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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(73) 2059 final

Brussels, 11 December 1973

Communication from the Commission to the Council on implementing
Article 39 of the Additional Protocol to the Ankara Agreement

COM(73) 2059 final

I. LEGAL BASIS

The annexed preliminary draft is intended to implement Article 39 of the Additional Protocol of the Ankara Agreement, which stipulates that:

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

As the Additional Protocol came into force on 1 January 1973, these provisions must be adopted by the Council of Association before 1 January 1974.

II. GENERAL CONSIDERATIONS

A. The present position of Turkish workers

At the moment there are two types of international instruments which mainly ensure social security protection for Turkish workers employed in the Community:

- 1) The bilateral conventions concluded between Turkey and certain Member States (Germany, Belgium, France, the Netherlands and the United Kingdom; Turkey and Denmark have concluded a convention which has been signed but not yet ratified).
- 2) The European Interim Agreements of the Council of Europe which provide for:
 - a. equality of treatment under national legislations. This equality of treatment is however subject to rather strict conditions of residence, especially for benefits provided under a non-contributory scheme;
 - b. equality of treatment between nationals of one Member State of the Council of Europe and those of other Member States for the purposes of applying a bilateral social security convention which they have concluded between them. (1)But the network of these conventions is incomplete, the rules vary from one convention to another and the majority of them have not been amended since the Community Regulations came into effect.

However, the application of these two principles is subject to certain restrictions set out in Annex III of the agreements, in particular the exclusion of certain non-contributory benefits (United Kingdom, France, Italy, Luxembourg, Belgium), childbirth allowances in France and Luxembourg, and the provisions on unemployment insurance of the convention between Germany and Belgium.

What is the position of Turkish workers employed in the Community with regard to equality of treatment, aggregation of periods and export of benefits, which are the three basic principles of international social security?

- Where equality of treatment is not guaranteed by the national legislation of the country concerned, as is the case in certain Member States for sometimes substantial benefits, and no bilateral convention exists, certain inequalities remain for which the Interim Agreements offer only partial solutions because of the restrictions they lay down in this sphere.

(1) Community regulations made on the basis of Article 51 of the EEC Treaty have replaced the bilateral conventions concluded between the Member States, but only in respect of the persons covered by these regulations. The conventions therefore continue to apply to nationals of other Member States of the Council of Europe, among others.

- As to aggregation of periods of insurance, employment or residence, the specific scope of bilateral conventions binding individual Member States and of those binding a Member State and Turkey means that the insurance history of a Turkish worker who has been employed in more than one Member State is never taken into account as a whole but is split up either because under the instrument concerned periods completed in Turkey cannot be considered or because under another instrument periods completed in one of the Member States are likewise not counted.
- The export of benefits to Turkey is only possible in the case of benefits due by a Member State bound by a bilateral convention with Turkey. Reversely, Turkish benefits may be transferred to that Member State only.

Consequently, only workers who have been employed in a Member State bound to Turkey by a bilateral convention enjoy more or less complete protection. However, for workers who have been employed in more than one Member State such protection is not only fragmentary but also poses many additional complex problems, in particular for the granting of pensions and accessory benefits (sickness insurance). These problems are all the more complicated where Member States have concluded a bilateral convention with each other that applies to Turkish workers by virtue of the Interim Agreements.

Consequently, it was necessary to find a solution for the gaps and inconsistencies resulting from the present situation by providing for the adoption of uniform provisions which would be easier to implement. This objective is only partially attained by Article 39 of the Additional Protocol. Paragraph 2 of this Article formally excludes the consideration of insurance periods completed in Turkey. A rational and complete solution for the problems mentioned above would require the adoption of an instrument of which the scope would have had to include the legislation of both the Member States and Turkey. Consequently, the measures to be adopted in accordance with Article 39 can only settle the problems resulting from the implementation of the legislation of the Member States and as such aim in particular at replacing the bilateral conventions between Member States which apply to Turkish workers as a result of the Interim Agreements.

B. Interpretation of Article 39 of the Additional Protocol

As it is only the social security institutions in the Member States who will bear the financial and administrative responsibilities for implementing the provisions of Article 39, the Commission thought it necessary to have the opinions of the experts of the Member States before preparing a draft decision. The Administrative Commission on Social Security for Migrant Workers of the Commission of the European Communities was therefore consulted. This Commission has, among other duties, the task of settling the problems raised by the interpretation or the implementation of the Community regulations on social security.

Two trends have emerged within the Administrative Commission on Social Security for Migrant Workers:

- first, to give Article 39 a completely literal interpretation;
- secondly, to give an interpretation of this Article more in keeping with the spirit of the Ankara Agreement.

1. According to those advocating a literal interpretation, the decision to be adopted by the Council of Association should:

- not provide for the principle of equality of treatment under the national legislations, because Article 37 of the Protocol only refers to the prohibition of discrimination with regard to conditions of work and remuneration;
- as regards the persons to be covered by the decision, be confined to Turkish workers who, after having been subject to the legislation of a Member State, are or have been subject to the legislation of one or more other Member States, and furthermore to the members of their families and their survivors; this would exclude only workers who are or have been subject to the legislation of one Member State, frontier workers, workers employed in several Member States, workers posted elsewhere, workers in international transport, seamen, etc, as well as members of the family who are resident in the territory of a Member State other than the competent State.

The object of Article 39 of the Protocol would be to facilitate the geographical and occupational mobility of Turkish workers under the provisions of Articles 37 and 38 of the Protocol which should enable them to benefit progressively from freedom of movement within the Community.

The provisions to be made in pursuance of Article 39 should therefore be confined to regulate the problems of workers moving from one Member State to another in order to take up employment and transfer their residence there, mainly through aggregation of periods of insurance or employment, with the exception of those workers who only work in one Member State;

- as regards the matters to be covered by the Decision, not contain provisions on insurance against accidents at work and occupational diseases, unemployment insurance and death grants, as these risks and benefits are not mentioned in Article 39;
- allow transfer to Turkey only of pensions acquired by virtue of the legislations of at least two Member States; pensions acquired by virtue of insurance under the legislation of a single Member State being governed by the provisions of the national legislation of the State concerned or of any bilateral convention existing between that Member State and Turkey; the Decision could not comprise any provisions allowing unrestricted transfer of a pension acquired by virtue of insurance under the legislation of two Member States to a Member State other than the State in which the institution responsible for payment is situated;
- not make medical services available in the territory of a Member State other than the State in which the competent institution is situated, either to the worker or to the members of his family;
- not take the members of the worker's family into account for the calculation of pensions, i.e. not provide for the granting of pension increases or supplements in respect of dependent members of the family.

2. The advocates of an interpretation in keeping with the spirit of the Ankara Agreement stressed that this literal interpretation would lead to inconsistencies and inequitable results and this would mean that the provisions to be adopted on the basis of Article 39 of the Additional Protocol would add nothing to the rights which Turkish workers already enjoy under the bilateral conventions binding the Member States, which apply to them through the abovementioned Interim Agreements, with the exception of the export to Turkey of pensions acquired in Member States that have not concluded a convention with Turkey. Indeed, the Decision would offer less advantages than these conventions, because the scope of the latter is in general much wider.

3. It is therefore appropriate to examine whether Article 39 of the Protocol actually excludes any other interpretation. In this connection, it should be noted that:

- a. the very wording of Article 39 allows a certain latitude in this respect. Article 39(1) provides that "the Council of Association shall adopt social security measures for workers of Turkish nationality moving within the Community and their families residing in the Community." Paragraphs 2 and 3 of the same Article begin with the words "These provisions" and "The abovementioned measures must ensure" aggregation, payment, etc. This formulation does not seem to make a narrow interpretation imperative but may, on the contrary, be taken to imply that, under paragraph 1, measures should be taken for Turkish workers and, under the following paragraphs, that such measures should in principle comprise in particular aggregation, payment of family allowances, etc.

in paragraph 1

- b. Article 39 of the Protocol is preceded, in Chapter I, Title II "Movement of Persons and Services" by provisions relating to the freedom of movement for workers and in particular by Article 36 which provides for the progressive achievement of freedom of movement for Turkish workers within the Community between 1 December 1976 and 30 November 1986. The question arises whether, taking account of the fact that until 1976 no steps will be taken in this field and that between 1976 and 1986 freedom of movement will be achieved only gradually, the scope of the provisions to be adopted under Article 39, in particular as regards the persons covered, should be limited. It does not seem that such a close link should be established between these two provisions. The nature and importance of the problems raised by social security legislations for workers moving within the Community are not linked to the degree in which freedom of movement has been achieved. These problems arise from movement as such, irrespective of whether it comes under the national policies on entry and stay or whether it is made easier by certain Community measures. It should be noted in this connection that, contrary to Article 36, Article 39 does not specify by what stages the objectives should be achieved. The same was true for the provisions of Regulations Nos 3 and 4 which were made in pursuance of Article 51 of the EEC Treaty and entered into force even before the first Community texts on freedom of movement; certainly, important improvements have been made to these texts, but since 1959 they have covered all risks and almost all situations arising from the movement of workers and their families.

* based on Article 49 of that Treaty

- c. Whilst it became apparent in the preparatory stage that the Member States were not willing, at Community level, to take into consideration the situation in which workers were subject to Turkish legislation before or after their employment in the Community, this in no way means that the measures to be taken under Article 39(1) with regard to the position within the Community of Turkish workers under the legislations of the Community only must be strictly confined to the problems provided for by paragraphs 2 and 3 of this Article.
- d. Furthermore, the Member States' representatives to the Administrative Commission have asked that, should the Commission adopt a literal interpretation, it should draw the Council's attention to the gaps and inconsistencies it would entail. Some of the representatives preferred to confine themselves in principle to a literal interpretation of Article 39 because, as they pointed out, this question of interpretation was in fact a political question on which the Community bodies have the final say. Nevertheless, during the final discussion a number of proposals based on a broader interpretation was welcomed by the majority of experts.

4. This point of view can furthermore be supported by the particular considerations for each point listed under II B 1. above:

- a. It would be difficult to exclude the principle of equality of treatment under national legislations from the decision. Equality of treatment is the first principle of the international instruments in social security. Secondly, this principle is included in the mandate given to the Commission by the Council for its negotiations with the Maghreb countries. Refusing what has been granted to the Maghreb countries to an associated country and which is likely to become a Member State does not seem to be justified.

Finally, the Court of Justice has stated, on many occasions, that equality of treatment is one of the fundamental principles of Community Regulations on Social Security for Migrant Workers, even though this principle is not mentioned in Article 51 of the Treaty which is the legal basis for these Regulations.

- b. Limiting the scope of this decision to workers who are or have been subject to the legislation of two or more Member States does not seem to be justifiable either.

It is, in fact, difficult to imagine that Article 39 of the Additional Protocol would ignore the situation of some 700,000 Turkish workers employed in one Member State, to confine itself to regulating the situation of a very restricted number of workers who, having worked in a Member State, are or have been employed in another Member State.

This limitation also excludes the members of the worker's family, who are in a Member State other than that in which the worker is employed, from the scope of the decision. Several experts have pointed out that this situation is not unusual because of accommodation problems in some countries.

The words "workers moving within the Community" were simply taken from the title of Community Regulations. This title was originally "Migrant Workers". This expression is no longer used in the title of these Regulations, as it sometimes gave rise to restricted interpretations (case of pensioners, family members, holiday-makers).

Finally, paragraph 5 of Article 39 does not make sense if Article 39 may only settle the situation of Turkish workers subjected to the legislation of two Member States, as by definition, the bilateral agreements between Turkey and the Member States only apply to relations between the Member State in question and Turkey and consequently cannot be more or less favorable than the decision.

- c. Even though, on reading the provisions of Article 39, certain experts thought that nothing need be included in the decision for branches of social security which are not explicitly mentioned, the Commission did not share this opinion.

It is apparent from the preparatory work on Article 39 that the Member States only wanted the following excluded from the matters to be covered by the decision:

- the consideration of periods completed in Turkey;
- the payment of family allowances when the family resides in Turkey;
- health services for the worker and his family resident in Turkey;
- unemployment insurance.

On the other hand, death grants are not a separate branch of social security but are either linked to sickness insurance or survivors' insurance according to the legislation of the Member States, as well as to insurance against accidents at work. There are no grounds for excluding these allowances as these branches are covered by Article 39.

The expression "health services" which is not used in Community terminology may reasonably be interpreted to include sickness insurance benefits in kind as well as cash benefits: such is also the view of the advocates of a literal interpretation. From the very fact that sickness insurance is not mentioned, it can be inferred that comparable benefits for insurance against accidents at work are also covered. In this connection it should be stressed that the omission of the oldest branch of social security from Article 39 may be explained by the fact that, apart from some special cases, entitlement to short and long-term benefits under this insurance is not subject to the condition that the person concerned should have completed certain periods of insurance or employment, and that provisions on aggregation are not necessary in this field.

In a more general way, there are also no grounds for excluding health services for the worker and the members of his family on the territory of a Member State other than where the competent institution is situated. As the decision will apply to frontier workers, workers posted elsewhere, seamen, etc..., these categories of persons may not be deprived of rights which are not excluded under Article 39.

- d. It would be strange if benefits could be transferred without restriction, when entitlement to these benefits is only possible in a Member State by referring to the periods of insurance completed in another Member State, whereas the advantage of transferring benefits to Turkey would be refused, if the worker fulfills the conditions necessary for this entitlement provided for in the legislation of one Member State when only periods completed in this country are taken into account.

Article 39 does not explicitly provide for the transfer of pensions to persons entitled to them residing in a Member State other than the competent State. But in view of the fact that these benefits are transferable to Turkey, it seems that a fortiori it should also be possible to transfer them within the Community. It seems difficult to imagine that a worker authorized to live in a Member State could not use this right on the grounds that the pension due from another Member State would only be payable to him in Turkey.

There is no reason to exclude the members of the worker's family in the calculation of pensions. Consequently, the increases or supplements to the pension for the members of his family should also be provided for. These increases or supplements are furthermore an integral part of these pensions.

The Commission proposed to the Council that in the Council of Association the Community should adopt the position outlined in points B 2 to 4 above.

In order to facilitate the deliberations of the Council, the Commission is at the same time submitting, in an Annex, a preliminary draft of proposals which the Commission would have to take if the Council of Association decided in accordance with this position.

REMARKS ON THE

III. DRAFT DECISION OF THE COUNCIL OF ASSOCIATION EEC/TURKEY

The Commission believes that the draft decision should be based on an interpretation in keeping with the spirit of the Ankara Agreement of the provisions of Article 39 on grounds mentioned under II B above.

It also believes, for administrative reasons, that it is desirable to adopt, as far as possible, the provisions of Community regulations on social security for migrant workers (1) rather than imposing the implementation of new provisions on the Member States.

The following guidelines constitute the basis of the attached draft :

Title 1 - General Provisions

Art. 1. The definitions contained in Article 1 of Regulation No 1408/71 in respect of "seasonal worker", "refugee" and "stateless person" do not refer to Turkish workers and have not been retained.

The definition of a "worker" is that of Article 1 a) i) and ii) of the Regulation; the definition under iii): any person who is voluntarily insured has not been adopted.

The definition of "Member State", "legislation", "social security convention", "competent authority", "institution", "competent institution" have been adapted either to include Turkey also or to specify that it only refers to the Member States.

Art. 2 and 3. Provisions in respect of the persons covered (Art. 2) and equality of treatment (Art. 3, paragraphs 1 and 2) correspond to those of Regulation No 1408/71.

Although all branches of social security are covered by equality of treatment, the decision does not provide for any special provisions in respect of unemployment benefits, long-term benefits in respect of accidents at work and occupational diseases and family benefits other than family allowances.

Art. 4. Turkish workers are at the moment covered by the bilateral conventions concluded between the Member States, through the European Interim Agreements to which the Member States and Turkey are parties. To a large extent the scope of the decision overlaps that of these conventions. As regards the persons and matters covered, the decision should therefore replace the provisions now applying to Turkish workers, because otherwise the decision and one or more bilateral conventions would be simultaneously applicable without it being clear under which of these instruments the rights of the persons concerned should ultimately be determined.

(1) Regulations EEC No 1408/71 and 574/72 as amended

Art. 5. As is the case for Regulation No 1408/71, obligations arising from ILO conventions and interim agreements are not affected. Moreover, the convention on social security for workers in international transport and, in accordance with paragraph 5 of Article 39 of the Additional Protocol, the more favourable provisions of the bilateral conventions concluded between Turkey and the Member States shall continue to apply.

The agreement on social security for Rhine boatmen is not mentioned, as it only applies to nationals of the Contracting Countries. Turkey is not a party to this agreement.

Once the European Convention on social security concluded within the framework of the Council of Europe comes into effect for Turkey and at least two Member States, the Council of Association would have to examine the implications of this Convention on the implementation of the decision.

Art. 6 and 7. Provisions in respect of waiving residence clauses and the revalorization of benefits are the same as those in Regulation No 1408/71.

Art. 8. The provisions of Article 12 of Regulation No 1408/71 on the prevention of overlapping of benefits were adopted and amended to take into account residence in Turkey and the fact that provisions for the granting of long-term benefits in respect of accidents at work and occupational diseases are not included.

Title II - Determination of the legislation applicable

Art. 9. The provisions of Regulation No 1408/71 on the legislation applicable to Turkish workers were adopted with the exception of those which do not affect them, such as those in respect of civil servants, military service, voluntary insurance or optional continued insurance, persons employed by diplomatic missions and auxiliary staff of the European Communities.

Title III - Special provisions relating to the various categories of benefits

Art. 10 and 11. Sickness and maternity

The provisions of the Regulation were adopted with the exception of those in respect of seasonal workers, unemployed persons and pension claimants. However, benefits in kind during a temporary stay are only provided in the case of movement for professional reasons. It also seemed necessary to include a special provision for Turkish frontier workers who are totally unemployed.

Art. 12. Invalidity

All the provisions of Regulation No 1408/71 were adopted with the exception of one provision in respect of the application of the Netherlands insurance for incapacity for work which is irrelevant in this context. The members of the family resident in Turkey are also taken into consideration for the calculation of benefits.

Art. 13 and 14. Old-age and death (pensions)

Contrary to that provided for in Regulation No 1408/71, the system of calculating pensions pro-rata temporis which was adopted applies in all cases, irrespective of whether or not the worker has fulfilled the conditions for entitlement to benefits with or without the aggregation of periods of employment, insurance or residence.

As indicated above under II A, five Member States are bound to Turkey by a bilateral social security convention. While the coexistence of these instruments will not raise problems for short-term benefits, this does not apply to pensions. Indeed, each Member State bound to Turkey by bilateral convention would have to award to a Turkish worker who has also been subject to the legislation of another Member State a pension calculated under the bilateral convention on the basis of periods completed in the first Member State and in Turkey, on the one hand, and a pension calculated under the decision on the basis of the same periods and periods completed in the other Member State, on the other. The latter would have to do the same if that country were also bound to Turkey by bilateral convention.

The problem is how to prevent such overlapping, which all those involved must regard as inadmissible.

It should be remembered that Article 39(5) stipulates that the decision cannot affect more favourable arrangements arising from the aforementioned bilateral conventions.

Two solutions can be envisaged. In any case, it is not possible to determine a priori whether the provisions of an instrument are more favourable than those of another instrument and that a decision can only be taken in each case after the calculations under the provisions of each instrument have been made.

According to the first solution, the worker should in all cases receive the highest amount of pension without the need to determine beforehand which instrument should prevail over the other.

In this case, it should be pointed out that a pensioner to whom a pension due under the decision is awarded could not benefit from the rights linked with this pension (right to medical services in Turkey) of which he could only avail himself if he received a pension due under the bilateral convention.

A second solution would be to stipulate that a pension calculated in accordance with the bilateral provisions would at any rate be awarded plus, where appropriate, a complement equal to the difference between the amount of that pension and the higher amount of the pension due by the same Member State under the provisions of the decision. This second solution was adopted so as not to deprive the pensioner of the rights linked with this pension.

As in the case of invalidity benefits, the members of the family resident in Turkey were taken into consideration for the calculation of benefits.

Art. 15. Accidents at work and occupational diseases

The provisions of Regulation No 1403/71 were adopted, with the exception of long-term benefits. Furthermore, payment of benefits during a stay outside of the competent State is only ensured if the worker has moved for professional reasons.

Art. 16 and 17. Death grants

The provisions of Regulation No 1408/71 were adopted.

Art. 18 and 19. Family benefits and family allowances

Family allowances are granted in accordance with the provisions of Regulation No 1408/71.

Title IV - Miscellaneous provisions

Art. 20 to 26. Provisions in respect of co-operation between competent authorities, exemptions from or reductions of taxes, exemption from authentication, claims, declarations or appeals, medical examinations, transfers of sums of money payable pursuant to the decision, special procedures for implementing certain legislations, housing allowances and family allowances introduced for demographic reasons, contributions chargeable to employers or undertakings not established in the competent State, collection of contributions and the rights of institutions responsible for benefits against liable third parties are the same as those of Regulation No 1400/71, except that a reference to Turkey was added to some of these provisions.

Title V - Application procedures

Art. 27 to 44. Provisions in respect of application procedures were adopted from Regulation No 574/72 with the necessary amendments where the provisions of Titles I, II and III diverge from the corresponding provisions of Regulation No 1408/71.

Title VI - Transitional and final provisions

Art. 45. These provisions were adopted from Articles 94 and 95 of Regulation No 1408/71 and from Article 120 of Regulation No 574/72.

ANNEX I

Annex V of Regulation No 1408/71 was amended to take into account the special application procedures of the national legislations in respect of Turkish workers.

ANNEX II

The annexes of Regulation No 574/72 were supplemented in respect of the competent authorities and institutions, the institutions of the place of residence, institutions of the place of stay and liaison bodies.

ANNEX

Preliminary draft provisions on the application of the social security schemes of the Member States to Turkish workers moving within the Community and to members of their families residing in the Community.

TITLE I: GENERAL PROVISIONS

Article 1

Definitions

For the purpose of this Regulation :

- a) the terms "frontier worker", "member of the family", "survivor", "residence", "stay", "competent State", "insurance periods", "periods of employment", "periods of residence", "benefits", "pensions", "family benefits", "family allowances", and "death grants" have the meanings assigned to them in Article 1 of Regulation (EEC) No 1403/71 of the Council of the European Communities of 14 June 1971;
- b) "worker" means:
- (i) subject to the restrictions set out in Annex V of Regulation (EEC) No 1403/71 of the Council of the European Communities of 14 June 1971, any person who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed persons;
 - (ii) any person who is compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this Regulation, under a social security scheme for all residents or for the whole working population if such person:
 - can be identified as an employed person by virtue of the manner in which such scheme is administered or financed, or
 - failing such criteria, is insured for some other contingency specified in Annex I under a scheme for employed persons, either compulsorily or on an optional continued basis;

- c) "Legislation" means all the laws, regulations, and other provisions and all other present or future implementing measures of each Member State relating to the branches and schemes of social security covered by Article 3(2) and (4).

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

The provisions of the preceding subparagraph cannot have the effect of excluding the schemes dealt with in Regulation No 3 of the Council of the European Economic Community¹ from the scope of this Decision.

¹ OJ, No 30, 16 December 1958.

- d) "Social security convention" means any bilateral or multilateral instrument which binds or will bind either two or more Member States exclusively, or one or more Member States and Turkey, and any other multilateral instrument which binds or will bind at least two Member States or a Member State and Turkey and one or more other States in the field of social security, for all or part of the branches and schemes set out in Article 3(2) and (4), together with agreements, of whatever kind, concluded pursuant to the said instruments;
- e) "Competent authority" means in respect of each Member State and of Turkey, the Minister, Ministers or other equivalent authority responsible for social security schemes throughout, or in any part of, the territory of the State in question;
- f) "Institution" means, in respect of each Member State or of Turkey, the body or authority responsible for administering all or part of the legislation;
- g) "Competent institution" means:
- (i) the institution of the Member State with which the person concerned is insured at the time of the application for benefit, or
 - (ii) the institution from which the person concerned is entitled or would be entitled to benefits if he or a member or members of his family were resident in the territory of the Member State in which the institution is situated, or
 - (iii) the institution designated by the competent authority of the Member State concerned, or
 - (iv) in the case of a scheme relating to an employer's liability in respect of the benefits set out in Article 3(2), either the employer or the insurer involved, or, in default thereof, a body or authority designated by the competent authority of the Member State concerned;
- h) "Institution of the place of residence" and "institution of the place of stay" mean respectively the institution which is competent to provide benefits in the place where the person concerned resides and the institution which is competent to provide benefits in the place where the person concerned is staying, under the legislation administered by that institution or, where no such institution exists, the institution designated by the competent authority of the Member State in question;

3

Article 2

Persons covered

This Regulation shall apply to workers who are or have been subject to the legislation of one or more Member States and who are Turkish nationals, as also to the members of their families and their survivors.

Article 3

Equality of treatment and matters covered

1. Subject to the special provisions of this Regulation, persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.

2. Paragraph 1 shall apply to all legislation concerning the following branches of social security:

- a) sickness and maternity benefits;
- b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;
- c) old-age benefits;
- d) survivors' benefits;
- e) benefits in respect of accidents at work and occupational diseases;
- f) death grants;
- g) unemployment benefits;
- h) family benefits.

3. Title III lays down the special provisions that apply with regard to:

- a) sickness and maternity benefits;
- b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;
- c) old-age benefits;
- d) survivors' benefits;
- e) benefits in respect of accidents at work and occupational diseases;
- f) death grants;
- g) family allowances.

4. This Regulation shall apply to all general and special social security schemes, whether contributory or non-contributory and to schemes concerning the liability of an employer or ship owner in respect of the benefits referred to in paragraph 1.

5. The provisions of Title III of this Decision shall not, however, affect the legislative provisions of any Member State concerning a ship owner's liability.

6. This Regulation shall not apply to social and medical assistance or to benefits schemes for victims of war or its consequences.

4

Article 4

Social security conventions replaced by this Regulation.

Subject to the provisions of Article 5, this Regulation shall, as regards persons and matters which it covers, replace the provisions of any social security convention binding two or more Member States that applies to Turkish workers under the European Interim Agreements on social security of 11 December 1953 concluded between the Member States and the Council of Europe.

Article 5

International provisions not affected by this Regulation

1. This Regulation shall not affect obligations arising from :
 - a) any convention adopted by the International Labour Conference which, after ratification by one or more Member States, has entered into force;
 - b) the European Interim Agreements on Social Security of 11 December 1953 concluded between the Member States of the Council of Europe.
2. Provisions of Article 4 notwithstanding, the following shall continue to apply:
 - a) the European Convention of 9 July 1956 concerning social security for workers in international transport;
 - b) any more favourable provisions of a social security convention binding one or more Member States and Turkey exclusively.

Article 6

Waiving of residence clause

Effect of compulsory insurance on reimbursement of contributions

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

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

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

Article 7

Revalorization of benefits

Rules for revalorization provided by the legislation of a Member State shall apply to benefits due under that legislation by virtue of the provisions of this Regulation.

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Article 3

Prevention of overlapping of benefits

1. This Regulation can neither confirm nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance. However, this provision shall not apply to benefits in respect of invalidity, old age, or death (pensions) which are awarded by the institutions of two or more Member States, in accordance with the provisions of Title III or by a Turkish institution.
2. The legislative provisions of a Member State for reduction, suspension or withdrawal of benefit in cases of overlapping with other social security benefits or other income may be invoked even though the right to such benefit was acquired under the legislation of another Member State or of Turkey. However, this provision shall not apply when the person concerned receives benefits of the same kind in respect of invalidity, old age or death (pensions) which are awarded by the institution of two or more Member States in accordance with Title III or by a Turkish institution.
3. The legislative provisions of a Member State for reduction, suspension or withdrawal of benefits in the case of a person in receipt of invalidity benefits or anticipated old-age benefits pursuing a professional or trade activity may be invoked against such person even though he is pursuing his activity in the territory of another Member State or of Turkey.

TITLE II: DETERMINATION OF THE LEGISLATION APPLICABLE

Article 9

The legislation applicable to Turkish workers employed in the Community shall be determined in accordance with the rules laid down by Article 13(1) and (2)(a) and (b), Article 14 and Article 17 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971.

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TITLE III: SPECIAL PROVISIONS RELATING TO THE VARIOUS CATEGORIES OF BENEFITS

Chapter 1: Sickness and Maternity

Article 10

For the purposes of acquisition, retention or recovery of the right to benefits, the provisions of Article 18(1) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 shall apply.

Article 11

For the purposes of the granting of benefits and reimbursements between institutions the provisions of Articles 19, 20, 21, 22(1)(a) and (4), 23, 24, 27, 28, 28a, 30, 32, 33, 34, 35 and 36 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 shall apply.

However, the provisions of Article 22(1)(a) of the abovementioned Regulation shall apply only to workers who are staying in a Member State other than the competent State for professional reasons and to the members of their families accompanying them.

Moreover, the provisions of Article 19 of the said Regulation shall apply to wholly unemployed Turkish frontier workers who satisfy the conditions specified by the legislation of the competent State for entitlement to sickness and maternity insurance benefits, as also to the members of their families.

Chapter 2: Invalidity

Article 12

The rights to benefit of a worker who has successively or alternately been subject to the legislation of two or more Member States shall be established in accordance with Articles 37(1), first sentence, and (2), 33 to 40, 41(1)(a)(b)(c) and (e) and (2), 42 and 43 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971. However, for the purpose of applying Article 32(4) of the said Regulation, all the members of the family, including children, who reside in the Community or in Turkey, shall be taken into account.

Chapter 3: Old age and death (pensions)

Article 13

The rights to benefits of a worker who has been subject to the legislation of two or more Member States or those of his survivors shall be established in accordance with Articles 44(2), first sentence, 45, 46(2), 47, 48, 49 and 51 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971.

However,

- a) the provisions of Article 46(2) of the said Regulation shall apply even if the conditions for the acquisition of entitlement to benefits are satisfied without the need to have recourse to the provisions of Article 45 of the said Regulation;
- b) for the purposes of applying Article 47(3) of the said Regulation, all the members of the family, including children, who reside in the Community or in Turkey shall be taken into account;
- c) for the purposes of applying Article 49(1)(a) and (2) and Article 51 of the said Regulation, the reference to Article 46 shall be replaced by a reference to Article 46(2).

Article 14

1. The competent institution of each of the Member States that is bound to Turkey by a bilateral or multilateral social security agreement shall calculate the benefit due under the said agreement.

Next, it shall compare the amount obtained by applying Article 13 with the amount obtained by applying the said agreement.

2. The worker shall be entitled to receive, from the institution of each of the Member States concerned, the amount of benefit due under the agreement referred to in paragraph 1, where appropriate increased by a supplement equal to the difference between the two amounts mentioned above.

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Chapter 4: Accidents at work and occupational diseases

Article 15

For the granting of benefits and reimbursements between institutions, the provisions of Articles 52, 53, 54, 55(1)(a), 58, 61, 62 and 63 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 shall apply.

However, the provisions of the abovementioned Article 55(1)(a) shall apply only in the case of an accident at work sustained during a stay in the territory of a Member State other than the competent State.

Chapter 5: Death grants

Article 16

For the acquisition, retention or recovery of the right to benefits, the provision of Article 64 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 shall apply.

Article 17

When the recipient dies or resides in the territory of a Member State other than the competent State, the death grants shall be awarded in accordance with Article 65 and Article 66 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971.

Chapter 6: Family benefits and family allowances

Article 18

For the acquisition of the right to benefits, the provision of Article 72 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 shall apply.

Article 19

The members of the family of a worker who are residing in the territory of a Member State other than the competent State shall receive family allowances in accordance with Articles 73(1) and (2), 74, 75 and 76 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971. However, a worker who is subject to French legislation by virtue of the provisions of Article 14(1)(a) of the said Regulation shall be entitled to the family benefits provided for by French legislation and set out in Annex V of that Regulation in respect of members of his family who accompany him.

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TITLE IV: MISCELLANEOUS PROVISIONS

Article 20

1. The competent authorities of Member States and of Turkey shall communicate to each other all information regarding measures taken to implement this Regulation;
2. For the purposes of implementing this Regulation, the authorities and institutions of Member States and of Turkey shall lend their good offices and act as though implementing their own legislation. The administrative assistance furnished by the said authorities and institutions shall, as a rule, be free of charge. However, the competent authorities of these States may agree to certain expenses being reimbursed.
3. The authorities and institutions of Member States and of Turkey may, for the purpose of implementing this Regulation, communicate directly with one another and with the person concerned or their representatives.
4. The authorities, institutions and tribunals of one Member State may not reject claims or other documents submitted to them on the grounds that they are written in an official language of another Member State or in the Turkish language.

Article 21

1. Any exemption from or reduction of taxes, stamp duty, notarial or registration fees provided for in the legislation of one Member State or of Turkey in respect of certificates or documents required to be produced for the purposes of the legislation of that State shall be extended to similar documents required to be produced for the purposes of the legislation of another Member State or of Turkey or of this Regulation.
2. All statements, documents and certificates of any kind whatsoever required to be produced for the purposes of this Regulation shall be exempt from authentication by diplomatic and consular authorities.

Article 22

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

Article 23

1. Medical examinations provided for by the legislation of one Member State may be carried out at the request of the competent institution, in the territory of another Member State or of Turkey, by the institution of the place of stay or residence of the person entitled to benefits, under conditions agreed between the competent authorities of the States concerned.

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

Article 24

1. Transfers of amounts made as a result of the implementation of this Decision, shall take place in accordance with the relevant agreements in force at the time of the transfer between the Member States concerned. In the case where such agreements between two States are not in force, the competent authorities in those States, or the authorities responsible for international payment shall, by common accord, adopt the measures required to make these transfers.

2. Transfers of amounts made as a result of the implementation of this Decision shall take place in accordance with the relevant agreements in force at the time of the transfer between the Member State concerned and Turkey. In the case where such agreements between Turkey and a Member State are not in force, the competent authorities in both States, or the authorities responsible for international payment shall, by common accord, adopt the measures required to make these transfers.

Article 25

The provisions of Articles 89 to 93 of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 also apply for the purpose of this Decision.

Article 26

Save as otherwise provided in Annex I to this Decision, Annexes I, III, IV and V of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 also apply for the purposes of this Decision.

TITLE V: IMPLEMENTING PROCEDURES

Chapter 1: General provisions

Article 27

Models of certificates, certified statements, declarations, applications and other documents drawn up for the application of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 and Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972 shall also be used for the application of this Regulation. The Administrative Commission shall adopt any further models that may be required for the application of this Regulation.

Article 28

1. The competent authorities may designate liaison bodies which may communicate directly with each other.
2. Any institution of a Member State or of Turkey, and any person residing or staying in the territory of a Member State or of Turkey, may make application to the institution of another Member State or of Turkey, either directly or through the liaison bodies.

Chapter 2: Implementation of the provisions of Title I

Implementation of Article 3

Article 22

1. Where a person entitled to a benefit due under the legislation of one Member State is also entitled to benefits under the legislation of one or more of the other Member States or of Turkey, the following rules shall apply:

- a) if the application of Article 8(2) or (3) entails the reduction or the concurrent suspension of those benefits, none of them may be reduced or suspended by an amount greater than the amount obtained by dividing the sum which is subject to reduction or suspension under the legislation under which the benefit is due by the number of benefits subject to reduction or suspension to which the person concerned is entitled;
- b) as regards benefits in respect of invalidity, old age or death (pensions) awarded under Article 46(2) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 by the institution of a Member State, that institution shall take into account any benefits of a different kind and any income or remuneration likely to entail the reduction or suspension of the benefit due from that institution, not for the calculation of the theoretical amount referred to in Article 46(2)(a) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 but exclusively for the reduction or suspension of the amount referred to in Article 46(2)(b) of the said Regulation. However, only a fraction of the total number of such benefit, income or remuneration shall be taken into account, and that fraction shall be determined in proportion to the duration of the periods completed, in accordance with Article 46(2)(b) of the said Regulation.

2. For the purposes of Article 8(2) and (3), the institutions concerned shall, on request, exchange all requisite information.

Article 30

The rules applicable in the case of overlapping of rights to sickness or maternity benefits, death grants and of rights to family benefits or family allowances under the legislation of several Member States shall be those laid down by Articles 8, 9 and 10, respectively, of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972.

Chapter 3: Implementation of the provisions of Title II

Article 31

The procedure for implementing Article 9 shall be that laid down in Article 11 and Article 12(1) of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972.

Chapter 4: Implementation of the provisions of Title III

Section 1: General rules for the aggregation of periods

Article 32

In cases in which account has to be taken of periods completed under the legislation of one or more other Member States, the provisions of Article 15 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972 shall apply.

Section 2: Sickness and Maternity

Article 33

The procedure for implementing Article 10 and Article 11 shall be those laid down in Articles 16, 17, 18, 19, 20, 21, 23, 24, first sentence, 25, 27, first sentence, 29, 32, 33 and 34 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972.

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Section 3: Invalidity, old age and death (pensions)

Article 34

- a) Claims for invalidity, old-age and survivors' benefits (including orphans' pensions) shall be submitted in accordance with Articles 35(1) and (2), 36(1), (2) and (4), first part of sentence, 37(a), (b) and (c) and 38 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972.
- b) However,
- (i) if the person concerned resides in Turkey, he shall submit his claim to the competent institution of that Member State to whose legislation the worker was last subject, where appropriate through the institution of the place of residence. The claim must be accompanied by the requisite supporting documents and must be drawn up on the form provided for by the legislation of that Member State;
 - (ii) Article 38 of the said Regulation shall apply to all members of the family of the claimant who reside in the territory of the Community or in Turkey.

Article 35

Where the worker has been insured exclusively under the legislation mentioned in Annex III of Regulation (EEC) No 1403/71 of the Council of the European Communities of 14 June 1971, claims for invalidity benefits shall be investigated in accordance with Article 39(1), (2) and (3) and Article 40 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972.

Article 36

- a) In all cases other than those referred to in Article 35, claims for old-age, survivors' and invalidity benefits shall be investigated in accordance with Articles 41, 42, 44, 46(1), first subparagraph, 43 and 49(2) of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972;
- b) the following provisions shall furthermore apply:
- (i) the investigating institution shall indicate on the form mentioned in Article 42(1) of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972 all periods of insurance or residence completed under the legislation which it administers and forward a copy of that form to the institution administering insurance

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in respect of invalidity, old-age or death (pensions) of any Member State with which the worker has been insured, where appropriate together with the employment certificates produced by the claimant;

- (ii) each of these competent institutions shall complete the form by indicating periods of insurance or residence completed under its own legislation and return it to the investigating institution. Once it has received all the forms showing insurance periods or periods of residence, the investigating institution shall forward one copy of the forms thus completed to each of the institutions concerned which will indicate on that form the theoretical amount and the actual amount of the benefits calculated in accordance with Article 40(2) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 and return the forms to the investigating institutions;
- (iii) as soon as the investigating institution establishes the fact that Article 40(2) or Article 43(2) or (3) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 should be applied, it shall inform the other institutions concerned accordingly;
- (iv) where the award of benefits takes more than three months and the information received shows that a right to benefits is acquired in at least one Member State, the investigating institution shall be bound to pay a recoverable advance of an appropriate amount.

Article 37

Administrative checks and medical examination shall be effected in accordance with the provisions of Article 51 and Article 52 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972. These provisions shall also apply if the recipient is resident in Turkey.

Article 38

Benefits are paid in accordance with Articles 53 to 59 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972. Where the recipient is resident in Turkey, payment shall be direct save as otherwise provided in the convention binding the Member State concerned and Turkey.

Section 4: Accidents at work and occupational diseasesArticle 39

The procedure for implementing Article 15 shall be that laid down by Articles 60, 61, 62, 64, first sentence, 65, 66, 70, 73 and 74 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972.

Section 5: Death grantsArticle 40

The procedure for implementing Article 16 shall be that laid down by Article 73 and Article 79 of Regulation (EEC) No 1403/71 of the Council of the European Communities of 14 June 1971.

Section 6: Family benefits and family allowancesArticle 41

The procedure for implementing Articles 18 and 19 shall be that laid down by Articles 85 to 89 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972.

Chapter 5: Financial provisionsArticle 42

Articles 93 to 96 and Articles 98 to 107 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972 shall also apply for the application of this Decision.

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Chapter 6: Miscellaneous provisions

Article 43

Articles 109 to 117 of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972 shall also apply for the application of this Regulation.

Article 44

The Annexes of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972 shall also apply for the application of this Regulation, save as otherwise provided in Annex II of this Regulation.

TITLE VI: TRANSITIONAL AND FINAL PROVISIONS

Article 45

1. No right shall be acquired under this Regulation for a period prior to the date of its entry into force.
2. All insurance periods and, where appropriate, all periods of employment or residence completed under the legislation of a Member State before the date of entry into force of this Decision shall be taken into consideration for the determination of rights to benefits under this Regulation.
3. Subject to the provisions of paragraph 1, a right shall be acquired under this Decision though relating to a contingency which materialized prior to the date of entry into force of this Regulation.
4. Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from the entry into force of this Regulation provided that the rights previously determined have not given rise to a lump sum payment.
5. The right of a person to whom a pension was awarded prior to the entry into force of this Decision may, on the application of the person concerned, be reviewed, taking into account the provisions of this Regulation.
6. If an application referred to in paragraph 4 or 5 is submitted within two years from the date of entry into force of this Regulation, the right acquired under this Decision shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.
7. If an application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period following the entry into force of this Regulation, rights which have not been forfeited or are not barred by limitation shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member States apply.

Article 46

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

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

ANNEX I

(Article 26 of the Regulation)

In order to implement this Regulation, the Annexes to Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1972 are to be amended as follows:

Annex I

(Unchanged)

Annex III

(Unchanged)

Annex IV

(Unchanged)

Annex VA. Belgium

(Unchanged)

B. Denmark

1. the following text shall be substituted for paragraph 1:

"1. Any person who, from the fact of pursuing an activity as an employed person, is subject to the legislation on accidents at work and occupational diseases shall be considered a worker within the meaning of Article 1(b)(ii) of the Regulation."

2. Items 2 and 3 do not apply.

3. The following shall be substituted for paragraph 4:

"4. Workers, applicants for pensions and pensioners with members of their family referred to in Articles 19, 22(1)(a) and 22a of the Regulation, resident or staying in Denmark shall be entitled to benefits in kind on the same terms as those laid down by Danish legislation for persons whose income does not exceed the level indicated in Article 3 of the Law No 311 of 9 June 1971 concerning the Public Health Service, where the cost of the said benefits shall be borne by the institution of a Member State other than Denmark."

4. The following shall be substituted for paragraph 5:

"5. Article 1(1) No 2 of the Law on old age pensions, Article 1(1) No 2 of the Law on invalidity pensions and Article 2(1) No 2 of the Law on widows' pensions and allowances are not applicable to workers or their survivors whose residence is in the territory of a Member State other than Denmark or in Turkey."

5. Paragraph 6 is unchanged.

6. The following shall be substituted for paragraph 7:

"7. The terms of the Regulation shall be without prejudice to the provisional rules under the Danish laws of 7 June 1972 on the pension rights of Danish nationals having their effective residence in Denmark for a specified period immediately preceding the date of the application."

7. The following shall be substituted for paragraph 8:

"8. The periods during which a frontier worker residing within the territory of a Member State has worked in Denmark are to be considered as periods of residence for the purposes of the Danish legislation. The same applies to those periods during which such a worker is posted to the territory of a Member State other than Denmark."

8. Paragraph 9 is unchanged.

9. Paragraphs 10, 11 and 12 are to be added:

10. In order to determine the right to benefits in kind in application of Article 22(1)(a) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971, the expression "member of the family" means any person considered as member of the family under the law on public health.

11. For the purpose of applying Article 8(2) of the Regulation to Danish legislation, invalidity, old age and widows' pensions shall be considered as benefits of the same kind¹.

12. If a worker to whom this Regulation applies claims an invalidity pension pursuant to Danish legislation, he may do so only if he has been resident in Denmark for at least a year, and if during that period he was physically and mentally fit to take up a normal job."

C. Germany

1. The following shall be substituted for paragraph 1:

"1. Article 6 of the Regulation shall not affect the provisions under which accidents (and occupational diseases) occurring outside the territory of the Federal Republic of Germany, and periods completed outside that territory, do not give rise to payment of benefits* under certain conditions, when those entitled to them reside outside the territory of the Federal Republic of Germany."

*, or only give rise to payment of benefits

¹ To be adopted only if the Council adopts the proposed Regulation amending Regulations Nos 1408/71 and 574/72 which contains the same provisions.

2. Paragraphs 2, 5, 6 and 7 are unchanged.

3. Paragraphs 3, 4, 8 and 9 do not apply.

D. France

1. The following shall be substituted for paragraph 1(a):

"1(a) The allowance for elderly employed persons shall be granted under the conditions laid down for French workers by French legislation, to all workers who are Turkish nationals and who, at the time of making their claim, were residing in French territory."

2. Paragraphs 1(b) and 3 do not apply.

3. Paragraphs 2 and 4 are unchanged.

E. Ireland

1. The following shall be substituted for paragraphs 1, 3, 5 and 6:

"1. Any person who is compulsorily or voluntarily insured pursuant to the provisions of Section 4 of the Social Welfare Act (1952) shall be considered a worker within the meaning of Article 1(b)(ii) of the Regulation.

3. Workers and pensioners, together with members of their families, who apply for medical treatment in application of Articles 19, 22(1)(a) and Article 23(a) of Regulation (EEC) No 1403/71 of the Council of the European Communities of 14 June 1971, shall be entitled, free of charge, to any such form of medical treatment as is provided for by Irish legislation, where the cost of this treatment is payable by the institution of a Member State other than Ireland.

5. In order to determine the right to benefits in kind in application of Article 22(1)(a) of Regulation (EEC) No 1403/71 of the Council of the European Communities of 14 June 1971, the expression "member of the family" means any person recognized as a dependent of the worker for the purposes of the Health Acts 1947 - 1970.

6. For the purposes of applying Article 8(2) of the Regulation to Irish legislation, invalidity, old-age and widows' pensions shall be considered as benefits of the same kind."

2. Paragraph 3ais unchanged. / ¹

3. Paragraphs 2 and 4 do not apply.

F. Italy

(Unchanged)

¹ To be adopted only if the Council adopts the proposed Regulation to amend Regulations Nos 1403/71 and 574/72 which contains the same provisions.

G. Luxembourg

1. Paragraph 1 is unchanged.
2. The following paragraphs 2 and 3 shall be added:
 2. For the granting of the fixed part of Luxembourg pensions, insurance periods completed under Luxembourg legislation by workers not residing on Luxembourg territory shall be treated as periods of residence.
 3. The supplement to make up the minimum pension as well as the children's supplement in Luxembourg pensions shall be granted in the same proportion as the fixed part."

H. Netherlands

1. The following shall be substituted for paragraph 1(a):
 - "1(a) A person receiving an old-age pension under Netherlands legislation and a pension under the legislation of another Member State shall, for the purposes of Article 27 and/or 23 of the Regulation, be considered to be entitled to benefits in kind if he satisfies the conditions required for entitlement to voluntary sickness insurance for elderly persons."
2. Paragraphs 1(b) to 4 are unchanged.

¹ To be adopted only if the Council adopts the proposed Regulation to amend Regulations Nos 1403/71 and 574/72 which contains the same provisions.

I. United Kingdom

1. The following shall be substituted for paragraph 1:

"1. All persons required to pay contributions as employed workers shall be regarded as workers for the purposes of Article 1(b)(ii) of the Regulation."

2. Paragraphs 2, 3, 5 and 6 are unchanged.

3. Paragraphs 4, 7 and 8 do not apply.

4. The following shall be substituted for paragraph 9:

"9. Wherever required by United Kingdom legislation for the purposes of determining entitlement to benefits, Turkish nationals born in a third State or in Turkey are to be considered nationals of the United Kingdom born in a third State."

5. The following paragraphs shall be added after paragraph 9:

"10. For the purposes of implementing the provisions of Articles 41 to 48 of the Regulation, no account shall be taken of graduated contributions paid by the insured person under United Kingdom legislation or of graduated retirement benefits payable under that legislation. These benefits shall be added to the amount of benefit due under the said legislation, determined in accordance with the provisions of the said Articles, to constitute the benefit actually due to the person concerned.

11. For the purpose of calculating the earnings for the granting of the earnings-related supplement provided for by United Kingdom legislation, in particular for cash benefits in respect of sickness, unemployment benefits and temporary widow's benefits, an amount shall, in derogation from Article 47 of Regulation (EEC) No 1403/71 of the Council of the European Communities of 14 June 1971, be credited to the person concerned for each week of activity completed as a worker under the legislation of another Member State during the tax year in question, equal to the amount of average weekly earnings corresponding to the average weekly rate of the earnings-related supplement which, according to the estimates, are payable to a male or female worker respectively during the current benefit year.

12. In order to determine the right to benefits in kind in application of Article 22(1)(a) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971, the expression "Member of the family" means any person considered as a dependant within the meaning of the National Insurance Act or of the legislation on accidents at work of the United Kingdom.
13. For the purposes of applying Article 8(2) of the Regulation to the legislation of the United Kingdom, invalidity, old age and widow's pensions shall be considered as benefits of the same kind.
14. For the purposes of implementing the Non-Contributory Social Insurance Benefit and Unemployment Insurance Ordinance (Gibraltar), any person to whom the Regulation is applicable shall be deemed to be domiciled in Gibraltar if he resides in a Member State."/ ¹

¹ To be adopted only if the Council adopts the proposed Regulation amending Regulations Nos 1408/71 and 574/72 which contains the same provisions.

ANNEX II

(Implementation of Article 44 of this Regulation)

In order to implement this Regulation, the following amendments and additions shall be made to the Annexes of Regulation (EEC) No 574/72 of the Council of the European Communities of 21 March 1972;

1. The following shall be added to Annex 1 :

"J. Turkey " (1)

2. In Annex 2 :

a) the following indent shall be added to Point C. 2(a)(i) :

" - if the person concerned is resident in Turkey : "Landesversicherungsanstalt
Ober- und Mittel-Franken
(Regional Insurance Office
of Upper and Middle Fran-
conia), Bayreuth"

b) the following is to be substituted for Point C. 2(b)(i) :

(1) To be completed by the Turkish authorities.

b) for persons who have been insured, or are treated as having been insured under German legislation or legislation of one or more other Member States or of Turkey or for their survivors:

(i) where the last contribution under German legislation was paid into the manual workers' pension insurance:

- when the person concerned is resident in the territory of the Federal Republic of Germany, excluding the Saarland

or

- when the person concerned is resident outside the Federal Republic of Germany and the last contribution under German legislation was paid to an institution outside the Saarland:

- if the last contribution of another Member State or of Turkey was paid into a Danish pension insurance institution:

"Landesversicherungsanstalt Schleswig-Holstein (Regional Insurance Office of Schleswig-Holstein), Lübeck

- if the last contribution of another Member State or of Turkey was paid into an Irish or British pension insurance institution:

"Landesversicherungsanstalt Freie und Hansestadt Hamburg (Regional Insurance Office of the Free Hanseatic City of Hamburg), Hamburg

- if the last contribution under the legislation of another Member State or of Turkey was paid into a Netherlands pension insurance institution:

"Landesversicherungsanstalt Westfalen (Regional Insurance Office of Westphalia), Münster

- if the last contribution under the legislation of another Member State or of Turkey was paid into a Belgian pension insurance institution:

"Landesversicherungsanstalt Rheinprovinz (Regional Insurance Office of the Rhine Province), Düsseldorf

- if the last contribution under the legislation of another Member State or of Turkey was paid into an Italian pension insurance institution: "Landesversicherungsanstalt Schwaben (Regional Insurance Office of Swabia), Augsburg
- if the last contribution under the legislation of another Member State or of Turkey was paid into a French or Luxembourg pension insurance institution: "Landesversicherungsanstalt Rheinland-Pfalz (Regional Insurance Office of the Rhine-Palatinate), Speyer
- if the last contribution under the legislation of another Member State or of Turkey was paid into a Turkish pension insurance institution: "Landesversicherungsanstalt Ober- und Mittel-Franken (Regional Insurance Office of Upper and Middle Franconia), Bayreuth
- where the person concerned is resident in the territory of the Federal Republic of Germany in the Saarland
- or
- when he is resident outside the territory of the Federal Republic of Germany and the last contribution under German legislation was paid into a pension insurance institution situated in the Saarland: "Landesversicherungsanstalt Saarland (Regional Insurance Office of the Saarland), Saarbrücken

3. In Annex 3:

a) the following indent shall be added to Point C. 3(a):

"(viii) dealings with Turkey: "Landesversicherungsanstalt Ober- und Mittel-Franken (Regional Insurance Office for Upper and Middle Franconia), Bayreuth"

b) the following point shall be added:

"J. Turkey¹"

4. In Annex 4:

a) the following indent shall be added to Point C. 3(b):

"viii) dealings with Turkey: "Landesversicherungsanstalt Ober- und Mittel-Franken (Regional Insurance Office for Upper and Middle Franconia), Bayreuth"

b) the following point shall be added:

"J. Turkey¹"

¹ To be completed by the Turkish authorities.