

PART NINE

FAMILY BENEFITS – Chapter Eight of Regulation 883/04

1. INTRODUCTION:

2. DEFINITION OF BENEFITS AND ALLOWANCES

3. LEGISLATION APPLICABLE

4. AGGREGATION OF PERIODS OF INSURANCE – ARTICLE 6

5. PRIORITY FOR STATE OF EMPLOYMENT

6. PERSONAL SCOPE OF APPLICATION – EXTENSION TO THIRD COUNTRY NATIONALS

6.1 Limitation of extension to third country nationals

7. GENERAL OVERVIEW OF RULES FOR PAYMENT OF FAMILY BENEFITS

7.1. A person does not claim benefits

7.2. Habitual Residence Condition and family benefits under Article 67

7.3. Unemployed Persons

7.4 Posted Workers

8. PRIORITY RULES IN CASE OF OVERLAPPING OF BENEFITS

8.1 Children Residing in a Member State Other than the Parents' State of

Employment – Article 58 of the Implementing Regulation EC 987/09.

9. APPLICABLE LEGISLATION AND/OR COMPETENCE TO GRANT FAMILY BENEFITS CHANGES

10. STUDENTS

11. CLAIM PROCEDURES –

11.1 AC Decision 147

11.2 Claims submitted to an authority of a Member State other than the competent State.

12. SCOPE OF SUPPLEMENTS

12.1 Calculation of Supplements

12.2. Supplement were no benefits due from competent Member State

1. Introduction: Scope of the Chapter

Chapter 8 of Title III of Regulation 883/2004 deals with entitlement to family benefits. The relevant provisions are set out in Articles 67 to 69 of Regulation 883/2004 and Articles 58 to 61 of the Implementing Regulation 987/09.

2. Definition of Benefits and Allowances

The Regulations define what is meant by 'family benefits'¹.

Family Benefits are defined as:-

'All benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex 1 of the regulation''.

In the case of Ireland, the following benefits are classified as 'family benefits':

- Child Benefit
- Family Income Supplement
- One-Parent Family Payment
- Guardian's (Non-Contributory) Payment, formerly Orphan's (Non-Contributory) Pension
- Domiciliary Care Allowance

The following examples are for illustrative purposes only and while many of the examples relate to Child Benefit it should be borne in mind that depending on a person's circumstances s/he may have entitlement to one or more of the other family benefits which will affect the overall payment to the family.

3. Legislation Applicable

Under the Regulation, the legislation applicable is determined by Title II Articles 11 to 16 (see Part 4 "Applicable Legislation" for detailed provisions). The main principle arising from Title II is that employed or self-employed persons shall be subject to the legislation of one State only, and this will normally be the State of employment. The following examples show how this principle impacts on entitlement to Family Benefits

Example 1

A lone parent is living in Northern Ireland with her children while working in the Republic of Ireland. In such circumstances, DSP becomes the competent authority for the payment of family benefits (FIS, Child Benefit and One Parent Family Payment, as the case may be). However, if the UK family benefits are higher than the

¹ Article 1(z) of Regulation 883/2004

corresponding Irish benefits, the UK is liable to pay a supplement to the family. In making this calculation, the UK will examine the whole basket of family benefits due in the UK.

The calculation will be:

(UK Child Tax Credit + Child Benefit) - (Irish Child Benefit + FIS + OFP) = supplement payable by the UK

Conversely, in the case of a lone parent living in the Republic of Ireland but working in Northern Ireland, the UK becomes the competent authority for payment of family benefits. and the Northern Ireland authorities will determine her family benefit entitlement. In accordance with Article 68 (2) of Regulation 883/2004 , She is also entitled to family benefits from Ireland based on residence but these family benefits payable by Ireland are suspended up to the level of UK benefit.

Therefore, Ireland pays a supplement if the total of the basket of family benefits is higher than that payable by the UK.

The calculation will be:

(Irish CB +OFP) - (UK Child Tax Credit+ CB) = Supplement payable by Ireland.

Example 2

The guardian of an orphan is living in Northern Ireland and working in the Republic of Ireland. Under Article 67 and the State of employment principle Ireland is the competent State for family benefits. The conditions for receipt of Guardian's (Non Contributory) payment (formerly Orphan's (Non-Contributory) Pension) are satisfied and Child Benefit is also payable. The UK may be liable for payment of a supplement, based on the child's residence in Northern Ireland, and in calculating the supplement will take account of the total family benefits being paid by Ireland.

4. Aggregation of Periods of Insurance – Article 6

In most Member States, entitlement to family benefits is not based on a requirement for periods of employment or insurance. Therefore the aggregation rule rarely applies. However, Ireland may be required to supply details of periods completed under Irish legislation for persons claiming insurance based family benefits in other Member States.

5. Priority for state of employment

Because entitlement to family benefits can often arise in more than one Member State (based on residence, employment or receipt of a pension) the general rule as laid down in Article 68 of the Regulation is that the level of payment in the State of employment applies.

However, when there is employment in two Member States, it is the State of residence of the members of the family which will become competent for family benefits.

It should be noted that for the purposes of Article 68, Decision No F1 clarifies the definition of “activity as an employed or self employed person” to include;

- Actual activity as an employed or self employed person.
- Temporary suspension of employment or self employment as a result of sickness, maternity, accident at work, occupational disease as long as wages or benefits, excluding pensions, are payable in respect of these contingencies or,
- Paid leave, strike or lock-out or,
- Unpaid leave for the purposes of child raising, as long as this leave is deemed equivalent to such an activity as an “employed or self-employed person” in accordance with the relevant legislation.

More Information on how entitlements are prioritised when there may be entitlement from more than one Member State is given in Section 9 below.

6. Personal Scope of application – extension to Third Country Nationals.

NOTE : PROVISIONS IN RELATION TO THIRD COUNTRY NATIONALS ARE STILL UNDER NEGOTIATION.

As outlined in Part 3 “The Scope of the Regulation”, EU Regulations 883/2004 and the Implementing Regulation 987/2009 apply to

nationals of a Member State, stateless person(s) and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors .

Until June 2003 non EEA nationals (or third country nationals), could only come under the scope of the Regulations if they were a member of the family of an EEA national. However, as of 1 June 2003, the provisions of Regulations 1408/71 and 574/72 were extended through EC Regulation 859/03 to cover third country nationals who were not already covered solely because of their nationality⁶. The provisions of Regulation 859/03 have now been replaced by EC Regulation 1231/10 which extended EC Regulation 883/04 to Third Country Nationals.

A Third Country National can only benefit from the provisions of the Regulations if s/he is legally resident in Ireland and if his/her situation is linked to another Member State. The Regulation does not confer any rights on a Third Country National to reside or work in a Member State.

In relation to family benefits, the operation of the Regulation on Third Country Nationals will mainly arise in relation to cross-border family situations.

Example 3

*A married couple/Civil Partnership move to Ireland from the Philippines; one of the couple is working in a hospital in Northern Ireland, and the other is working in the Republic of Ireland and has a valid work permit. Prior to 2003, both of these persons would have been outside the scope of the Regulations, and their entitlement to benefits would have been decided under domestic legislation alone. However, since 1 June 2003, the EU Regulations apply because the situation is not confined to a single Member State. In this case, Ireland will be competent for family benefits, but the UK will be liable for any supplement. **NB: for the Regulations to apply in such a case, it must be established that the third country national has a valid work permit.***

Example 4

A family are residing in Northern Ireland, where the mother is not, and never was, employed. The father, a non EEA national, is working in the Republic of Ireland. Before 1 June 2003, this situation would have fallen outside the scope of the Regulations, because the mother was not an employed person. However, because this situation is not confined to a single Member State (residence in one

State and employment in another) the regulations apply and according to Article 67 Ireland is competent for family benefits, and the UK will be liable for any supplement.

6.1 Limitation of extension to third country nationals The extension of the Regulations to third country nationals applies in all Member States except: Denmark, Iceland, Liechtenstein, Norway and Switzerland. If a third country national moves between Ireland and one of these 5 countries s/he is **not covered by the EC Regulations**.

Example 5

A non EEA couple are living in Ireland with their children. The mother is not working and the father goes to Switzerland to work. Because Switzerland is not covered by the extension of the Regulations to third country nationals, the Regulations do not apply, and therefore Switzerland will not be obliged to pay. Instead, Ireland would pay family benefits under domestic legislation.

7. General overview of rules for payment of family benefits.

The Regulations provide that a person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including family members residing in another Member State, as if they were residing in the former Member State².

In essence, a person's family is treated as if they resided in the State of employment. Article 67 overrules any residency requirement in national legislation regarding family benefits. However, as the benefits are to be granted in accordance with the provisions of the legislation of the competent State other national provisions such as age limits and number of children will apply. As a general rule, if there is also an entitlement to family benefits in the State of residence of the members of the family based solely on their residence, these benefits will be suspended up to the amount provided by the State of employment. In other words, the State of employment will pay benefits, but the State of residence will pay a supplement if its benefits are higher than the benefits in the competent State³.

Situations will arise where, for various reasons, a person or family may have an entitlement to Family Benefits in more than one Member State. Unless otherwise provided for, the Regulations do not confer nor maintain the right to several benefits of the same

² Art 67 of Regulation 883/2004

³ Art 68 (2) of Regulation 883/2004

kind for one and the same period of compulsory insurance (Article 11 of 883/2004). In relation to Family Benefits, Article 68 of the Regulation sets out the priorities which apply when an entitlement to Family Benefits arises in more than one Member State. These are set out in Section 9 below.

7.1. A person does not claim benefits

Where a person entitled to claim benefits fails to exercise that right, an application for family benefits made by the other parent, a person treated as a parent or a person or institution acting as guardian of the child or children shall be taken into account by the competent institution of the Member State whose legislation is applicable. (Article 60(1) of the Implementing Regulation EC 987/09.

7.2. Habitual Residence Condition and family benefits under Article 67

Article 67 effectively overrules the requirement that a person be habitually resident in the State. Thus, in the case of a claim for family benefits by any national of an EEA Member State, who is employed or self-employed in Ireland and subject to the Irish PRSI system or is at the time of claim in receipt of Irish Jobseeker's Benefit, formerly Unemployment Benefit, the habitual residence condition is overruled. **This is also the case even where the family resides in another Member State.**

See <http://www.welfare.ie/publications/hrc.html> for note on Habitual Residence Condition.

Example 6

A father works in Ireland and resides with his wife/Civil Partner (who does not work) and children in Northern Ireland. Under Article 67 and the State of employment principle, Ireland is the competent State and should pay family benefits, irrespective of where the members of the family reside. However, the Northern Ireland authorities will pay a supplement if its family benefits are higher than the Irish benefits.

Example 7

An EEA national comes to Ireland with her child and works part-time. She claims One-Parent Family Benefit and Child Benefit. Under Article 73 and the State of employment principle Ireland is the competent State and the habitual residence condition is overruled. Ireland would also be competent for One-Parent Family

Benefit and Child Benefit even if the child resided in another Member State and the habitual residence condition is overruled by Article 67. If the family benefits in the State where the child resides are higher this State will pay a supplement.

7.3. Unemployed Persons

A wholly unemployed person who last resided in a Member State other than that of last employment, and who is receiving unemployment benefits from the State of residence, shall also receive family benefits from that state for members of his/her family residing with him⁴.

A formerly employed or self-employed person who receives unemployment benefit under the legislation of an EEA Member State shall be entitled to family benefits from that State in respect of his/her family members residing in another State⁵

Example 8

A father who was formerly employed in Ireland is now receiving Jobseeker's Benefit, under Irish legislation. His wife/civil partner and children reside in Northern Ireland. Is he entitled to claim family benefits on behalf of his children living in Northern Ireland?

The answer to this will vary depending on whether the spouse /partner is employed in Northern Ireland. If she is not, then Article 67 will apply and the father is entitled to claim family benefits in Ireland for as long as he is entitled to Jobseeker's Benefit (Unemployment Benefit). Once his entitlement ends, and if he has not found employment, competency for family benefits will switch to the Northern Ireland authorities. If the spouse/partner is employed in Northern Ireland competency for family benefits falls to be decided under Art 68 (b)(i) as his unemployment would also be regarded as "activity as an employed or self employed person" in accordance with Administrative Decision F1. In such circumstances, the residence of the children in Northern Ireland is key as there is a claim for benefit in two Member States on the same basis.

7.4 Posted Workers

Under the Regulation, a worker can be 'posted' to another Member State by his/her employer for a period of 24 months.⁶ , Under the posting provisions, such a worker will continue to be subject to the legislation of the Member State from which s/he was posted. Therefore, a person posted from Ireland will continue to be subject

⁴ Article 65 (5)(a) of Regulation 883/2004

⁵ Article 67 of 883/2004

⁶ Article 12 of 883/2004

to Irish legislation and will continue to receive any family benefits from Ireland. This also applies for self-employed persons who go to another Member State to pursue self-employed activity for a period of up to 24 months.

The situation is similar for civil servants sent to work in another EEA Member State. In such situations, the civil servant will continue to be subject to the legislation of the Member State to which the administration employing him/her is subject ⁷

In such situations, if the family members continue to reside in the country of origin, the claim can be dealt with under national legislation only. However, if the family move to the same Member State as the posted worker or the civil servant, EU rules apply and competency for family benefits will depend on whether the spouse/partner becomes employed in the other Member State.

Example 9

A person employed in a large multi-national firm in Dublin is 'posted' to the UK for a period of 12 months, during which he lives in the UK with his family. The employed person is issued with a Structured Electronic Document (formerly E101) by DSP to state that he remains subject to Irish legislation and DSP will remain competent for payment of family benefits.

Example 10

A civil servant working for the Department of Foreign Affairs is sent to Norway for 3 years and lives in Oslo with his family. The civil servant has the relevant SED (E101) to state that he remains subject to Irish legislation and, therefore, DSP will remain competent for family benefits. However, should the civil servants' wife/civil partner take up employment in Norway, then competency for family benefits will switch to that State.

8. Priority Rules in case of overlapping of benefits

Article 68 sets out the priorities for payment of benefits where there are overlapping entitlements. Where during the same period and for the same family members benefits are due under the legislation of more than one Member State the following priority rules apply.

Where benefits are payable by more than one State on different bases the order of priority is 1) rights arising from employment or self employment, 2) rights deriving from the payment of a pension 3) benefits based on residence.

⁷ Article 13 (4) 883/2004)

Where benefits are due from more than one Member State for the same reason the following criteria apply;

- Where benefits are due on foot of employment or self employment the place of residence of the children takes priority, provided there is such activity, and additionally, where appropriate, the highest amount of the benefits provided for by the conflicting legislations. In the latter case the cost of benefits are shared in accordance with criteria laid down in the Implementing Regulation 987/09. This is explained below.
- Where rights arise as a result of payment of a pension; the place of residence of the children, provided that a pension is payable under its legislation and, additionally, where appropriate, the longest period of insurance or residence under the conflicting legislations.
- Where residence is the factor the place of residence of the children is the priority.

Example 11

A mother resides in Ireland with her child and is not engaged in paid employment, while her husband/civil partner is employed in Germany. In accordance with the priority rules the entitlement based on employment in Germany takes precedence over the residency based entitlement in Ireland. Accordingly, entitlement to Irish family benefits is suspended up to the level of the benefits granted in Germany in accordance with Article 68(2). However, if Irish benefits are higher, then a supplement may be payable by DSP.

The situation described above would be different, however, if the mother was employed in Ireland. If both parents are employed or self-employed, then the right to family benefits falls to be decided in accordance with Article 68 1(b) (i) i.e. there is an entitlement to benefit in two Member States on the basis of employment or self employment. In that case the priority for payment of Family Benefits rests with the State in which the children are residing.

Example 12

Two children and their separated mother are residing in the Republic of Ireland, where she is not employed or receiving any benefits. The separated father is living and working in the United Kingdom. Under Article 68(1)(a), the UK is competent for family

benefits and entitlement in Ireland is suspended up to the level of UK benefit in accordance with Article 68(2). Under its domestic legislation, the UK will award family benefits to the father if he is paying maintenance to the mother above the UK rate of Child Benefit. In calculating the supplement DSP should include One-Parent Family Payment (if the person would qualify for the payment), and Child Benefit.

However, if the father is not paying maintenance, then there may be no entitlement to Child Benefit or Child Tax Credit from the UK. In this situation, competency for family benefits will switch to Ireland and be assessed on the basis of our domestic legislation. . Moreover, no supplement would be payable from the UK in this situation

Example 13

A mother is living with her 2 children in the UK where she is not employed, or receiving any benefits covered by the scope of A/C Decision F1. The woman's separated husband/Civil Partner is living and working in Ireland. According to Article 68, Ireland is competent for family benefits and under domestic legislation the mother has primary entitlement under Irish law so Child Benefit should be paid to the mother of the children in the UK.

Example 14

Both parents are employed; the father of the children is self-employed in Ireland and the mother is employed in Italy, the children reside with their mother in Italy. According to Article 68 1(b)(i) , Italian legislation has priority and the father's entitlement to family benefits under Irish legislation is suspended up to the amount of family benefits provided in Italy. However, if Irish family benefit rates are higher than Italian rates, then the difference between the two rates must be paid in the form of a supplement.

Example 15

A family is residing in the Republic of Ireland, with the father working in Northern Ireland and the mother running a 'Bed and Breakfast' in the Republic. Because the mother is pursuing an activity as a self-employed person there is an overlapping of rights and it is the State of residence of the children that becomes competent. Therefore, DSP is competent for family benefits, and the UK will be liable for payment of any supplement.

Example 16

A woman, separated from her husband/Civil Partner is living with her children in the Republic of Ireland and is also employed here. The woman's separated husband/Civil Partner is living and working

in Northern Ireland. Although there is entitlement to benefits from both the Republic of Ireland and Northern Ireland, DSP is competent by virtue of the residence of the children here and, in accordance with the provisions of national legislation, benefits will be provided to the mother who has care of the children. As in the case of Example 12 above, the UK will award family benefits to the father if he is paying maintenance to the mother above the UK rate of Child Benefit. In this case however, the UK benefit is suspended up to the level of the Irish benefit and a supplement will be payable by the UK if their family benefits are higher than the Irish family benefits. In this case One-Parent Family Benefit may also be in payment and should be notified to the UK authorities for the purposes of calculating the supplement.

Example 17

A family with twin children is living in Northern Ireland. The father is employed there while the mother is employed in the Republic of Ireland. The UK is competent for payment of family benefits and Ireland considers the need for payment of a supplement, using the usual formula.

However, as well as the normal rate of Child Benefit, the family would also be entitled to the special grants for twins, payable at birth, 4 years and 12 years. Therefore, in addition to any supplement, the family should receive payment of the special grant for twins in the same way as if Ireland were competent for payment of family benefits.

8.1 Children Residing in a Member State Other than the Parents' State of Employment⁸.

Where the order of priority as set out in Article 68 (1)(b)(i) and (ii) cannot be determined on the basis of the residence of the children Article 58 of the Implementing Regulation 987/09 provides that each Member State concerned shall calculate the amount of benefits, including the children not resident within its own territory. If applying Article 68 (1)(b)(i), the competent Member State whose legislation provides for highest level of benefits shall pay the full amount and be reimbursed half this sum by the other Member

⁸ Art 58 of regulation 987/09

State up to the level of the benefits provided under the legislation of the latter Member State.

In this scenario, if entitlement arises as a result of the payment of pensions and competency cannot be decided on the basis of residency of the children then priority is given to the entitlements from the Member State with the longest period of insurance or residence.

Example 18

A mother is working in Belgium while the father works in France. Both parents live in Luxembourg with their children. Under Article 58 of EC Regulation 987/09, the Member State of Employment which pays the highest family benefits is the competent authority. If for example, France pays higher family benefits than Belgium, then benefits are payable under French legislation, but the Belgian authorities must refund half the payment to the French authorities. However, Belgium will not be obliged to refund more than the amount it would normally pay under its domestic legislation.

Example 19.

A couple are resident in Ireland with their child and receiving pensions from the UK and France. The UK pension is based on 20 years of insurance and the French pension is based on 25 years of insurance. In such circumstances France is the competent State for Family benefits.

9. Applicable Legislation and/or competence to grant family benefits changes⁹.

Where the applicable legislation and/or the competence to grant family benefits change between Member States during a calendar month, irrespective of the payment dates of family benefits, the institution which has paid the benefits at the beginning of that month shall continue to do so until the end of the month in progress. It should notify the other Member States concerned of the date on which it ceased payment. Payment by the other Member State will take effect from that date.

10. Students

⁹ Article 59 of Regulation 987/09

There are specific provisions in relation to students. Apart from aggregation, students' entitlement to benefits is to be dealt with according to national legislation only.

Under national legislation (Social Welfare Consolidation Act) a person undergoing full-time education is regarded as a 'qualified child' for Child Benefit purposes until he/she reaches the age of 18. Therefore, situations will arise where Ireland is the competent Member State but the members of the family reside in another Member State and are undergoing full-time education. In such cases, such full-time education abroad must be treated as if it were being completed in Ireland. In order to enquire about full-time education being pursued in another Member State, Ireland should send the relevant SED (which replaces form E 402) to the Member State of residence. Ireland might also receive such forms from other Member States seeking information on full-time education being pursued in Ireland.

11. Claim procedures –

Article 59 of Regulation 987/09 sets out the procedure for applying Articles 67 and 68 of Regulation 883/2004.

- The application should be addressed to the competent institution
- The situation of the whole family has to be taken into account **as if** all members of the family were subject to the legislation of the Member State concerned and residing there
- An application can be lodged by a person subject to the legislation of a Member State i.e. any member of the family can make an application for family benefits.
- Where a person entitled to make a claim does not do so, an application made by the other entitled person/institution shall be taken into account by the competent institution of a Member State whose legislation is applicable.
- The institution to which the application is made must decide, taking account of all the facts, if it is the competent State by priority:
 - if that institution concludes that it is the competent State by priority it shall provide its family benefits and if it appears that a differential supplement is payable by the other State it shall forward the application to that other State and provide details of the amount of benefits paid;

- if ,however the institution to which the claim is made concludes that it is the secondary competent State it shall take a provisional decision on the priority rules and forward the application to the other institution that it deems to be the competent State by priority. The applicant should be informed at the same time.
- The other institution has a 2 month period in which to take a position on the provisional decision. At this point there are 2 possibilities:
 - (i) the second institution does not take a position within the 2 months
 - (ii) there is a difference of views between the two institutions.
- (i) **the second institution does not take a position within the 2 months**

In this case the provisional decision taken by the first institution applies and this institution pays the family benefits provided by its legislation and provides details of the amount of benefit paid. If it is later determined that the first institution has paid more than that for which it is responsible it may claim reimbursement of the excess in accordance with Article 71.

- (ii) **there is a difference of views between the two institutions**
 Where there is a difference of views between the two institutions as to which legislation takes priority the rules in Article 6 (2) to (4) of Regulation 987/09 (dealing with provisional application of legislation and provisional payment of benefits) shall apply. For the purposes of family benefits the institution of the place of residence in Article 6(2) means the place of residence of the children.

11.2 Claims submitted to an authority of a Member State other than the competent State.

There is a specific provision to cover the situation where a claim is made in a State other than the one that is competent by priority. Under Article 68 (3) where a person submits a claim for family benefits to a Member State under whose legislation they are entitled to claim, even though that State is not competent by

priority right, the date on which the application was first made shall be considered as the date on which it was submitted to the competent authority by priority.

An authority receiving such an application must, without delay, forward the application to the competent authority, inform the person concerned and, without prejudice to the provisions of the Implementing Regulation EC 987/09 concerning provisional awards, pay, if necessary a differential supplement.

The competent authority should treat the claim as if it were submitted directly to it and the date on which the application was submitted to the first authority shall be taken as the date the claim was made.

Similarly, under Article 81 any claim, declaration or appeal which should have been submitted in accordance with the legislation of one Member State within a specified period shall be admissible if it is submitted within the same period to a corresponding institution in another Member State. The authority receiving such documents shall forward them to an institution in the appropriate Member State without delay.

12. Scope of supplements

Supplements will apply to all family benefits. In the case of Ireland this means that supplements will be calculated taking into account the benefits classified as family benefits in subsection 2 above. However, a supplement in respect of family benefits will not be payable by a Member State if the entitled person does not meet the domestic conditions (except for residence) for receipt of that benefit. For example, where an employed person is entitled to Child Benefit and CTC in the UK, and where entitlement to Child Benefit only in Ireland has been suspended (because, for example, there is no entitlement to FIS in Ireland), Ireland will only have to take into account its rate of Child Benefit when calculating whether a supplement is due.

12.1 Calculation of Supplements

When calculating supplements, the position of the family should be looked at as a whole, irrespective of the person to whom the benefits are being paid. A comparison should then be made between all the benefits the family are entitled to from the competent Member

State, and all the benefits they would be entitled to in the other Member State.

Supplements will be calculated on the basis of the number of children for who there is entitlement when the supplement arises. However, supplements should be recalculated to take account of children born after the event which gave rise to entitlement in more than one Member State (such as employment, change of residence etc)¹⁰

12.2. Supplements where entitlement to benefit ceases

Supplements will be payable as long as the domestic conditions for receipt of the benefit are satisfied. However, where entitlement ceases in the country paying the full benefits, but there would be entitlement in the Member State paying the supplement (on the basis of national legislation alone and without the need for aggregation), then that state will become responsible for paying the full benefit¹¹. This provision would apply in the case where entitlement to a benefit in one State ends because of reaching an age limit, but there would still be entitlement in the state paying a supplement because of a higher age limit. The latter state will then pay the benefit in full.

12.3 Supplement where no benefits due from competent Member State

However, if benefits are not being received from Member State A for other reasons, such as because that country does not provide for them under its national legislation, then Member State B will pay full benefits rather than a supplement.

¹⁰ Case C-251/89 Athansopoulos

¹¹ Case C-113/96 Gomez Rodriguez and Case C-471/99 Martinez Dominguez

SEDs NUMBER + NAME	ART 883/04	ART 987/09	E-FORM	DESCRIPTION OF BUSINESS FLOW (meaning + purpose)	REMARKS ON SEDs
F001 Request for Determining Competence	67, 68	58, 59, 60.1,60.2	E401 E411	Competent Institution request the other Institution(s) to provide information of the claimant and his/her right to benefits in MS	Application should be forwarded without delay to the Competent Institution. The Date on which the claim were submitted to the first Institution is same to the latter Institution
F002 Reply for Determining Competence	67, 68	58, 59, 60.1,60.2	E401 E411	Other Institution(s) provides necessary Information	
F003 Decision on Determining Competence	67, 68	58, 59, 60.1,60.2		Grounds for Decision and information on Benefits provided	
F004 Request Clarifications		60.3, 60.4		Request on grounds for Decision, optional message	
F005 Reply Clarifications		60.3, 60.4		Reply to request on grounds for Decision, optional message	
F006 Information about Provisional Decision on Primary Competence and Benefits Provided	68	60.3, 60.4		Institution notifies the content of provisional Decision and Benefits provided	The Institution where the children reside will have to grant the benefits provided for its legislation on a provisional basis. If there is a disagreement on the residence of the children Institution MS

					where the application is made start paying the full amount.
F007 Notification on Disagreement on Provisional Decision		60.3		Institution has two months time to take a position on the provisional decision	If this Institution do not contest the Provisional Decision, Decision applies
F008 Decision after Communication		60.4		Decision of Agreement/Disagreement, if the Decision is Disagreement, BF continues with SEDs F006/ F009, as optional	
F009 Contestation to Provisional Decision on Primary Competence and Benefits Provided		60.3		Contestation yes or not accepted, if not accepted there will be an amendment of the SED F006 till an agreement is arrived or if a consult to AC is necessary, clerk starts a new Flow with Flow F003	
F010 Consultation with Administrative Commission		6.3 & 60.4		If no Agreement is reached the Institutions have to decide on how they will take the matter to the Administrative Commission.	Either one of the Institutions may start this procedure
F011 Decision of Administrative		6.3 & 60.4		The Administrative Commission shall seek the reconcile the points	

Commission				of view within six months	
F012 Request for Reimbursement		60.5	E411	MS submits a claim for reimbursement and makes a decision if possible on the differential amount of its benefits	Types of benefits from the list, precise the length in days, weeks and/ or months, amount for each child among same family or total amount provided for the entire family
F013 Reply to Reimbursement		60.5	E411	MS makes a decision on the payment of its benefits from the start of the contested period and makes a reimbursement to the claimant Institution	
F014 Request for Decision Made on Primary Claim Evaluation	68.2	2.2	E411	Determination of the differential amount	The Secondary Competent Institution request the Primary Competent Institution Circumstances of the Family , types and amounts of benefits
F015 Reply to Decision Made on Primary Claim Evaluation	68.2	2.2	E411	Primary Competent Institution provides information requested	MS in question informs of decision on primary claim evaluation

F016 Request for Discharge of Benefits	68 a			Person with whom the children are living claims that she/he is not receiving Family Benefits for maintenance of the child/children	
F017 Reply for Discharge of Benefits	68 a			Competent Institution's reply to request	
F018 Request for Insurance Length Period	69	61	E104	Competent Institution which has no Additional or Special Family Benefits for Orphans request for information about length of insurance /residence periods other MSs	Request is necessary only if there is more than two Competent MSs and it is not clear which one has longest period of Insurance/ Residence
F019 Reply to Insurance Length Period	69	61	E104	Institution in question informs the Periods	
F020 Information on Priority	69	61		Competent Institution with longest insurance periods	
F021 Application for Additional Benefits	69 & 81	61		Competent Institution forwards the application to Institution with longest Insurance periods without delay	
F022 Request for Information of Periods	6	12		Periods of insurance, employment, self-employment, residence	
F023 Reply to Information	6	12		Periods of insurance, employment, self-employment,	

of Periods				residence	
F024 Request Examinations		2.2		Medical Examination necessary for Family Benefits	Only in case the Entitlement to Family Benefit require medical grounds
F025 Reply to Medical Examination s		2.2		Information of the medical Examination	
F026 Request for more Information		2.2	E001	For the Exchange of any kind of Information	E.g. Information of the date when application was originally submitted
F027 Reply to More Information		2.2	E001	For the Exchange of any kind of Information	E.g. Information of the date when application was originally submitted