs (c) and (d) deal with practical matters: communication of information and rates of exchange applicable.

14. For the purpose of applying paragraph 2 of Article 13 of the Convention, the official rate of exchange shall be that prevailing on the first day of the month in which the final payment is made, or if the pension is recalculated at the rate then prevailing. This was decided in order to avoid increasing the work of the institutions which otherwise would have to be kept constantly informed of changes in the official rate of exchange in their respective countries.

Article 9 – Accumulation of maternity benefits

15. This article also deals with the application of Article 13 of the Convention as regards preventing accumulation of maternity benefits. For this purpose it designates the competent State as the one in whose territory the birth took place. If the birth did not take place in the territory of a Contracting Party the legislation applicable is that to which the person concerned was last subject.

Article 10 – Accumulation of death grants

16. This article deals in a way similar to, that of Article 9 with the accumulation of death grants. It provides that in both cases referred to in paragraph 2 of this article, the only entitlement to death grants recognised shall be that acquired under the legislation of the Contracting Party which was last applicable to the person in respect of whom the death grant is payable.

Article 11 – Accumulation of family allowances

17. It is provided in this article that the legislation to which the main breadwinner is subject determines which is the competent State in cases where two or more persons are entitled to family allowances under the legislation of two or more Contracting Parties in respect of the same members of their family. The article provides, however, that where children of persons who are subject to the legislation of a Contracting Party by virtue of employment or occupation reside or are brought up in the territory of that Party, the legislation of that Party shall be applicable.

18. It should be noted that this article concerns only the accumulation of family allowances and not the accumulation of family benefits, the reason being that accumulation presents no specific problem in respect of Section 2 of Chapter 6 of the Convention since in such circumstances the family benefits paid would be those granted by the country of residence. In such cases several rights might accrue simultaneously creating not a problem of accumulation of benefits but a problem of accumulation of refunds. This problem will, however, also be settled under the bilateral or multilateral agreements provided for in the Convention.

19. The following example may serve to illustrate this point. State A, in which entitlement to family benefits depends upon the father's occupation, concludes an agreement for the application of Section 1 or Section 2 of Chapter 6 of the Convention with State B where entitlement to family benefits depends upon the child residing in the territory of that State. If both States agree to apply Section 1 of Chapter 6 (family allowances), the allowances payable for children residing or being brought up in State B will be paid on the basis of the entitlement acquired in State A; in this case, the benefits or debt of State A will be exported, although benefits of only one kind will be paid, namely those of State A. On the other hand, if the two States decide to apply Section 2 (family benefits), the benefits will be paid directly in pursuance of the legislation of State B.

It is clear from this example that, according to the system chosen, the problems of accumulation of benefits which may arise should disappear as a result of the clarification provided by the legal arrangements set forth in Chapter 6 of the Convention. It is for this reason that Article 58 of the Convention provides that bilateral or multilateral agreements designed to give effect to the provisions of Section 1 or 2 of Chapter 6 of the Convention will also settle the problems of the accumulation of benefits of a similar nature. Only in the context of such agreements and the application of the system chosen will it be possible to define the problems of accumulation of benefits which may arise in practice, having regard to the legislations in question. Consequently, in the Agreement the only points remaining to be settled would be any problems of accumulation of benefits which might arise under one or other of these systems. Article 11 however refers exclusively to the position adopted in Section 1 of Chapter 6 of the Convention; in other words, the system by which family allowances are paid on the basis of rights acquired in the competent State in the particular case where the father of one or more children for whom family allowances are payable works in a country which grants entitlement to such allowances, and the mother or another person acquires entitlement to family allowances for the same children by working in another country. To deal with this problem, Article 11 provides that the applicable legislation shall be that to which the main breadwinner is subject, except where children of persons who are subject to the legislation of a Contracting Party by reason of employment or occupation, reside or are brought up in the territory of that Party. In such a case, the legislation of that Party is applicable.

TITLE III – Application of the provisions of the Convention relating to the legislation applicable

Chapter 1

Article 12 – Formalities for workers seconded abroad

20. This article deals with the application of paragraphs 1 and 2 of Article 15 of the Convention which lays down certain formalities for employed persons who are seconded to work in the territory of another Contracting Party whether on land or at sea. It provides, in particular, that when the necessary conditions are satisfied, the institution designated by the competent authority to whose legislation the worker is subject, shall issue to the worker on his or his employer's request a certificate of temporary employment abroad. It also provides that where it becomes necessary to extend the temporary employment beyond 12 months, the employer shall submit an application accordingly. Where the relevant provisions of the national legislation so require, the employer must seek the worker's agreement before requesting the extension.

Article 13 – Provisions applicable when the employer is outside the territory of the Contracting Party whose legislation is applicable

21. This article, which deals with the application of Article 15, paragraph 1 (b) and (c) of the Convention, concerns the case where the legislation of a Contracting Party is applicable to a person whose employer is outside the territory of that Party. In such a case, and in order to determine which institution is competent, it provides that the said legislation shall apply as if that person were employed in his place of residence.

Article 14 – Requirements for exercise of the right of option provided for under paragraph 2 of Article 17 of the Convention

22. This article deals with the application of Article 17 of the Convention. It is concerned with the right of certain persons including domestic servants employed in diplomatic missions or consular posts, who are nationals of the State represented by the mission or post (accrediting State or sending State) to opt for the application of the legislation of that State instead of the legislation of the State in which they are employed. It lays down the rules under which this right of option may be exercised.

23. The expressions "accrediting State" and "sending State" which appear in paragraph 4 of this article refer to the same State, the first being used in the case of officials with diplomatic rank, the second in the case of consular agents.

TITLE IV – Adding together of periods of insurance and of residence

Article 15 – Rules for adding periods together

24. This article concerns the application of Articles 10, 19, paragraphs 1, 2, 3 and 4 of Article 28, Article 49 and paragraphs 1, 2 and 3 of Article 51 of the Convention. It refers to all the provisions in the Convention dealing with the adding together of periods of insurance or residence completed by the person concerned under the legislations of the Contracting Parties. Paragraph 1 provides as a general rule that the adding together of periods shall always apply in the case of long-term benefits (pensions), whereas for short-term benefits periods are added together only where this is necessary in order to give entitlement to such benefits. Since the Convention provides that certain schemes such as the special scheme for civil servants, are excluded from its scope (paragraph 4 of Article 2 of the Convention), it lays down as a general rule that periods completed under such civil service schemes are not to be taken into account for the purpose of totalisation. However, paragraph 2 of Article 15 of the Agreement provides that where in a given State a social security scheme other than that applicable to civil servants and falling within the scope of the Convention, takes account of periods completed under the Civil Service scheme, all the institutions concerned are likewise to take them into account. The following example may clarify this point: a person has spent part of his life in the territory of a Contracting Party as a civil servant, and the rest of his working life in the same country in another employment and was therefore subject to a general social security scheme. If the legislation of that State takes into account the periods that the person concerned has completed as a civil servant in order to calculate the amount of benefits due under the general scheme, such periods shall be taken into account for the purpose of totalisation.

25. In this connection it should be noted that it is obligatory on the institutions of the Contracting Parties to take into consideration contributions relating to periods of voluntary or optional continued insurance under the conditions laid down in Article 15, paragraph 4.

26. With regard to the reference in paragraph 4 of this article that "the contributions relating to such periods shall be considered as conferring entitlement to increased benefits under the said legislation", the following is the position:

The periods referred to in paragraph 4 are not taken into account for the calculation of pensions since these are periods of voluntary or optional continued insurance which overlap other periods which are already taken into account in the process of totalisation periods for the calculation of pensions. As regards such periods of voluntary or optional continued insurance which are not taken into account, each Contracting Party will be responsible for deciding how these may be taken into account under the national legislation in order to increase the pension determined in accordance with the rules of the Convention.

The purpose of this paragraph is to prevent periods of voluntary or optional continued insurance from being over-looked because they overlap periods of compulsory insurance and are not taken into consideration in view of paragraph 1 (b) of Article 15 of the Agreement. This was decided chiefly because the entitlement acquired by virtue of adding the periods of compulsory insurance together in the country where such voluntary or optional continued insurance has been paid might not be sufficient to give entitlement to a full pension on the basis of that country's legislation. It may also happen that periods of compulsory insurance completed on the territory of other Contracting Parties will be limited periods giving only partial entitlement.

Consequently, and with a view to reaching an equitable solution, it was agreed, when the Convention was being drawn up, that national authorities and institutions should be allowed to use such periods of voluntary or optional continued insurance to increase the benefits due to the person concerned. It should be specifically noted that a similar arrangement may also be applied in the context of a supplementary insurance if the relevant legislation provides accordingly.

TITLE V – Application of special provisions in the Convention

Chapter 1 – Sickness and maternity

Article 16 – Formalities to be complied with in applying the provisions of Article 19 of the Convention

27. This article concerns the application of Article 19 of the Convention; it specifies the manner in which the person concerned is to inform the competent institution of the periods of insurance completed under other legislations to which he was subject, starting with the last period completed. In order to speed up the payment of benefits, the obligation to supply the certificate provided for in paragraph 1 of this article rests upon the person concerned since he is in the best position to indicate the institution to which he was previously last subject.

Article 17 – Formalities to be complied with by a claimant of sickness and maternity benefits in kind who resides in the territory of a Contracting Party other than the competent State

28. This article, like Articles 18 and 19, concerns the application of Article 20 of the Convention which deals with the right to sickness and maternity benefits of persons residing in the territory of a Contracting Party other than the competent State. It should be noted that this article is not concerned with questions of finance, such as refunds, arising from the application of the Convention, as matters; of this kind will be settled by the Contracting Parties themselves through bilateral or multilateral agreements.

Article 18 – Provision of benefits in kind to frontier workers and to members of their families

29. This article contains special provisions to prevent any abuses arising from the application of Article 20 of the Convention which provides that frontier workers and members of their families are entitled to receive benefits in kind either in the territory of the competent State or in the State in which they reside. It stipulates in particular that certain medical supplies or laboratory analyses and examinations may be provided or carried out only in the territory of the Contracting Party in which they have been prescribed.

Article 19 – Payment of cash benefits for workers residing in the territory of a Contracting Party other than the competent State

30. This article relates to a problem similar to, that dealt with in Article 17 of the Agreement which is concerned with the provision of benefits in kind. It provides that in order to receive cash benefits under Article 20, paragraph 1 (b) of the Convention, the person concerned shall submit to the institution of the place of residence a certificate that he has ceased to work, or, as the case may be, a certificate of incapacity for work issued by the doctor attending him. He shall also submit any other documents required by the legislation of the competent State. This article also provides that the institution of the country of residence shall, by such administrative and medical supervision as may be necessary, assist the competent institution in verifying that the contingency has actually arisen and it shall forward all necessary documentation to the competent institution. The article, moreover, contains provisions to permit the competent institution to retain its rights to supervise and decide cases itself since it is that institution which bears the cost of the benefits. Other provisions in this article are concerned with the notification of termination of incapacity for work and with the determination of the date of termination of incapacity for work in cases where this is in dispute between the institutions concerned. In such cases it is provided that the date decided upon by the competent institution shall prevail.

31. Paragraph 8 sets out the manner in which the competent institution or the institution of the place of residence shall pay cash benefits. If these benefits are paid by the institution of the place of residence on behalf of the competent institution, the conversion of the amount of benefit to be paid by the institution of the place of residence shall be effected at the official rate of exchange prevailing on the first day of the month during which the benefit is paid. This provision was included in order to avoid increasing the work of the institutions, which otherwise would have to keep themselves constantly informed of any changes in the official rate of exchange in their respective countries.

Article 20 – Provision of sickness and maternity benefits in kind to persons in the territory of a Contracting Party other than the competent State

32. This article, like Articles 21, 22 and 23, concerns the application of Article 21 of the Convention in so far as it deals with the provision of sickness and maternity benefits in kind to persons in need of such benefits while in the territory of a Contracting Party other than the competent State. It particularly concerns two distinct categories of persons, i.e. workers seconded to work abroad, referred to in Article 15, paragraph 1 (a) (i) and paragraph 2 (a) of the Convention, and international transport workers. For those temporarily working abroad, Article 20 of the Agreement, in order to simplify the procedure, requires the submission of the certificate of temporary employment abroad as provided for in Article 12 of the Agreement. The case of international transport workers has been dealt with on the basis of the provisions contained in the Administrative Arrangement for applying the European Convention on Social Security for International Transport Workers. In order to ensure that the provision of benefits is not interrupted after the lapse of the thirty days laid down in paragraph 3, and to prevent as far as possible the provision of benefits not due, a ten days' time limit is provided for under paragraph 4 of this article, during which the competent institution must reply to the institution of the place of temporary residence.

Article 21 – Provision of benefits in kind in the territory of a Contracting Party other than the competent State to persons other than those working temporarily abroad or in international transport

33. This article concerns persons neither working temporarily abroad nor working in international transport, who are in need of the immediate provision of benefits during temporary residence in the territory of a Contracting Party other than the competent State.

34. Paragraph 1 of this article provides in particular that such a person shall request from the competent institution a certificate showing that he is entitled to such benefits, and the period during which he is so entitled, and shall submit it to the institution of the place of temporary residence which will comply with his request. Where the person concerned does not submit such a certificate on his own initiative, the institution of the place of temporary residence shall apply for it to the competent institution.

35. Paragraph 2 of this article, like paragraph 6 of Article 17 of the Agreement, reaffirms the need to let the competent institution know the date of entry into the hospital of the person concerned, the probable duration of his stay there and the date of discharge.

Article 22 – Provision of benefits in kind in the territory of a Contracting Party other than the competent State to persons who have already been admitted to benefits in the territory of the competent State

36. Paragraph 1 of this article concerns the cases covered by Article 21, paragraph 1 (b) (i) of the Convention, whereby persons entitled to draw benefits from an institution of a Contracting Party are authorised to return or to transfer their residence to the territory of a Contracting Party other than the competent State and to continue receiving benefits there. Article 22 of the Agreement provides that in order to continue drawing benefits in kind in the territory of the Contracting Party to which they have been authorised to go, the persons concerned shall present to the institution of their place of temporary residence or residence a certificate issued by the competent institution stating that they are entitled to continue receiving these benefits in accordance with the legislation of the competent State, and where appropriate, specifying the period for which the benefits may be provided.

37. In the event of hospitalisation of such persons, paragraph 2 of this article provides for the application, *mutatis mutandis*, of the provisions of Article 17, paragraph 6 of the Agreement.

38. Paragraph 3 of this article concerns persons who are authorised to proceed to the territory of a Contracting Party other than the competent State in order to receive there the care which their condition requires. In such cases paragraphs 1 and 2 of this article shall apply *mutatis mutandis*.

Article 23 – Provision of benefits in kind to members of the family of persons covered by Articles 21 and 22 of the Agreement

39. Since Article 21, paragraph 3 of the Convention provides that members of a family in the circumstances referred to in paragraph 1 of that article are entitled to benefits in kind, Article 23 of the Agreement lays down specifically that in this case the procedure for establishing the entitlement to benefits is the same as that provided in the case of a direct beneficiary in Articles 21 and 22 of the Agreement.

Article 24 – Payment of cash benefits to persons temporarily residing in the territory of a Contracting Party other than the competent State

40. This article relates to the payment of cash benefits to persons; referred to in Article 21, paragraph 1 (a) (ii) of the Convention, i.e. persons who claim such benefits while temporarily residing outside the territory of the competent State. It is modelled on Article 19 of the Agreement which deals with the payment of cash benefits to persons seconded abroad, and to international transport workers.

Article 25 – Certificates regarding members of the family of the persons concerned residing in the territory of a Contracting Party other than the competent State

41. This article concerns the application of Article 22, paragraph 4 of the Convention, which provides that where the amount of cash benefits varies according to the number of members of the family, all such members, including those residing in the territory of a Contracting Party other than the competent State, shall be taken into account in assessing the amount of such benefits. The purpose of the article is to permit such assessment on the basis of the total number of members of the family concerned. To this end, the article requires the submission of a certificate normally issued by the social security institution of the State where the members of the family of the person concerned reside. However, in order to facilitate assessment procedure, Article 25 paragraph 3 provides that the certificate concerning the members of the family issued by the social security institution may be replaced by recent civil status documents containing the necessary details, provided that such documents are normally issued by an authority of the State in which the members of the family of the person concerned reside.

Article 26 – Provision of sickness and maternity benefits in kind to unemployed persons in the territory of a Contracting Party other than the competent State

42. This article deals with the application of Article 23 of the Convention, which provides that unemployed persons receiving unemployment benefits from an institution, and accordingly entitled to sickness and maternity benefits in kind, may receive such benefits even if they reside in the territory of another Contracting Party. Since the case is similar to that provided for under Article 17 of the Agreement, this article simply refers to those provisions.

Article 27 – Provisions of benefits in kind to pensioners and to members of their family

43. This article concerns the application of Article 24 of the Convention and governs, in particular, the provision of benefits in kind to pensioners and to members of their family residing in the territory of a Contracting Party where there are no institutions responsible for paying pensions. The provisions of the article follow closely those of Article 17 of the Agreement which deal also with a case of uninterrupted residence in the territory of a Contracting Party other than the competent State. Article 27 provides in particular:

- that the pensioner and the members of his family shall register with the institution of the place of residence;
- that they shall submit a certificate that they are entitled to benefits in kind from, one of the institutions responsible for paying pensions;
- that they must periodically renew proof of their entitlement, by presenting a receipt of the counterfoil of a money order relating to the latest pension payment;
- that the pensioner himself or the members of his family shall inform the institution of the place of residence of any change which might affect their entitlement to benefits in kind; for example, suspension of a pension.

44. The provisional registration provided for in paragraph 2 of this article cannot be considered as obligating the institution of the place of residence to provide the benefits concerned. Neither can it be invoked against the institution responsible for the provision of benefits in kind because such provisional registration is effected only on the authority of the institution of the place of residence without prejudice to entitlement to benefits.

Article 28 – Provision of benefits in kind to members of a pensioner's family not residing in the territory of the same Contracting Party as the pensioner

45. This article concerns the application of Article 24, paragraph 4, of the Convention. It deals with the case of members of a pensioner's family who reside in the territory of a Contracting Party other than that in which the pensioner himself resides. In such a case, it provides that in order to receive benefits in kind in the territory of the State in which they reside, the persons concerned shall register with the institution of that Contracting Party, submitting the supporting documents required by the legislation which that institution applies, as well as a certificate similar to that provided for under Article 27, paragraph 1 of the Agreement.

46. Paragraph 2 of this article describes the certificate which the members of a pensioner's family shall submit when applying for benefits in kind.

47. Paragraphs 3 and 4 concern, respectively, the exchange of information between the institution of the place of residence of the members of the family and that of the place of residence of the pensioner, and the information that the members of the family shall submit to the institution of the place of residence when such information may entail a modification of their rights to benefits in kind.

Article 29 – Provision of benefits in kind to pensioners and to the members of their family while temporarily residing in the territory of a Contracting Party

48. This article deals with the application of Article 24, paragraph 6, of the Convention. Like Articles 27 and 28 of the Agreement, it concerns the provision of benefits in kind to pensioners and to members of their family who require such benefits during a period of temporary residence in the territory of a Contracting Party other than the competent State. Paragraph 2 of this article provides that in the event of hospitalisation of these persons, the provisions of Article 17, paragraph 6, of the Agreement shall apply, *mutatis mutandis*.

Article 30 – Refund of the cost of benefits in kind obtained during temporary residence in the territory of a Contracting Party other than the competent State where such refund is claimed after the person concerned has returned to the territory of the competent State

49. This article deals with the case where the person concerned applies to the institution of the competent State for refund of the cost of medical expenses incurred by him during temporary residence in the territory of a Contracting Party other than the competent State.

It concerns in particular the following categories of persons:

- workers seconded abroad and workers in international transport,
- other persons who needed immediate medical treatment or benefits while temporarily resident in the territory of a Contracting Party other than the competent State, and
- persons who, while entitled to benefits in kind from an institution, have been given permission to undergo treatment in the territory of a Contracting Party other than the competent State,

whenever such persons have not complied beforehand with the requirements of paragraphs 1, 2 and 5 of Article 20 and of Articles 21 and 22 of the Agreement, i.e. when they are unable to submit the certificate.

50. The article provides that in such circumstances the refund shall be made only in accordance with the scale of reimbursement applied by the institution of the Contracting Party in whose territory the person concerned resided temporarily when he received the benefits for which he claims the refund.

51. Paragraph 2 of this article deals with the administrative assistance the Contracting Parties shall furnish to each other concerning the scales of reimbursement applicable. It provides that the institution of the place of temporary residence shall furnish to the competent institution, on request, the necessary information regarding such scales.

Article 31 – Application of the provisions concerning the maximum period for which benefits are provided

52. This article deals with the application of Article 25, paragraph 3 of the Convention, which provides that where the legislation of a Contracting Party fixes a maximum period for the provision of benefits, account may be taken of the period during which benefits have already been provided by the institution of another Contracting Party for the same case of sickness or maternity. In order to ensure the necessary co-operation between the institutions concerned, this article provides that the institution providing such benefits may, where necessary, ask the institution of the Contracting Party which has already provided the benefits, for whatever relevant information it may require. If, for any reason, the formalities referred to in paragraphs 1, 2 and 3 of this article could not be complied with during a period of temporary residence in the territory of a Contracting Party other than the competent State, the provisions of Article 24 shall apply, *mutatis mutandis*.

Chapter 2 – Invalidity, old age and death (pensions)

Article 32 – Submission of claims for the payment of invalidity, old age and survivors' pensions

53. The purpose of this article is to determine the institution to which the person concerned must apply in order to receive the benefits provided for in Articles 28 to 34 of the Convention concerning payment of invalidity, old age and survivors' pensions. It provides that, in such cases, he must apply to the institution of the place of residence since this is the one which he can most easily contact.

54. If the person concerned or the deceased has not been subject to that legislation, the article provides that the institution of the place of residence shall transmit the claim to the institution of the Contracting Party to which he or the deceased has been last subject. When sending the claim, the institution of the place of residence shall indicate the date on which it has been submitted. That date shall then be considered as the date of submission of the claim to the institution to which the person concerned or the deceased was last subject.

55. Paragraph 2 of this article is concerned with the case of a person who is resident in the territory of a Contracting Party to whose legislation neither he nor the deceased person has ever been subject. It provides that, in this case, the person concerned may apply to the institution to which he, or the deceased person, in the event of an application for survivors' benefits, was last subject. It should be noted that even in this event he may avail himself of the services of the institution of the place of residence to forward his claim.

Article 33 – Form and procedure for the submission of claims

56. This article specifies the manner in which the claims referred to in the previous article shall be made. In order to facilitate the work of an institution responsible for paying the pension, it states that such claims shall be accompanied by supporting documents in the form required by the legislation of the Contracting Party in whose territory the claimant resides, since it is to an institution in that territory that the person concerned submits his claim. In the case referred to in Article 33, paragraph 2, i.e. when the claimant of the deceased has not been subject to the legislation of the Contracting Party in whose territory the claimant resides, it is likewise provided that in such a case the claim shall be accompanied by supporting documents and made in conformity with the legislation of the State to which the claimant or the deceased was last subject. It also provides that the information supplied by the claimant must be officially provided by the competent bodies of the country of residence. Finally, Article 33 states that the claimant shall, as far as possible, indicate the institution or institutions to which he has been subject during his working life or, where appropriate, the employer or employers for whom he has worked. This latter provision is intended to facilitate subsequent work by the examining institution, in cases where it is necessary, for the purpose of determining both entitlement and the amount of the pension payable to refer to periods of insurance completed under other legislations.

57. The expression "authorities" in sub-paragraph (b) of Article 33 covers not only social security institutions, but other authorities such as municipal authorities, police etc.

Article 34 – Certificates regarding members of a claimants family who reside in the territory of a Contracting Party other than the competent State

58. Article 34 contains a provision similar to that in Article 25 of the Agreement, whereby in order to benefit from the provisions of Article 30, paragraph 3, of the Convention, the claimant is required to submit a certificate indicating the members of his family who are to be taken into account for the purpose of calculating benefits.

59. As the provisions of Article 25, paragraphs 2 and 3 are to apply, *mutatis mutandis*, the claimant may instead, if he so wishes, submit civil status papers instead of the certificate of the members of the family referred to in paragraph 1 of this article.

Article 35 – Procedure for establishing the degree of invalidity

60. In accordance with the terms of this article, the institution responsible for determining the degree of invalidity must take account of the medical or administrative information furnished by institutions of other Contracting Parties.

61. It is understood that, in conformity with Article 64, paragraph 2 of the Convention relating to administrative assistance given to each other by authorities and institutions of the Contracting Parties, no charge shall be made for supplying information or for medical examinations carried out at the request of an institution. However, the competent authorities of the Contracting Parties may agree to the reimbursement of expenses. The article further provides that each institution concerned may call for an examination of the claimant by a doctor of its choice, in which case the expenses incurred are to be borne by the institution requesting the examination.

Article 36 – Examination of claims

62. This article provides that all claims for benefit are to be examined other by the institution of the place of residence, or if the claimant or the deceased person was last affiliated in the country of residence, by the institution to which he was last affiliated. This institution, which has a centralising function, is described as the "examining institution".

63. Under the terms of paragraph 2 of the article, that institution shall immediately notify claims for benefits to all other institutions concerned.

Article 37 – Use of model forms for examination of claims

64. Examining institutions are required by this article to use a model form setting out all particulars necessary for assessment, especially the details and total of the periods to be taken into consideration.

Article 38 – Circulation of forms referred to in Articles 36 and 37 of the Agreement

65. The provisions of this article are intended to prescribe the procedure to be followed in dealing with the forms referred to in Articles 36 and 37 of the Agreement. The examining institution sending out the forms must first state thereon the periods of insurance and/or residence completed under its legislation, and subsequently transmit the forms to the other institution(s) concerned.

66. When only one other institution is involved, that institution shall complete the form and assess immediately the benefit for which it is liable. For this purpose it must first state the theoretical and the actual amounts and, where appropriate, the amounts which would be due solely on the basis of the periods completed under its own legislation. It must then return the form to the examining institution. Where two or more other institutions are involved, each shall complete the form indicating the periods of insurance or residence completed under the legislation it applies and return the form to the examining institution. That institution shall send the completed form to the other institutions involved. These institutions shall then assess entitlement indicating on the form the theoretical and the actual amounts and, where appropriate, the actual amounts which would be due under their national legislation alone, (this latter figure might be necessary in order to determine the differential supplement). Having been dealt with by all these institutions, the form is then returned to the examining institution.

67. Article 38 further provides that when the examining institution is aware that the career of the person concerned includes periods of insurance or residence of less than one year or from one to five years, it must inform the other institutions accordingly, so that they can apply Article 31 or Article 32 of the Convention.

Article 39 – Cases where benefits may be paid without the relevant form having been completed by all the institutions concerned

68. This article is intended to speed up those payments of benefit which can be made without waiting for the relevant form to be completed by all the institutions concerned. It also ensures that the total benefit finally paid shall not be less than that provisionally paid to the beneficiary.

69. The first two paragraphs mention the cases where benefits are payable at once:

1. Cases in which entitlement to benefit can be assessed by an institution solely on the basis of periods completed under its legislation;
2. Cases where the institution may apply Article 29, paragraph 5, of the Convention, which provides for the possibility of direct calculation.

70. As regards paragraph 2 of this article, it is stressed that if the institution paying the benefit in accordance with Article 29, paragraph 5, of the Convention is not the examining institution, it shall inform the latter institution of payments made, and withhold the amount of any arrears for the benefit of any institution which may have paid amounts in excess of what was due, in accordance with the procedure laid down under Article 39, paragraph 7 of the Agreement.

71. Paragraphs 3, 4, 5, 6 and 7 are intended to ensure that the amount paid will in no case exceed the final amount; the maximum amount is laid down in Article 34 of the Convention concerning the differential supplement. The article accordingly provides that it shall be possible for deductions to be made so as to keep the provisional amounts paid below the maximum benefit due under a single national legislation. When the final settlement of the benefits due is in process, the institutions concerned may withhold the amount of overpayments made from the amount of any arrears due to the person concerned.

Article 40 – Differential supplements

72. This article concerns cases in which differential supplements are payable by several institutions of Contracting Parties. Paragraph 1 provides that the examining institution shall make a comparison, on the basis of the information provided by all the institutions concerned, between the final amount and the amount calculated on national periods alone; establish the largest differential supplement; and apportion the amount payable among the institutions concerned according to the ratio between the differential supplement which each institution concerned would be liable to pay on its own account and the total amount of the supplements which all the institutions would be required to pay. Paragraph 2 states how amounts expressed in the different national currencies of the Contracting Parties are to be converted. In order to facilitate the work of the institutions concerned, this article provides that conversion shall be affected at the rate of exchange in force on the first day of the month in which the final payment of benefits due is made.

Article 41 – Re-calculation of benefit when further entitlement arises

73. This article is concerned with cases in which benefit already paid has to be recalculated again because entitlement arises under the legislation of another Contracting Party; it states that in such cases the provisions of Articles 38 and 40 of the Agreement shall apply, *mutatis mutandis*.

Article 42 – Communication of decisions

74. This article describes the last stage in the implementation of the co-ordination machinery. It provides that each of the institutions concerned shall inform the claimant, after consulting the examining institution, of the decisions taken with respect to his claim for benefit, as soon as such decisions can be regarded as final. A copy of these decisions must be sent simultaneously to the person concerned and the examining institution. Every decision shall state that the assessment is only provisional and give particulars of the procedure and time limits for appeal provided for under the legislation by the institution which has taken the decision. Time limits for appeal shall take effect only from the date on which the person concerned receives notification of the decisions. After final settlement of the claim, the examining institution shall sum up and inform the person concerned of all the decisions taken by the institutions in question.

Article 43 – Measures to expedite payment of benefits

75. This article indicates administrative measures which may be taken to expedite payment of benefits, some of the measures being based on provisions which already exist in some national legislations. It provides that if a person who has previously been subject to the legislation of one or more Contracting Parties becomes subject to the legislation of a further Contracting Party, the competent institution of the latter shall approach the liaison body (or bodies) of the other Contracting Parties (referred to in Annex 4 of the Agreement) to obtain all the information which will be necessary when benefit falls due. Sub-paragraph (b) of the same article, which concerns only old age pensions, suggests that the institutions involved reconstitute the case history of the person concerned, at his own request or at that of the institution to which he is affiliated, one year before he reaches pensionable age.

Article 44 – Administrative and medical supervision

76. This article covers certain types of invalidity, old age and survivors' benefits whose provision normally requires administrative or medical supervision. It provides that, where the person concerned is not residing in the territory of a Contracting Party in which the institution responsible for paying the benefits is situated, that institution may, for the purpose of such supervision, avail itself of the services of the institution of the place of temporary residence or residence; in such cases the said institution shall act in conformity with the legislation it applies.

77. The article, however, provides, like Article 35 of the Agreement, that the institution responsible for payment may have the beneficiary examined by a doctor of its choice. This examination will be carried out at its own expense, since it goes beyond the reciprocal administrative assistance provided for in Article 64, paragraph 2 of the Convention; nor is it covered by Article 67, paragraphs 1 and 2 of the Convention, as the latter provisions concern "medical examinations" only and are therefore not applicable to the normal medical supervision of a beneficiary by an institution.

78. It should be noted that the expression "medical examination" means a series of procedures which are not always exercised directly by an institution but on behalf of an institution, for example by a panel of specialists where occupational diseases are concerned.

79. It should be noted, too, that for the application of paragraph 2 of this article, and in order to avoid unnecessary research work by the institutions, it is provided that research shall be undertaken only at the request of the institution liable for payment.

Article 45 – Resumption of the provision of benefits after suspension

80. This article concerns the exchange of information and the co-operation that institutions must give each other when a person who resides in the territory of a Contracting Party other than the competent State again becomes entitled to benefit after a period of suspension. It provides that the institutions concerned shall provide each other with all the necessary information and administrative assistance.

Articles 46 to 52 – Payment of benefits

81. These articles contain administrative provisions for the payment of invalidity, old age and survivors' pensions. They govern the relationship between the institutions responsible for the payment of benefits and the institution which is required to effect the payment in practice and specify the conditions the beneficiary must comply with in order to receive benefits.

82. It should be noted that the competent institutions can pay pensions directly to the beneficiary in the territory of another Contracting Party. The relevant articles deal with the problem, of the payment of benefits by a competent institution through the institutions of the Contracting Party in whose territory the beneficiary resides. Since the Convention contains provisions governing the payment of invalidity, old age and survivors' benefits which become applicable immediately after its entry into force, it is provided that these articles of the Agreement shall also become immediately applicable after the entry into force of the Agreement. However, it should be noted that to make the system more flexible, the Contracting Parties may adopt by mutual agreement, under the terms of Article 5 of the Agreement, methods of payment differing from those laid down in Articles 46 to 52. Alternatively they may continue the methods of application agreed earlier among themselves, by including these in Annex 5 of the Agreement. Where these methods of application are contained in the texts of social security agreements, concluded earlier between the Contracting Parties, they can be continued by including them in Annex III of the Convention.

Chapter 3 – Occupational injuries and diseases

83. This chapter deals with the administrative provisions governing the application of the articles in the Convention relating to compensation for occupational injuries and diseases. The wording of the articles in Chapter 3 has been brought into line with that of the corresponding articles on sickness and maternity. These provisions have been set out in two separate chapters in the interests of clearness and simplicity and to avoid excessive reference to previous articles.

Article 53 – Formalities to be observed in order to obtain benefits in kind for occupational injuries and diseases in the territory of a Contracting Party other than the competent State

84. This article deals with the application of Article 38, paragraph 1 (a), of the Convention regarding the provision of benefits in kind to workers suffering from an occupational injury or an occupational disease who reside in the territory of a Contracting Party other than the competent State.

85. The article provides that in order to receive such benefits, the worker shall submit to the institution of his place of residence a certificate of entitlement to the benefits, issued by the competent institution. Where the legislation of the competent State so provides, the worker shall in addition submit to the institution of his place of residence an acknowledgement of the notification of his occupational injury or disease.

86. If the person concerned fails to submit the documents, the institution of the place of residence shall apply for them to the competent institution, but shall meanwhile provide the benefits in kind available in case of sickness of the worker concerned in so far as he is entitled to such benefits. A worker residing in the territory of a Contracting Party other than the competent State, shall receive sickness benefits in kind if he is entitled to such benefits under the legislation of the competent institution. If that right does not derive from this legislation or from the application of the chapter in the Convention on sickness and maternity benefits (because the bilateral or multilateral agreements to which the application of this chapter is subject are not yet in force), it can nevertheless derive from earlier agreements kept in force under Article 5, paragraph 2, of the Convention. The purpose of this provision is to ensure that sickness benefits in kind are provided as quickly as possible, even if a worker's entitlement to benefits in kind in the event of occupational injury or disease has not yet been formally established.

87. Paragraph 3 of this article concerns the period for which the certificate for seasonal workers remains valid. It provides that this certificate shall remain valid for the expected duration of the seasonal work unless in the meantime it is cancelled by the competent institution. Paragraph 4 of this article provides that a claim for benefits in kind shall be accompanied by any documents normally required for the provision of such benefits under the legislation of the Contracting Party in whose territory the worker resides. Both the worker and the competent institution shall inform the institution of the place of residence of any change likely to affect the entitlement to benefits in kind.

88. Paragraph 7 of this article contains specific rules intended to avoid certain abuses which might arise out of the application of Article 20 of the Convention, which states that frontier workers and members of their family may receive benefits in kind either in the competent State or in the country of residence. It provides in particular that certain medical supplies can be made available, or that certain laboratory analyses and examinations can be carried out, only in the country in which they have been prescribed.

Article 54 – Formalities to be observed in order to obtain cash benefits in the case of occupational injury or disease in the territory of a Contracting Party other than the competent State

89. This article deals with the application of Article 38, paragraph 1 (b), of the Convention. It concerns the same case mentioned in the preceding article but in relation to the payment of cash benefits other than pensions.

90. In order to obtain the cash benefits in question, a worker shall submit to the institution of his place of residence, within three days of becoming incapable of work, a certificate to the effect that he has ceased to work or, if necessary, submit a certificate of incapacity for work issued by the doctor attending him. He shall submit with his application any other documents required by the legislation of the competent State for the type of benefit claimed.

91. Paragraph 2 relates to the case where the legislation of the country of residence does not provide for a certificate of incapacity for work issued by a doctor, and stipulates that in such cases the worker shall apply directly to the institution of the place of residence within the time limit set by the legislation it applies. That institution shall at once seek medical confirmation of incapacity for work and issue the certificate. The institution of the place of residence shall immediately transmit to the competent institution the documents referred to in paragraphs 1 and 2 of this article, indicating at the same time the probable duration of incapacity for work.

92. Paragraph 4 of this article provides that the institution of the place of residence shall undertake as soon as possible a medical examination of the worker and make the necessary administrative enquiries regarding the case as if the worker were insured by it, and shall notify the competent institution without delay of the findings. This provision is intended to safeguard the interests of the competent institution; the medical examination and administrative enquiry assure the institution responsible for paying benefits to the worker that these will be paid regularly and in accordance with the legislation of the competent State.

93. Paragraph 6 sets out rules for cases where two different dates are set by the institution of the place of residence and the competent institution for the termination of incapacity for work. In such cases, the date set by the competent institution shall apply.

94. Paragraph 8 sets out the manner in which the competent institution or the institution of the place of residence shall pay cash benefits. If these benefits are paid by the institution of the place of residence on behalf of the competent institution, the conversion of the amount of benefit to be paid by the institution of the place of residence shall be effected at the official rate of exchange prevailing the first day of the month in which the benefits are paid. This provision was included to avoid unnecessary work for the institutions which otherwise would have had to keep themselves constantly informed of any changes in the official rate of exchange in their respective country.

Articles 55 to 58 – Payment of benefits in cash or in kind to workers with an occupational injury or occupational disease who temporarily reside in, return to, transfer their residence to, or go to receive treatment in the territory of a Contracting Party other than the competent State

95. These articles deal with the application of Article 40 of the Convention which relates to cases where workers with an occupational injury or an occupational disease are in need of cash benefits or benefits in kind while temporarily residing in the territory of a Contracting Party other than the competent State, or when they return to or transfer their residence from the competent State to the territory of a Contracting Party other than the competent State. The articles also cover cases where victims of an occupational injury or disease are authorised by the competent institution to go to the territory of another Contracting Party in order to receive the treatment required by their condition.

96. Article 55 sets out special rules applying to the provision of benefits in kind for workers seconded abroad, or employed in international transport. These two categories of workers require special provision because of the particular conditions which apply in their cases.

97. It should be noted that, contrary to the provisions of Article 53, paragraph 1, Article 55, paragraph 3 provides that the institution of the place of residence shall provide benefits in kind for up to thirty days even though it has not yet received a certificate from the competent institution that the worker concerned is entitled to receive such benefits. Article 53, paragraph 4 provides that a worker must show that he is entitled to benefits in kind so that the institution of the place of residence may provide such benefits. However, in the case of workers seconded abroad or employed in international transport referred to, in Article 55, it is assumed that they are entitled to such benefits. This assumption is established in accordance with the provisions laid down in the European Convention on Social Security for Workers in International Transport, of 8 July 1956, and its administrative arrangement.

If, after the provision of benefits in kind, in accordance with Article 55, paragraph 2, the recipient proves unable to establish his entitlement to them, the matter falls to be settled under Article 87 of the Agreement.

98. Article 56 concerns the application of the rules regarding the provision of benefits in kind to workers with an occupational injury or disease temporarily residing in the territory of a Contracting Party other than the competent State, by the institution of the place of temporary residence, and at the expense of the competent institution. The article provides that in order to obtain such benefits, the worker shall submit to the institution of the place of temporary residence a certificate issued by the competent institution that he is entitled to the benefits claimed. If the worker does not submit such a certificate, the institution of the place of temporary residence shall request it from the competent institution. The latter institution shall indicate in this certificate the maximum period for which the benefits in kind may be provided in such a case under the legislation it applies.

99. Article 57 deals with the continued receipt of benefits in kind by workers who have been authorised by the competent institution to transfer their residence or to return to the territory of a Contracting Party other than the competent State. In such cases, the worker shall submit to the institution of his place of residence a certificate issued by the competent authority to the effect that he is entitled to continue receiving the benefits claimed. This certificate may be issued after the worker has left the territory of the Contracting Party where the competent institution is situated if, for unavoidable reasons, it was impossible to provide it sooner.

100. Article 57, paragraph 3, provides that the rules governing the provision of benefits in kind to workers who have been authorised by the competent institution to transfer their residence or to return to the territory of a Contracting Party other than the competent State shall apply, *mutatis mutandis*, to workers authorised by the competent institution to go to the territory of a Contracting Party other than the competent State in order to receive treatment.

101. The provisions contained in Article 58 are similar to those contained in Article 25 of the Agreement concerning sickness and maternity benefits. Since the payment of cash benefits other than pensions presents fewer problems than the provision of benefits in kind, Article 58 of the Agreement suggests a single solution for the payment of the benefits provided for in the three cases covered by Article 40, paragraph 1 (a), (b) and (c) of the Convention, i.e. if the persons concerned temporarily reside in, return to, transfer their residence, or go for treatment to, the territory of a Contracting Party other than the competent State.

Articles 59 and 60 – Relations between the competent institution and the institution of the place of temporary residence or residence

102. The provisions in these articles concern the application of Articles 38 to 40 of the Convention. Article 59 contains provisions for regulating relations between the competent institution and the institution of the workers place of temporary residence or residence, especially where the occupational injury has been sustained or the occupational disease has been contracted in the territory of a Contracting Party other than the competent State. They set out the procedures concerning the declaration of an occupational injury or disease and the submission of medical certificates.

103. Article 60 deals with the problems that arise when the competent institution contests the nature of the injury or disease, as covered by Article 38, paragraph 1, or Article 40, paragraph 1, of the Convention. In such circumstances the institution of the place of temporary residence or residence which has already provided benefits in kind shall continue to, provide the worker concerned with such benefits in so far as he may be entitled to them under the sickness insurance scheme until a final decision has been reached as to the nature of the origin of his entitlement to benefits. If it proves, when a final decision is reached, that an occupational injury or disease is not involved, the institution of the place of temporary residence or residence shall continue to provide the benefits in kind as in the case of sickness insurance if the worker concerned is entitled to such benefits. In the contrary case, any benefits which the worker has received as for sickness shall be regarded as benefits relating to an occupational injury or disease.

Article 61 – Procedure to be followed by the institution of a Contracting Party for assessing the degree of incapacity when previous occupational injuries or diseases under the legislation of another Contracting Party are taken into account

104. This article is concerned with the application of Article 43, paragraph 4 of the Convention in cases where the legislation of a Contracting Party provides that previous occupational injuries or diseases shall be taken into account when assessing the degree of incapacity under the legislation of another Contracting Party.

105. Article 61 of the Agreement provides that all necessary information relating to earlier occupational injuries or diseases shall be supplied by the worker to the institution concerned, whatever the degree of incapacity resulting from such earlier cases. To this end, Article 61, paragraph 2, authorises the competent institution to apply directly to any other institution previously competent for whatever information it considers necessary.

Article 62 – Application of the provisions concerning the maximum period for which benefits are provided

106. This article deals with the application of Article 44, paragraph 2, of the Convention, concerning the maximum period for which benefits in cash and in kind for occupational injuries or diseases are provided to workers who either reside in the territory of a Contracting Party other than the competent State, or temporarily reside, return, transfer their residence, or go to the territory of a Contracting Party other than the competent State to receive treatment.

107. Article 62 contains provisions similar to those laid down for the receipt of sickness and maternity benefits in Article 31 of the Agreement. In all such cases, contact must be established between the institution which provided the benefits and the institution responsible for providing them. To this end, the article lays down that the institution responsible for providing the benefits may, as necessary, ask the institution of any other Contracting Party concerned for information regarding the length of time for which the latter institution has already provided benefit in respect of the same occupational injury or disease.

Article 63 – Certificate regarding members of a worker's family residing in the territory of a Contracting Party other than the competent State

108. This article deals with the application of Article 45, paragraph 3, of the Convention, which provides that where the legislation of a Contracting Party prescribes that the amount of the cash benefit shall vary according to the number of members of the family, the competent institution shall take account of all such members, including those residing in the territory of a Contracting Party other than the competent State, when paying benefit for an occupational injury or disease. To this end, this article provides that the claimant shall submit to the competent institution a certificate regarding the members of his family residing in the territory of a Contracting Party other than the competent State. This certificate shall be issued by the institution of the place of residence of these members of the family which is competent in relation to sickness benefit, or by any other institution designated to do so. It is also provided that the provisions of Article 25, paragraphs 2 and 3 of the Agreement shall apply, *mutatis mutandis*.

Articles 64 and 65 – Rules regarding the compensation of workers who have contracted an occupational disease and were exposed to risk in the territory of several Contracting Parties

109. These articles deal with the application of Article 46 of the Convention, regarding the compensation of workers who have contracted an occupational disease and were exposed to risk in the territory of several Contracting Parties. Article 46, paragraph 1, of the Convention provides that the benefit due to a worker or to the survivors of a worker who was exposed to the risk of occupational disease in the territory of several Contracting Parties shall be awarded in accordance with the legislation of the Party in whose territory the worker was last engaged in an occupation likely to cause such a disease. Article 64 of the Agreement is accordingly designed to enable the institution of that Party to assemble all the information necessary to determine the compensation payable.

110. Article 64, paragraph 3, is concerned with cases where the institution of the Contracting Party in whose territory the worker was last engaged in an occupation likely to cause the occupational disease finds that he or his survivors are not entitled to benefits under the legislation it applies. To avoid interruption of the process of compensation this paragraph provides that in such cases the institution referred to above shall immediately send full information on the case to the institution in whose territory the worker concerned was last engaged in an occupation likely to cause the disease in question. The latter institution shall consider whether the worker is entitled to benefits under the legislation it applies and, if not, shall send the records of the case, containing all information that it or the former institution has assembled, to the competent institution of a third Contracting Party in whose territory the worker may have engaged in an occupation of a nature likely to cause the occupational disease in question.

111. Article 65 sets out rules for cases where an appeal has been lodged against a decision by the institution of a Contracting Party to reject a claim. To avoid any delay in providing compensation it provides that the institution concerned shall notify this development to the institution to which the claim was subsequently sent. That institution shall then consider whether the worker is entitled to benefits under the legislation it applies. If so, Article 65 provides that it shall make advance payments, the amount being determined in consultation with the institutions against whose decisions the appeal was lodged. If, after the appeal is settled, the institution is obliged to provide the benefits, it shall refund to the former institution the amount of the advance payments made.

Article 66 – Procedure to be followed in case of aggravation of an occupational disease

112. This article deals with the application of Article 47 of the Convention, regarding the aggravation of an occupational disease. It is intended to enable the institution to which the worker applies in the event of aggravation of his disease to obtain information as to any periods of occupational activity in which he was engaged which might have aggravated his disease, and as to any benefits which may have been provided earlier by the previous institution.

113. To this end, the worker concerned is required to provide the institutions from which he claims benefits with full information on any benefit previously received by him for the same occupational disease and of any occupations he has followed since the award of these benefits.

114. That institution may also request any information regarding the case, which it considers necessary, from any previously competent institution.

Articles 67 to 69 – Submission and examination of claims for pensions, administrative and medical supervision of claimants, and payment of pensions

115. These articles deal with the submission and examination of claims for pensions, administrative and medical examination of the claimant, and payment of pensions. The problems that arise in connection with the submission and examination of claims for pensions are similar to those in the case of old age pensions. Article 67 provides that the claimant may apply directly to the competent institution or to the institution of his place of residence, which shall then send his claim to the competent institution.

Chapter 4 – Death (grants)

116. This chapter deals with the provisions for applying Articles 49 and 50 of the Convention which relate to death grants.

Articles 70 and 71 – Formalities to be observed in order to obtain a death grant

117. Article 70 specifies the institution to which the person concerned should submit his claim for a death grant along with the supporting documents required by the legislation applied by that institution. It should be noted that the claimant may apply either to the competent institution or to the institution of his place of residence.

118. Article 71 sets out the conditions for adding together periods of insurance or residence completed under legislation other than that applied by the competent institution, to which the person giving rise to entitlement to a death grant was subject. In such cases, the claimant shall supply the competent institution with a certificate issued by the institution competent in matters of sickness or old age benefits to whose legislation the person giving rise to an entitlement to a death grant was previously last subject. This certificate is delivered to the person concerned on request. Like the provisions concerning other social security schemes, this article provides that should the person concerned not submit such a certificate, the competent institution shall apply for it to the latter institution.

Chapter 5 – Unemployment

119. This chapter deals with the provisions for applying the articles in the Convention relating to unemployment benefit.

Article 72 – Adding together of periods

120. This article deals with the application of Article 51 of the Convention which concerns the adding together of periods to be taken into account for the acquisition, maintenance or recovery of entitlement of unemployment benefit when the legislation of a Contracting Party makes entitlement conditional on the completion of a period of insurance, employment, other occupational activity or residence. It has been drawn up on the lines of corresponding articles on the adding together of periods for entitlement to other social security benefit.

Article 73 – Formalities to be observed in order to retain a right to unemployment benefits when transferring residence

121. This article deals with the application of Article 52 of the Convention, which provides that an unemployed worker satisfying the conditions prescribed by the legislation of one Contracting Party in respect of the completion of a qualifying period is likewise deemed to have satisfied the conditions prescribed in this respect by the legislation of any Contracting Party to whose territory he has transferred his residence. With regard to the application of these provisions, Article 73 of the Agreement states that the person concerned shall submit to the institution of his new place of residence a certificate that he satisfies the conditions prescribed by the legislation of the competent State. This article also sets out rules on problems concerned with the transmission of this certificate from one institution to another and, like the provisions concerning other social security schemes, it adds that if the worker concerned does not submit this certificate, the institution of his new place of residence shall apply for it to the competent institution.

Article 74 – Conditions governing the provision of unemployment benefit to unemployed persons residing in the territory of a Contracting Party other than the competent State at the time of their last employment

122. This article deals with the application of Article 53 of the Convention, which sets out the conditions under which unemployment benefit is provided for frontier workers and for other categories of workers (seasonal workers, travellers, commercial salesmen) who, during their last employment, were not residing in the territory of the Contracting Party to whose legislation they were subject. Article 74 of the Agreement contains certain clauses which make it possible to apply in these cases the provisions of the preceding articles of this chapter.

123. Paragraph 1 of this article concerns cases of total unemployment covered by Article 53, paragraph 1 (a) (ii) and (b) (ii) of the Convention. These provide that in such circumstances, the legislation of the place of residence of these workers shall be applied. To enable the institution of the country of residence to similarly apply provisions on adding periods together, as laid down in Article 72 of the Agreement, Article 74 provides that the institution of the place of residence shall be regarded as the competent institution.

124. Paragraph 2 of this article deals with the application of Article 53, paragraph 1 (b) (iii) of the Convention, regarding workers who have already become entitled to unemployment benefit from the institution to which they were last subject. Since reference is made to Article 52 of the Convention when applying the said paragraph 1 (b) (iii), i.e. unemployed workers in the above-mentioned situation are treated in the same way as unemployed workers transferring their residence from one State to another, Article 74 of the Agreement states that the provisions in Article 73 regarding the general rule are applicable, *mutatis mutandis*.

125. Paragraph 3 of this article concerns the application of Article 53, paragraph 2, of the Convention, which is intended to prevent accumulation of benefits provided by the Contracting Party in whose territory the unemployed worker was last employed and also by the Contracting Party in whose territory he resides, in the cases covered by Article 53, paragraph 1 (a) (i) and (b) (i) of the Convention. To this end, it provides for the communication of information concerning the worker's entitlement to benefit between the institution of the place of residence and the competent institution.

Article 75 – Procedure to be followed when taking into consideration periods during which unemployment benefit has been paid

126. This article concerns the application of Article 54 of the Convention, which provides that when the legislation of the State in whose territory the unemployed worker resides prescribes a maximum period for the award of benefits, the institution of that State may take account of any period during which benefit has already been provided since the last confirmation of his entitlement to benefit under the legislation of another Contracting Party. Article 75 of the Agreement is intended to facilitate the communication of relevant information so that the institution in question may know how long benefit has already been provided in another country. The provisions of this article correspond in general to those laid down for sickness and maternity, occupational injury and disease.

Article 76 – Procedure to be followed in establishing earnings when the unemployed worker has been employed in the territory of two or more Contracting Parties

127. This article relates to the application of Article 55, paragraph 1 of the Convention. When the legislation of a Contracting Party prescribes that unemployment benefit shall be calculated on the basis of the worker's previous earnings, the institution which applies this legislation shall take account only of the worker's previous earnings in the territory of the aforesaid

Party, or, if he was not last employed in that territory for at least four weeks, of the corresponding normal wage at the unemployed worker's place of residence for work equivalent or similar to his last occupation in the territory of another Contracting Party.

128. Article 76 of the Agreement concerns only the latter case. It is intended to enable the institution paying the benefits to collect the information it needs to assess work previously carried out in the territory of another Contracting Party in order that it may be able to calculate the corresponding wage for equivalent or similar work in the State where it is situated.

Article 77 – Certificates regarding members of a workers' family residing in the territory of a Contracting Party other than the competent State

129. This article concerns the application of Article 55, paragraph 2, of the Convention, which contains a rule also applicable in connection with sickness and maternity, and occupational injury and disease, whereby members of a worker's family residing in the territory of a Contracting Party are taken into account where the legislation of the competent institution takes the number of members in a family into consideration when assessing the amount of benefit.

130. Article 77 concerns the certificate to be provided by the unemployed person concerned regarding members of his family residing in the territory of a Contracting Party other than the competent State, and sets out a procedure similar to that contained in Articles 25 and 63 of the Agreement.

Chapter 6 – Family benefits

131. This chapter includes the provisions for applying the articles of the Convention which deal with family benefits.

Article 78 – Adding together of periods

132. This article deals with the application of Article 57 of the Convention, which concerns the adding together of periods to be taken into account in assessing entitlement to family benefits. The rule in Article 78 of the Agreement for adding these periods together is similar to that applicable for the provision of short-term benefits in connection with sickness and maternity, death and unemployment.

Article 79 – Procedure for providing family allowances when the children of the claimant reside in the territory of a Contracting Party other than the competent State

133. This article deals with the application of Article 59 of the Convention. It sets out the procedure to be followed in order to obtain family allowances when the children of the claimant reside in the territory of a Contracting Party other than the competent State. It governs the submission of claims for allowances, which must be sent to the competent institution directly by the person concerned or, if necessary, through his employer.

134. Paragraph 2 of this article contains provisions designed to make it possible for the competent institution, when applying Article 59, paragraphs 3 and 4, to acquire information regarding the amount of family allowances payable under the legislation of the Contracting Party in whose territory the children of the claimant are living or being brought up, in all cases where the competent institution is required to limit the amount of such allowances to the amount paid in the latter country. In order to simplify administrative work, the information obtained from the competent authority of the Contracting Party shall remain valid for three calendar months.

135. Article 79, paragraph 3, includes a provision designed to make it possible to certify the number of family members giving title to family allowances by means of a statement as to the family status of the members concerned issued by the competent registration authorities in the territory of the Contracting Party where they are living or being brought up, if such documents are normally issued by these authorities. If not, the claimant shall submit a statement as to his family status issued by the institution designated by the institution of the latter Party.

136. Paragraph 4 refers to the information to be provided, if necessary, by the claimant to identify the person to whom family allowances should be paid if they are not paid direct to the claimant himself.

137. Paragraph 5 concerns the obligation of the person concerned to inform the competent institution of any changes likely to affect the entitlement to benefit.

138. Paragraph 6 provides that the provisions in paragraphs 1, 3 and 5 of this article shall apply to workers seconded abroad as regards the payment of family allowances for their children.

Article 80 – Rules on accumulation of family allowances

139. This article concerns accumulation of family allowances. The first paragraph refers to the case in which allowances may be accumulated as the result of a change in the recipient's employment, other occupational activity, or residence from the territory of one Contracting Party to the territory of another Contracting Party in the course of the period during which the allowances are paid. It may happen that the person concerned may be able to claim

allowances twice over for the same child or children during the same quarter or month. In such cases, Article 80, paragraph 1, provides that family allowances payable by each of the institutions in question shall be reduced in accordance with the duration of the employment, other occupational activity or residence completed in the territory of one or other of the Contracting Parties. This paragraph co-ordinates daily or longer-term systems of payment.

Article 81 – Formalities to be observed in order to obtain family benefit in the territory of a Contracting Party other than the competent State

140. This article deals with the application of Article 61 of the Convention. It contains provisions enabling family benefit to be paid when members of the family reside in the territory of a Contracting Party other than the State to whose legislation the claimant is subject.

141. Article 81, paragraph 1, concerns the certificate issued by the competent institution to certify the right to family benefit when members of the family reside in the territory of a Contracting Party other than the competent State.

142. The provision contained in paragraph 2 is similar to that adopted in respect of benefits in kind in the event of sickness for members of the family residing in the territory of a Contracting Party other than the competent State. It is designed to simplify relations between institutions when ascertaining whether a person is entitled to benefit. The paragraph provides that the certificate necessary to prove entitlement shall remain valid until the institution of the place of residence is notified of its cancellation. However, in the case referred to in Article 81, paragraph 1 (c) of the Agreement, this certificate shall remain valid only for three calendar months from the date of issue.

143. Paragraph 3 deals with seasonal workers, and provides that the certificate shall remain valid for the whole expected duration of the seasonal work for which the worker is engaged, unless the competent institution notifies its cancellation to the institution of the place of residence.

144. Paragraphs 4 and 5 contain provisions co-ordinating the application of the legislation of the competent State and of the country of residence when these provide for payment of benefit at different intervals.

145. Paragraph 6 is intended to enable periods of employment or other occupational activity completed under the legislation of the competent State to be converted when these are expressed in units other than those used in the legislation of the Contracting Party in whose territory the members of the family reside. The conversion shall be effected in accordance with the rules laid down in Article 15, paragraph 3 of the Agreement.

146. Paragraph 7 provides that the institutions shall inform one another immediately when a person ceases to be entitled to family benefit.

147. Paragraph 8 requires members of a family to likewise inform the institution of their place of residence so that it is aware of any change likely to affect entitlement to benefit.

Article 82 – Rules for accumulation

148. This article also relates to the application of Article 61 of the Convention. It sets out rules relating to accumulation similar to those in Article 80 of the Agreement, i.e. preventing accumulation of family benefits when the members of the family change their residence from the territory of one Contracting Party to that of another Contracting Party during the course of a month or a calendar quarter.

149. With this object in view, it specifies that if either of the legislations provides for the payment of monthly or quarterly benefits, these shall be paid in proportion to the duration of residence of the members of the family in the territory of the Contracting Party in question during the month or quarter concerned.

150. As mentioned under Article 11 above, the question of accumulation causes fewer difficulties in the application of Section 1 of Chapter 6 of the Convention than in the application of Section 2, since in such circumstances benefits are by definition always granted under the legislation of the country of residence.

Article 83 – Formalities to be observed in providing family benefit when the members of the unemployed worker's family reside in the territory of a Contracting Party other than the competent State

151. This article deals with the application of Article 62 of the Convention, which provides that unemployed workers receiving unemployment benefit under the legislation of one Contracting Party are also entitled to family benefit for members of their family residing in the territory of another Contracting Party, provided that the legislation of the competent institution has recognised their entitlement to such benefit. Article 83 of the Agreement concerns the issuing of a certificate to the effect that the unemployed worker receives unemployment benefit from a competent institution and that he would be entitled to family benefit for the members of the family if he were residing with them in the territory of the competent State.

TITLE VI – Miscellaneous provisions

Article 84 – Mutual administrative assistance for the recovery of overpaid benefit

152. This article provides that the institution of any Contracting Party which had paid benefit to a person shall assist the institution of another Contracting Party in the event of the latter institution seeking recovery of any benefit overpaid. It should be noted that the assistance referred to in this article is confined to material administrative assistance between the institutions concerned and excludes, for instance, any legal proceedings.

Article 85 – Recovery of excess payments and of advances on payments

153. This article deals with the case where the institution of a Contracting Party has paid benefit in excess of a person's entitlement, or has paid an advance on benefit. The first paragraph deals with the particular case of co-ordinated assessment, that is to say the case where the excess payment is the result of payment or reassessment of invalidity, old age or survivors' benefit, under Chapter 2 of Title III of the Convention. In such a case, this paragraph provides that the institution which has made the excess payments may recover the amount overpaid or advanced from any arrears of benefit to which the person concerned may be entitled from any institution of another Contracting Party which pays similar benefit to that person. If the recovery cannot be made in this way, the provisions of Article 85, paragraph 2 shall apply.

154. Paragraph 2 deals with the general case of recovery of overpaid benefits in cases other than the co-ordinated assessment mentioned in the preceding paragraph, that is to say all cases where the application of one national legislation alone is concerned. In such circumstances this paragraph provides that the institution which has made the overpayment may, under the conditions and to the extent to which such deduction is permissible under the legislation it applies, recover the amount overpaid through any institution of another Contracting Party which pays similar benefits to the same beneficiary. It also provides that the recovery may be effected by the latter institution only under the conditions and to the extent to which such deduction is permissible under the legislation it applies (for example, within the limit of the amount which may be recovered under the legislation applied by the institution which makes the deduction).

155. Paragraph 3 is intended to permit any institution of a Contracting Party which has made advance payment of benefits for a period during which the beneficiary was entitled to corresponding benefits under the legislation appointed by another Contracting Party, to recover the amount advanced through the institution of the latter Contracting Party which pays the said benefits for the same period.

156. It should be noted that although paragraph 2 of this article imposes a double restriction on the recovery procedure, the technique for recovering advance payments on benefits, mentioned in paragraph 3, is similar to that mentioned in paragraph 1 of this article. In fact, in this case any restrictions which the relevant legislation may impose on the recovery of overpayments of social security benefits will not apply, as the advance payment of benefit is considered to be a kind of loan which justifies the adoption of a wider range of recovery criteria than those set out in paragraph 2 of this article.

Article 86 – Recovery of sums overpaid by social assistance authorities in cases where the person concerned was entitled to social security benefits during that period

157. This article sets out rules governing cases where the social assistance authority of a Contracting Party has provided social assistance during a period when the beneficiary was entitled to benefits under the social security legislation of another Contracting Party.

158. In such circumstances, it provides that, if this authority is entitled under the legislation it applies to recover social assistance payments from social security benefits, it may recover the amount of the assistance paid through any institution of another Contracting Party liable for payment of social security benefits to the same person.

Article 87 – Recovery of sums paid on the basis of the presumption in Article 20, paragraph 2, and Article 55, paragraph 2, of the Agreement

159. This article sets out rules for the case in which benefits in kind for sickness, maternity, occupational injury or disease have been provided on the basis of the presumption in Article 20, paragraph 2, or Article 55, paragraph 2, of the Agreement for workers seconded abroad or employed in international transport. It primarily concerns cases where the institution of the place of temporary residence has to recover the benefits which it has provided on this presumption when the person concerned is not entitled to such benefits under the legislation of the competent State. In such circumstances, the benefits provided shall be refunded either by the competent institution, by the institution indicated in the certificate as being competent, or by any other institution designated by the competent authority of the Contracting Party concerned.

Article 88 – Disputes concerning the legislation applicable or the institution liable to provide benefit

160. This article is designed to protect the person concerned with regard to his receiving benefits in the event of dispute concerning the legislation applicable or the institution liable to provide benefits. It provides that in such circumstances the person concerned shall provisionally receive the benefits prescribed by the institution of his place of residence. Where the person does not reside in the territory of one of the Contracting Parties in question, the article provides that he shall receive – again provisionally – the benefits prescribed by the legislation of the Contracting Party to which he was last subject.

161. This article also provides that after settlement of the dispute concerning either the legislation applicable or the institution which is to pay the benefits, the cost of the benefits paid provisionally shall be borne by the institution designated as that liable to pay the benefits.

Article 89 – Enquiry by the institution of a Contracting Party in the territory of another Contracting Party

162. This article enables the competent institution of a Contracting Party to conduct an enquiry in the territory of another Contracting Party. In this connection it may appoint an official to investigate the matter subject to the agreement of the competent authorities of the two Contracting Parties concerned. The official appointed shall receive the assistance from the competent authority of the Contracting Party in whose territory he conducts the enquiry.

Article 90 – Calculation of benefit in cases where members of the family of the person concerned do not live with him

163. This article is concerned with the taking into account of members of the family of the person concerned who do not live with him, in calculating the amount of certain benefits. As specified in Article 1 (e) of the Agreement, the expression "members of the family" has the meaning given to it under Article 1 (q) of the Convention. Consequently, that expression also refers to persons not living under the same roof as the person concerned, provided that they are mainly dependent on him. In such a case this legal fiction enables members of the family not living with the person concerned to be taken into account where the legislation of the institution concerned does not require the production of evidence that members of the family are mainly dependent on him. Where such evidence is required, the article provides that it may consist of statements showing that the person concerned contributes substantially to their support. It should be noted that the expression "may require evidence" in this article has been introduced not only to ensure uniformity of procedure in cases where the production of evidence is required, but also to give those institutions wishing to do so the option of dispensing with that evidence.

Article 91 – Obligation to notify the Secretary General of the Council of Europe of any agreements concluded under the Convention and the Agreement

164. This article refers to the communication to the Secretary General of the Council of Europe of any agreements concluded which apply or are based on provisions contained in the Convention or the Agreement. It provides that such agreements shall be communicated to the Secretary General within three months of the date of their entry into force.

Article 92 – Annexes to the Agreement

165. This article concerns the Annexes referred to in Article 4 of the Agreement, and provides that these Annexes shall be an integral part of the Agreement. It should be noted that, unlike the relevant provisions in the Convention, the procedure for amending the Annexes to the Convention laid down in Article 73, paragraphs 2 and 3, of the Convention applies only to Annex 5 of the Agreement, since this is the only one which is important from a legal point of view and requires the unanimous agreement of the Contracting Parties.

TITLE VII – Transitional and final provisions

Article 93 – Consequences of the submission of a claim for a pension after the Convention has come into force

166. This article is concerned with the submission of a claim for invalidity, old age or survivors' benefit after the entry into force of the Convention. It should be noted that, contrary to the provisions of Article 74, paragraph 5 of the Convention, which apply even when no claim has been lodged subsequent to the entry into force of the Convention, Article 93 of the Agreement applies only to cases where a pension has not been paid in full before the entry into force of the Convention since the person concerned was still entitled to benefit to be provided on the basis of the legislation of another Contracting Party. In such a case, Article 93 of the Agreement provides that the submission of a claim for payment of this remaining

benefit after the entry into force of the Convention shall entail the revision of benefit previously paid so that this may be paid in accordance with the provisions of the Convention.

Article 94 – Signature, ratification and acceptance of the Agreement

167. This article sets out the conditions under which the member States of the Council of Europe may become Parties to the Agreement. In general, these conditions correspond to those contained in the model final clauses adopted by the Committee of Ministers of the Council of Europe.

168. It should be noted, however, that the Agreement, like the Convention, cannot be considered as an independent legal instrument, as any State which ratifies or accepts it must at the same time ratify or accept the Convention in accordance with the provisions of Article 75, paragraph 2 of that instrument.

Article 95 – Entry into force of the Agreement

169. In general, the provisions of this article are similar to the model final clauses mentioned above.

170. In view of the interdependence between the Agreement and the Convention, this article provides that these two instruments shall enter into force at the same time with respect to the Contracting Parties which ratify or accept them.

171. It is pointed out that the expression "ratification" is used within the meaning given to it by the Council of Europe treaty practice. It denotes the deposit of any instrument of ratification and covers the effect of ratification in international law.

Article 96 – Accession to the Agreement by States not members of the Council of Europe

172. This article provides that States not members of the Council of Europe which are invited by the Committee of Ministers to accede to the Convention by virtue of Article 77 of that instrument, must at the same time accede to the Agreement. It also lays down the procedure to be followed in such a case.

Article 97 – Duration of the Agreement and denunciation

173. In general, the provisions of this article are similar to the model final clauses mentioned earlier. As pointed out in Articles 94 and 95 of this explanatory report, the Agreement, like the Convention, has no independent legal status. Therefore, any Contracting Party which denounces the Agreement must, at the same time, denounce the Convention under the conditions laid down in Article 78 of the latter instrument.

Article 98 – Notification

174. This article has been drafted on the basis of the model final clauses mentioned above.