COMMISSION OF THE EUROPEAN COMMUNITIES

PRACTICAL HANDBOOK OF SOCIAL SECURITY FOR EMPLOYED PERSONS AND THEIR FAMILIES MOVING WITHIN THE COMMUNITY

Revised as at 1 February 1979

This handbook has been drawn up at the request of the Commission of the European Communities by Mr René BONNET, Assistant Director of the Caisse autonome nationale de la sécurité sociale dans les mines, Paris, in collaboration with the Department of 'Free Movement and Social Security of Migrant Workers' of the European Communities.

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NOTE

This fourth amending supplement to the Practical Handbook of Social Security for Employed Persons and their Families moving within the Community is the last to be published in a loose-leaf folder.

The Handbook is currently in the process of being re-edited.

The new edition, which will probably be available at the beginning of 1980, will contain, in Part I, the texts of Regulations No 1408/71 and No 574/72, Decisions of the Administrative Commission and Judgments of the Court of Justice. Part II will contain commentaries on the provisions of these Regulations, Administrative Commission Decisions and Court of Justice Judgments. The commentary will follow the order of the provisions of Regulation No 1408/71.

Provisions of Regulations No 1408/71 and No 574/72 which have since been replaced, and declarations made in the minutes of the Council will also be included.

Those interested in the new publication — which is to be entirely updated every eighteen months — should apply to the Office for Official Publications of the European Communities, Sales Department, Boîte postale 1003, Luxembourg.

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NOTE

The following have been inserted in this revision :

1. Judgments of the Court of Justice of the European Communities :

   — Case 35/77, 29 November 1977.
   — Case 64/77, 30 November 1977.
   — Case 66/77, 1 December 1977.
   — Case 55/77, 6 December 1977.
   — Case 84/77, 19 January 1978.
   — Case 83/77, 14 March 1978.
   — Case 98/77, 14 March 1978.
   — Case 105/77, 14 March 1978.
   — Case 126/77, 15 March 1978.
   — Case 115/77, 16 March 1978.
   — Case 117/77, 16 March 1978
   — Case 134/77, 20 April 1978.
   — Case 1/78, 28 June 1978.
   — Case 9/78, 6 July 1978.
   — Case 26/78, 5 October 1978.
   — Case 10/78, 12 October 1978.

2. Administrative Commission : Decision No 110.

3. Rates of currency conversion to be applied for the purpose of refunding benefits for the second, third and fourth quarters of 1978 and the first quarter of 1979.

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AMENDMENTS OR ADDITIONS

A — Leaves to be replaced or inserted

Former pagination, taking into account revisions I-75, II-76 and III-77)	Corresponding sheets (to be replaced or inserted) in revision IV-78
Title page I-II	Title page I-II
Analytical table : pages IX, X, XXI and XXII	Analytical table : pages IX, X, XXI and XXII
Pages 3-4	Pages 3-4 (delete p. 4a (III-77))
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218c-218d	218c-218d; add 218e and 218f
222a-222b	222a-222b

B — Amendments or additions to be made by hand

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	§ 2 — Institutions responsible for benefit 178 to 178b, C 164b 68
	§ 3 — Formalities and procedures 179 to 182, C 165 to C 170a 68a
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	. . . . .
XXV	— Section III, B and C are to be amended as follows :
	B — Rules applicable in case of overlapping entitlement to benefit 609 to 611, C 399 and C 400a . . . 198a

Page	Amendment or addition
XXV	C — Investigation of claims and payment of benefit 612 to 616, C 401 to C 404 . . . . . 200 § 1 — Submission of claims for benefit 612 to 614, C 401 and C 402 . . . . . 200 § 2 — Payment of benefit 615, C 403 . . . . . 200a § 3 — Information concerning situations which may affect entitlement to benefit 616, C 404 200a
1	— In the reference table under Chapter I, add the following Cases of the Court of Justice : 84/77, 10/78.
13	— In the reference table under Section II, add the following Case of the Court of Justice: 35/77.
18	— In the reference table in Section II, add "Court of Justice EC: Cases 32/76, 10/78".
57	— In the reference table under Section II, add the following Case of the Court of Justice: 117/77.
105	— In the reference table under Section I, add the following Case of the Court of Justice: 64/77.
123	— In the reference table in Section II, add the following Case of the Court of Justice EC: 9/78.
172	— In the reference table under Section II, add the following Case of the Court of Justice: 35/77.
178a	— In the last line of the fifth paragraph add "(on this Case, see also C 9-4 and C 26a)".
198	— In the reference table under Section III, add: Court of Justice EC: Case 115/77.

NOTE

After being amended to implement them in the nine Member States from 1 April 1973, Regulations Nos 1408/71 and 574/72 were again amended, first by Regulation (EEC) No 1392/74 and then by Regulation (EEC) No 1209/76. Regulation No 574/72 was also amended by Regulation (EEC) No 2639/74. These amendments were included in revisions I-75 and II-76 of this handbook.

Regulations Nos 1408/71 of 14 June 1971 and 574/72 of 21 March 1972 were further amended by Regulation (EEC) 2595/77 of 21 November 1976.

Between July 1976 and December 1977 the Court of Justice of the European Communities delivered additional judgments.

During the same period, the Administrative Commission adopted four Decisions on administrative questions and questions of interpretation for the purpose of implementing the Regulations.

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The following have been inserted in the revision at 31 December 1977.

1. Basic texts:
   — Regulation (EEC) No 2595/77 of 21 November 1977, published in OJ L 302 of 26 November 1977.

2. Judgments of the Court of Justice of the European Communities:

   — Case 19/76, 13 July 1976.
   — Case 17/76, 29 September 1976.
   — Case 32/76, 13 October 1976.
   — Case 40/76, 23 November 1976.
   — Case 39/76, 15 December 1976.
   — Case 63/76, 16 December 1976.
   — Case 62/76, 3 February 1977.
   — Case 72/76, 16 February 1977.
   — Case 76/76, 17 February 1977.
   — Case 75/76, 10 March 1977.
   — Case 93/76, 16 March 1977.
   — Case 79/76, 31 March 1977.
   — Case 87/76, 31 March 1977.
   — Case 102/76, 5 May 1977.
   — Case 104/76, 5 May 1977.
   — Case 109/76, 9 June 1977.
   — Case 112/76, 13 October 1977.
   — Case 22/77, 13 October 1977.
   — Case 37/77, 13 October 1977.
   — Case 32/77, 20 October 1977.
   — Case 41/77, 9 November 1977.

3. Administrative Commission Decisions Nos 106 to 109.

   Rates of currency conversion to be applied for the purpose of refunding benefits for 1976, 1977 and the first half of 1978.

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AMENDMENTS OR ADDITIONS

A — Leaves to be replaced or inserted

Former pagination, taking into account revision I-75 and II-76	Corresponding sheets (to be replaced or inserted) in the revision (III-77) as at 31 December 1977
Title page I-II	Title page I-II
Analytical table, pages IX-XVIII and XXI-XXIV	Analytical table, pages IX-XVIII and XXI-XXIV
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222a	222a-222b

B — **Amendments or additions to be made by hand**

Page	Amendment or addition
1	— In the reference table in Chapter I, the references to Cases of the Court of Justice are to be completed as follows: 17/76, 39/76, 40/76.
3	— At the end of the second subparagraph of No C 3 ("in Great Britain ... employed person"), add "see C 9a below".
23	— The last line of No 49 is to be amended as follows "Nos 1392/74, 1209/76 and 2595/77".
24	— In the reference table in Section II, the references to Regulation No 574/72 are to be completed as follows: "and by Regulation 2595/77, OJ EC L 302 of 26 November 1977"; add also "EC Court of Justice: Case 93/76".
25	— In No 53, the last line should read "... 1209/76 and 2595/77".
26	— In the reference table in Section III, add the following Court of Justice Cases: 69/76, 87/76 and 104/76.
39	— The last two lines of No 94 should read as follows: "... Regulation No 574/72 as amended by Regulations 878/73, 1392/74, 1209/76 and 2595/77 (Regulation 574/72, Arts 4 and 14)".
42	— In the reference table of Section II, add the following Court of Justice Case: 33/75.
89	— In the reference table in Section IX, the references to Regulation No 574/72 should be amended as follows: "... and by Regulation 2595/77, OJ EC L 302 of 26 November 1977"; to the Administrative Commission Decisions, add 109.
90	— In No 251, the entry in brackets should read: "(Regulation 574/72, Art. 93 (1) and (5) as amended by Regulation 2595/77)".
101	— In the reference table in Section V, the reference to Annex 10 to Regulation 574/72 should be completed as follows: "... and by Regulation 2595/77, OJ EC L 302 of 26 November 1977".
102	— The last sentence of No 288 to read as follows: "Annex 10 to this Regulation has been amended by Regulations Nos 878/73, 1392/74, 1209/76 and 2595/77".

Page	Amendment or addition
123	— In the reference table in Section II, add "6/75 and 112/75" to Cases of the Court of Justice.
128a	— In the reference table in Section III, the reference to Regulation No 574/72 should read as follows: "... and by Regulation 2595/77, OJ EC L 302 of 26 November 1977".
128b	— At the end of No 354, read "... 1392/74, 1209/76 and 2595/77".
136	— In the reference table in Section IV, the reference to Regulation No 574/72 should read as follows: "... and by Regulation 2595/77, OJ EC L 302 of 26 November 1977".
137	— The last sentence of No 391-2 should read: "... of 8 June 1974) and by Regulation No 2595/77 (OJ EC L 302 of 26 November 1977)".
139	— In the reference table in Section I, the reference to Regulation No 574/72 should read as follows: "... and by Regulation 2595/77, OJ EC L 302 of 26 November 1977".
158	— In the reference table in Section I, add "66/74" to Cases of the Court of Justice.
167	— In the reference table in Section III, the reference to Regulation No 574/72 should read as follows: "... and by Regulation 2595/77, OJ EC L 302 of 26 November 1977". In No 510, the last sentence should read as follows: "... and 2595/77 (OJ EC L 302 of 26 November 1977)".
168	— In the reference table in Section I, the reference to Regulation No 574/72 should read as follows: "... and by Regulation 2595/77, OJ EC L 302 of 26 November 1977".
170	— In No 521, add "and Regulation 2595/77".
172	— In the reference table in Section II, add "40/76" to Cases of the Court of Justice.
179	— In No 557, add "and Regulation 2595/77".
180	— In the reference table in Section II, the reference to Regulation No 574/72 should read as follows: "... and by Regulation 2595/77, OJ EC L 302 of 26 November 1977".
193	— In the reference table in Section I, add "19/76" to Cases of the Court of Justice.

TABLE OF CONTENTS

INTRODUCTION

The reader of the "Practical Handbook of social security for employed persons and their families moving within the Community" will certainly be familiar with the development of the European social security regulations and the various stages of their revision. The following historical review is therefore designed only to set out the texts which served as a basis for the preparation of the Handbook and to supply the explanations necessary for its proper use.

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Let us avoid the tedium of the parliamentary ratifications and take as our starting point a European convention signed under the aegis of the ECSC on 9 December 1957; the first European social security regulations, adopted respectively on 25 September 1958 and 3 December 1958 by the Council of the European Economic Community under article 51 of the Treaty of 25 March 1957 establishing the said Community, entered into force on 1 January 1959. These regulations were numbered No 3 and No 4 respectively.

Since their adoption the two European regulations have undergone numerous important amendments, in order either to improve the previous provisions or to fill in loopholes or to cover the situation of certain categories of migrant workers. In particular, the position of frontier workers was the subject of regulation No 36-63 of 2 April 1963.

The implementation procedures for the European social security regulations were set out in decisions of the "Administrative Commission for the Social Security of Migrant Workers" and in judgments by the Court of Justice of the European Communities.

The multiplicity of amendments adopted and the developing jurisprudence of the Court of Justice of the European Communities soon made necessary a general revision of the European regulations. This revision, proposed by the Commission in 1966, was finally completed in the form of two new regulations, No 1408/71 of 14 June 1971 (OJ EC L 149, 5 July 1971) and 574/72 of 21 March 1972 (OJ EC L 74, 27 March 1972).

These two new regulations, which abrogate and replace regulations No 3, No 4 and No 36, came into force respectively on 1 October 1972 for the six original Member States and on 1 April 1973 for the new Member States.

Bringing together in a single text the provisions covering permanently-employed workers, frontier workers, seasonal workers and seafarers, regulations 1408/71 and 574/72 contain considerable improvements over the previous system both with regard to the personal and with regard to the material scope of Community coordination, which is extended, and to the various branches of insurance.

However, since the date of their publication, the new regulations have had to undergo considerable technical amendment in order to take account, in the system of Community coordination, of the special features of social security legislation in the three new Member States : the United Kingdom, Ireland and Denmark.

A first series of adaptations appears as Annexes to the Act of Accession of 22 January 1972 (OJ EC L 73, 27 March 1972). A second series, made necessary by changes in Danish legislation, was issued in regulation 2864/72 of 19 December 1972 (OJ EC L 306, 31 December 1972).

As a consequence, the implementation regulation, No 574/72, also had to be adapted with regard to certain administrative and financial rules. These latter amendments were made by means of regulations 2059/72 of 26 September 1972 (OJ EC L 122, 29 September 1972) and 878/73 of 13 March 1973 (OJ EC L 86, 31 March 1973). The provisions of the technical amendments resulting from the Annexes to the Act of Accession, together with regulations 2864/72 and 878/73, came into force on 1 April 1973.

As a parallel exercise, in order to permit the practical implementation of the regulations, the Administrative Commission for the Social Security of Migrant Workers, at its 125th session in September 1972, adopted 53 forms concerning the various benefits and situations (OJ EC L 261 20 November 1972). In addition this Commission undertook a review of the decisions which it had previously had to adopt concerning the abrogated regulations so as to determine which of these decisions were no longer of use and which needed to be amended in the light of the provisions of regulations 1408/71 and 574/72. New decisions will also have to be adopted.

Further amendments are at present being prepared in order both to adapt regulations 1408/71 and 574/72 to changes in national legislation which have taken place since their entry into force and to fill some loopholes which have been revealed by the experience of the first few months of implementation.

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The "Practical Handbook" brings together all the provisions mentioned above, in the form of summaries followed by notes. It puts together in logical order the corresponding provisions of EEC regulations 1408/71 and 574/72 as adapted to take account of the legislation of the new Member States.

The provisions included in this first edition are those which had been definitively adopted by the competent bodies of the EEC as at 1 July 1973.

The Handbook consists of two parts.

Part One deals with the General Rules of Coordination and is subdivided into two Titles, relating respectively to :

— Title I — the scope of the Regulations : Persons Covered (Chapter I), Matters Covered (Chapter II), Application in Time (Chapter III), and

— Title II — the Guiding Principles and Technical Organs of Coordination : Equality of Treatment (Chapter IV), Determination of the Applicable Legislation (Chapter V), General Rules for Aggregation of Periods (Chapter VI), Administrative or Consultative Authorities, Institutions and Organs.

Part Two is devoted to the exercise of the entitlements belonging to the persons covered by the regulations. The provisions concerning these entitlements are dealt with in separate chapters for the various categories of benefit : Sickness and Maternity (Chapter VIII), Invalidity (Chapter IX), Retirement and Death (Pensions) (Chapter X), Accidents at Work and Occupational Diseases (Chapter XI), Death Grants (Chapter XII), Unemployment (Chapter XIII), Family Benefits and Family Allowances for employed and unemployed persons (Chapter XIV), Benefits for Dependent Children of Pensioners and for Orphans (Chapter XV), and Provisions Common to the Various Branches of Insurance (Chapter XVI).

The chapters are subdivided into sections, sub-sections (indicated by capital letters) and paragraphs. At the head of each section the following indications are given : references to the text being analysed, corresponding text reference in the abrogated regulations and, where appropriate, references to judgments of the Court of Justice, decisions of the Administrative Commission, forms to be used, etc.

Summaries of the provisions of the regulations appear in the paragraphs in roman type, numbered in sequence. Each paragraph contains a reference to the corresponding provision either of regulation 1408/71 or of regulation 574/72 with, where appropriate, an indication of any amending text.

Notes following the summaries of the regulations are in italics, also numbered in sequence with a preceding letter "C".

These notes explain the texts of the regulations, making reference in particular to :

— Explanations for the Reasons for European Regulations Nos 1408/71, 574/72, 2864/72 and 878/73 and annexes to the Treaty of Adherence. These references are indicated by the letters "ERER" followed by the regulation concerned or the Treaty of Adherence...

— Statements Recorded in the Minutes of the Council (indicated by the letters "SRMC" followed by the regulation concerned);

— abrogated European regulations (R. No 3, R No 4, R No 36);

— decisions of the Court of Justice of the European Communities ("CJ EC" followed by reference number, date of judgment and parties in the case);

— decisions of the Administrative Commission ("AC decision No···");

— forms to be used.

The notes finally give the juridical relationship of previous jurisprudential decisions or interpretative opinions to the new regulations.

An analytical table and an alphabetical index are also included in the "Practical Handbook". It contains in addition three annexes consisting of :

— ANNEX I : List of judgments of the Court of Justice of the European Communities concerning the implementation of the European Social Security Regulations, with references to the Practical Handbook and to the Collected Judgments of the Court.

— ANNEX II: List of currently applicable decisions adopted by the Administrative Commission for the Social Security of Migrant Workers, with references

to the Practical Handbook and an indication, where appropriate, of the former amended or adapted decisions.

— ANNEX III : Table relating the articles of Regulations 1408/71 and 574/72 (adapted) to the corresponding provisions of the Practical Handbook.

ANALYTICAL TABLE

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ALPHABETICAL INDEX

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PART ONE

General Rules of Coordination

TITLE I

Scope

C 1 — *The determination of beneficiaries under the regulation and the extent of their entitlements are subject to conditions governing qualification of persons covered (Ch. I), nature of national legislations included in European coordination (Ch. II) and the effective dates of the various applicable provisions (Ch. III) respectively.*

CHAPTER I

PERSONS COVERED

Present regulations:	R 1408/71 art. 1, 2 Annex V, amended by Treaty of Accession OJ EC L 73 27 March 1972 and by R 2864/72 OJ EC L 306 31 December 1972 R 574/72 art. 108
Corresponding text of abrogated regulations:	R 3 art. 1, 4 R 36 art. 1, 2, 5
Court of Justice EC:	Case 75/63, 19/68, 23/71, 17/76, 39/76, 40/76, 84/77, 10/78

C 2 — *The enumeration of persons covered results from the combination of the provisions appearing in article 1 letter a) to letter g) and article 2 of regulation 1408/71.*

A — Workers

1 — This wording of the regulation, bearing in mind the limitations and explanations set out in Annex V (see below Nos. 2, 3 and 4), means all persons who are nationals, in the sense of the Treaty of Rome, of one of the Member States and who, in one of those States, are covered against one or more social contingencies (R 1408/71 art. 1, 2 para. 1).

1-1 — either under compulsory or optional continued insurance applying to employed persons (R 1408/71 subpara a letter *i)*) (see below, No 2);

1-2 — or under compulsory insurance within a social security scheme applying to all residents or to the whole of the working population (R 1408/71 subpara. a letter *ii)*):

1-2-1 — where their status as employed persons results from the method of management or financing of the scheme;

1-2-2 — in the absence of such criteria, where the persons concerned are covered by compulsory or optional continued insurance for some other contingency set out in Annex V of regulation 1408/71, within a scheme organised for the benefit of employed persons;

1-3 — or under voluntary insurance within a scheme organised for the benefit of employed persons or for all residents or for certain categories of residents provided that the persons concerned have previously been compulsorily insured for the same contingency within a scheme organised for the benefit of employed persons.

2 — However, notwithstanding the provisions referred to under No 1-1, Belgium excludes from the application of the regulation self-employed workers and other persons in receipt of health care under the Belgian law of 9 August 1963 relating to compulsory insurance against sickness and invalidity, inasmuch as they do not receive for such care cover identical to that granted to employed persons (R 1408/71 Annex V A-1).

3 — Annex V (amended by the Treaty of Accession OJ EC L 73, 27 March 1972 and by R 2864/72 OJ EC L 306, 31 December 1972) contains explanations concerning :

3-1 — the application of German legislation on family benefits (Annex V C 6);

3-2 — the definition of the term "workers" in the sense of article 1 subpara. *a)* letter *ii)* of the regulation: in Denmark (Annex V B 1), in Ireland (Annex V E 1) and in the United Kingdom (Annex V I 1). A person is considered to be a worker in the sense of the regulation:

— in Denmark, where, because he is in paid employment he is subject to legislation on accidents at work and occupational diseases;

— *In the United Kingdom, where he is obliged to pay contributions as an employed person; see C 9-4 below.*

— *In Ireland, where he is compulsorily or voluntarily insured in accordance with the provisions of section 4 of the Act of 1952 on social security and the social services.*

C 3 — *"Except for insurance schemes for unemployment and for accidents at work and occupational diseases, the Danish social security schemes apply to all residents. In order to distinguish, within these latter schemes, those persons to whom the regulation applies, it is necessary to refer to a scheme organised for the benefit of employed persons of which the said persons are also members.*

Since the unemployment scheme does not cover all employed persons, the scheme for accidents at work and occupational diseases has been chosen as the reference scheme. However, since certain self-employed persons are also compulsorily insured with this scheme, reference is made only to those persons who are members of the scheme by reason of paid employment" (ER Tech. Adapt. Sec. (71) 4376 and 4550).

C 4 — *The Irish family allowances scheme, and the national health service, apply to all residents without it being possible to distinguish, within these schemes, those workers to whom the regulation applies. It is therefore necessary for this purpose to refer to the Act on social security and the social services (Social Welfare Act), which determines which are employed persons under Irish legislation (ER Tech. Adapt. Sec. (71) 4376 and 4550).*

3-3 — Exemption from the condition, set out in article 1, subparagraph *a)*, letter *iii)* of the regulation, of having previously been compulsorily insured against the same contingency in a scheme organised for the benefit of employed persons in the same Member State, for persons who are members of an approved unemployment insurance fund in Denmark (Annex B 2), and for workers in Ireland (Annex V E 2) who are voluntarily registered with retirement pension and widows' insurance schemes and the death benefit scheme.

C 5 — *The exemption set out in Annex V B 2 was rendered necessary because of the exclusively voluntary nature of unemployment insurance in Denmark.*

With regard to the insertion in Annex V E 2, this was founded on the fact that workers going to Ireland to take up employment there which immediately gives them a salary higher than the maximum for admission to Irish compulsory insurance may, under article 9, paragraph 2 of regulation 1408/71 (No 54-2 below) make use of insurance periods completed in another Member State in order to meet the conditions for joining voluntary insurance (three years subject to compulsory insurance). The provision inserted in Annex V E 2 has the effect of including in the scope of the regulation persons thus admitted to voluntary insurance, even though they do not meet the condition laid down in article 1 a) iii) of regulation 1408/71 of having previously been subject to compulsory insurance in the same Member State (EM Adapt. Tech. SEC (71) 4376 and 4550).

4 — The Act of Accession contains a declaration by the United Kingdom government on the subject of the definition of the term "nationals" as applied to that country.

C 6 — Among the persons covered (SRMC R 1408/71 ad art. 1, subpara. a)) should be included:

- *pensioners residing in a Member State other than that in which they have been working as employed persons;*
- *widows and others deriving entitlement from persons covered by the regulation;*
- *employed persons staying as tourists for a short period in the territory of a Member State other than that of their employment.*

C 7 — The term "worker" can only be defined on the basis of the criteria described above under 1-2-2 (art. 1, subpara. a), letter ii), second dash of regulation 1408/71) for the application of the provisions concerning family benefits where these are paid on behalf of a German institution. Annex V, refers back, for this purpose, to the risk of unemployment against which the worker must be compulsorily insured (SRMC R 1408/71 ad art. 1, subpara. a-(b)).

C 8 — The definition of "workers" who may benefit under the regulation is both more precise and broader than that resulting from regulation No 3. C 8-1 — Regulation 1408/71 indicates in fact — without ambiguity — in article 1-a), letters i), ii), iii), and bearing in mind the insertions in Annex V, the persons who, under that term, are vocered by its provisions.

Regulation No 3 did not directly define which were the workers who could benefit from its provisions. Definition resulted from the combination of the provisions of article 1, letters b) and p) explaining the sense to be given to the words "legislation" and "insurance periods" and those of article 2 indicating the legislations referred to by the regulation.

C 8-2 — The definition of beneficiaries is wider: although the original objective of extending the scope of the new regulation to self-employed persons was not achieved because of certain difficulties relating to the range of article 51 of the Treaty (limited to employed persons only), the new regulation nevertheless admits a relatively extended concept of the term "employed persons".

The new regulation does in fact apply to seafarers who were excluded from regulation No 3 and it extends to certain categories of non employed-persons as long as they are covered against one or more risks within social security schemes organised for the benefit of employed persons, whatever the judicial form and the terms used by the national legislature to give that cover and regardless of whether the insurance of those persons is obligatory, optional or voluntary (cf. ERER 1408/71).

C 9 — Fuller particulars on the term "worker"

In the framework of Regulation No 3, the Court of Justice of the European Communities on three occasions (Cases 75/63, 19/68 and 23/71) had to define the concept of "employed person or person treated as such". Since the entry into force of Regulation No 1408/71, the Court of Justice had had to deliver further rulings interpreting that Regulation to determine whether a worker who had not paid contributions in the country of employment (Case 39/70) or who had, in a Member State, been subject to a social security scheme which applied to all residents (Cases 17/76 and 84/77) was an employed person within the meaning of article 1, a), ii) of Regulation No 1408/71.

C 9-1 — Case 75/63 (Mrs. MKH Unger v. Bestuur der Bedrijfsvereniging voor Detailhandel Ambachten). The Court of Justice of the Communities decided on 19 March 1964 that the concept of "employed person or person regarded as such" used in regulation No 3 has a Community meaning... This concept covers persons who, having first been compulsory insured with social security as "workers" have later, as such and because of eventual resumption of worker status, been accepted by national voluntary insurance schemes governed by principles similar to those of compulsory insurance.

C 9-2 — In its judgment No 19/68 of 19 December 1968 (Case of Cicco), the Court of Justice of the European Communities considered that persons such as craftsmen should be regarded as "workers" provided that, under national provisions, they are covered against one or more risks by extension of schemes organised for the benefit of workers as a whole, whatever the forms or procedures used for this purpose by the national legislature.

C 9-3 — Judgment No 23/71 of 27 October 1971 (Janssen v. Alliance Nationale Mutualité Chrétienne).

In this case the Court of Justice was asked to say whether the concept of "person regarded as a worker" in the sense of regulations Nos 3 and 4 could be applied to attendants considered as self-employed persons by Belgian legislation on invalidity insurance.

In reply to this question, the Court, believing that "article 4 of regulation No 3 is based on a general tendency in the social legislation of Member States to extend the benefit of social security to new categories of persons on grounds of identical risks and vicissitudes", considered that such persons should be regarded as coming within the definition whenever as a result of national legislation, the provisions of a general social security scheme are extended to a category of persons other than employed persons; the extension should involve cover for the beneficiaries against one or more risks comparable to that granted for the risk concerned, by the general scheme itself".

C 9-4 — Case 39/76 (Board of the Bedrijfsvereniging voor de Metaalnijverheid, The Hague, v. Mr. L.J. Mouthaan), Judgment of 15 December 1976.

The case concerned a Dutch worker who, while continuing to reside in the Netherlands, had been employed in the Federal Republic of Germany for a Netherlands undertaking established in the Netherlands without being insured under German legislation on social security although he was working in that country. On becoming unemployed, he had applied to the competent Netherlands institution for unemployment benefits. On the institution's refusal to grant such benefits, the Court of Justice had delivered the following ruling:

"It must be accepted that the status of worker within the meaning of Regulation 1408/71 is acquired when the worker complies with the substantive conditions laid down by the social security scheme applicable to him even if the steps necessary for affiliation to that scheme have not been completed."

In support of its ruling, the Court of Justice of the EC had, in particular, noted that

— *article 1, a) of Regulation 1408/71 defined the term "worker" by reference to persons who were affiliated to a social security scheme applicable to employed persons or organised for the benefit of such workers;*

— *owing to the mandatory character, both in each Member State and in the Community order, of affiliation by employed persons to compulsory insurance against one or more risks corresponding to the branches of a social security scheme, the above provisions were not intended to restrict the term "worker" within the meaning of that Regulation to persons actually insured under one of the abovementioned schemes, but were intended to define as "workers" all persons to whom those schemes applied (on this case, see also C 26a and C 366c).*

C 9-5 — Case 17/76, Mrs. M.L.E. Brack, widow of R.J. Brack, v. Insurance Officer.

The person concerned was a British national who had always resided in Great Britain. He had been insured under the British national insurance scheme since 1948. Until 1957 he had paid contributions as an employed person; after 1957 he paid contributions as a self-employed person. On 23 September 1974 he had gone on holiday to France, where he fell seriously ill on 30 September and had to receive immediate medical attention. On 25 October 1974 he had returned home to England.

The British competent institution wanted to know whether during the period of treatment in France from 30 September to 25 October 1974, Mr. Brack retained the status of "worker" within the meaning of regulation 1408/71 for the purpose of receiving benefit under article 22, para. 1 of that regulation.

Following receipt of a reference for a preliminary ruling on the interpretation of article 1 a), ii) and iii) and Point I i) of Annex V to regulation 1408/71, the Court of Justice of the EC, referring to the judgments in Cases 19/68 and 23/71, and considering, in particular, that

Article 1 a), ii) of regulation 1408/71 must be understood as referring also to persons who are not "employed persons" within the meaning of the law of employment but who must be treated as such for the purposes of applying regulation 1408/71, taking account on the one hand of the objectives and of the spirit of this regulation and of articles 48 to 51 of the Treaty which form its basis and, on the other hand, of the special features of the administration or financing of the scheme to which such persons are affiliated and of the changes which have taken place in the nature of such affiliation,

ruled, in a judgment delivered on 29 September 1976, that

"1. The provision in paragraph 1 of Point I (United Kingdom) of Annex V to regulation 1408/71, far from restricting the definition of the term "worker" which appears in article 1 a) of the regulation, is solely intended to clarify the scope of subparagraph ii) of this paragraph vis-à-vis British legislation.

2. A person who:

— was compulsorily insured against the contingency of "sickness" successively as an employed person and as a self-employed person under a social security scheme for the whole working population;

— was a self-employed person when this contingency occurred;

— at the said time and under the provisions of the said scheme, nevertheless could have claimed sickness benefits in cash at the full rate only if there were taken into account both the contributions paid by him or on his behalf when he was an employed person and those which he made as a self-employed person;

constitutes, as regards British legislation, a "worker" within the meaning of article 1, a), ii) of Regulation 1408/71 for the purposes of the application of the first sentence of article 22 1) ii) of this regulation."

C 9-6 — Case 84/77 (C.P.A.M. d'Eure-et-Loir v. Alicia Tessier, née Recq) Judgment of 19 January 1978.

This Case, like the preceding ones, concerned the scope of article 1, a), ii) of regulation 1408/71, on the definition of "employed person" with regard to the legislation applicable.

The dispute concerned a French national who, after finishing her studies in France in September 1973, resided in the United Kingdom from 3 October 1973 to 30 April 1974, where she worked as an au pair girl and followed evening classes. On her return to France she registered herself as a person seeking employment.

Having applied for sickness insurance benefits for treatment received in France from 17 May to 17 June 1974, she was informed by the sickness fund that she could not obtain them either as a dependant of her father because she had finished her studies in September 1973 and had worked during her stay in the United Kingdom or on the basis of a personal right as she failed to satisfy the condition of completion of a certain period of work, as her registration as seeking employment meant that rights already acquired were retained, but no additional rights were acquired, or as a migrant worker, because the fact of having been insured under United Kingdom legislation during her period of residence in that country did not confer on her the status of employed person within the meaning of article 1, a), ii) of regulation 1408/71.

The French Court de Cassation, with whom a further appeal was lodged, referred the following two questions to the Court of Justice of the EC:

"— Whether a national of a Member State who, while residing in the territory of another Member State for the purposes of working there au pair and, at the same time, of following a part-time course of study, receives in that State social security benefits in kind, is a migrant worker within the meaning of article 1 of regulation 1408/71;

"— Whether the rights acquired by such a national during his stay must be taken into account by any other Member State as if they were periods laid down for the acquisition of a right under its own legislation".

In its reply, the Court of Justice ruled as follows:

1. *A national of a Member State who, in another Member State, has been subject to a social security scheme which is applicable to all residents can benefit from the provisions of regulation 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community only if he can be identified as an employed person within the meaning of article 1, a), ii) of that regulation. As regards the United Kingdom in particular, in the absence of any other criterion, such identification depends by virtue of annex V to that regulation on whether he was required to pay social security contributions as an employed person.*

2. *Rights acquired by a person who can be identified as a worker within the meaning of article 1, a), ii) of regulation 1408/71 during his residence in a Member State as if they were periods required for the acquisition of a right under its own legislation.*

B — Frontier workers

5 — This term refers to any worker employed in the territory of one Member State and residing in the territory of another Member State to which, normally, he returns each day or at least once a week (R 1408/71 art. 1-*b)*).

6 — A person's status as a frontier worker is maintained for a maximum period of four months when he is posted for this period to the territory of the same Member State or of another Member State even if, during the period of such posting, he cannot return to his place of residence in the conditions specified above (R 1408/71 art. 1-*b)*).

C 10 — *The definition of the term "frontier worker" is taken from article 1 letter c) of regulation No 36/63. The clause relating to the maintenance of the status of "frontier worker" for four months in the case of those workers who are posted during that period to another Member State is based on the provisions of article 5 (2) of regulation No 36/63.*

C 11 — *Note that the new definition of "frontier workers" no longer contains any reference to a frontier zone.*

C — Seasonal workers

7 — This term denotes workers who, in the territory of a Member State other than that where they reside, carry out work which depends on the rhythm of the seasons, the duration of which may not under any circumstances exceed eight months if the person concerned stays in that territory throughout the period of his employment (R 1408/71 art. 1-*c)*).

C 12 — *This definition takes in and explains that given in article 1, letter 1) of regulation No 3 amended by regulation 73/63.*

8 — Proof of status as a seasonal worker is given, according to the applicable legislation, by presentation either of a labour contract stamped by the employment service of the Member State where the person concerned was last employed, or of a certificate issued by the institution of the country of employment certifying the seasonal nature of the work which the person is or has been engaged upon (R 574/72 art. 108, amended by R 878/73; SMRC R 1408/71 ad art. 1 subpara. *c)*).

C 13 — *The provisions described above correspond to those of article 1 letter 1) of regulation No 3. However, regulation 878/73 had to make an adaptation in order to take account of the fact that in the United Kingdom seasonal workers are employed without labour contracts.*

D — Refugees and stateless persons

9 — These terms have the meaning attributed to them in articles 1 of the Convention concerning the Status of Refugees signed at Geneva on 28 July 1951 and of the Convention concerning the Status of Stateless Persons signed in New York on 28 September 1954 respectively (R 1408/71 art. 1 *d), e)*).

C 14 — *As a result of statements inserted in the Minutes of the Council (SRMC R 1408/71 ad art. 1 subparas d) and e)):*

C 14-1 — Member States who have ratified the Protocol of 31 January 1967 to the Geneva Convention will, as far as they are concerned, apply the regulation to those persons defined as refugees by that Protocol, without this involving any obligations on the part of Member States which have not yet ratified it.

C 14-2 — Member States are free to apply the provisions of the regulation to persons who are considered as refugees and stateless persons in their territory under more favourable legislation, without this involving any obligations on the part of other Member States.

C 14-3 — In the two cases mentioned above, the other Member States declare that they are willing to supply to the competent institutions concerned the necessary administrative data on the above-mentioned persons who may have been subject to their legislation.

C 15 — *Regulation No 1408/71 has taken for the definition of the term "refugee" the provisions appearing in article 1 letter j) of regulation No 3.*

E — Survivors and members of the family

10 — For the definition of these terms, reference is made to the legislation under which benefits are provided or, with regard to members of the family, to the legislation of the place of residence for medical treatment during a temporary stay or for invalidity pensions (R 1408/71, art. 1-*f), g)*).

11 — If the applicable legislations consider a member of the family or of the household or a survivor to be only a person living under the worker's roof, this condition is regarded as having been met where the person concerned is or was chiefly dependent upon the said worker (R 1408/71, art. 1-*f), g)*).

C 16 — *As indicated above (C 6) the terms "members of the family" and "survivors" include widows and others deriving benefit from persons covered by the regulation (SRMC R 1408/71, ad art. 1, subpara. a)).*

C 17 — *For the definition of these terms, regulation No 3, article 1, letters n) and o) referred back to the legislation of the country of residence with regard to "members of the family" and to the applicable legislation for "survivors".*

C 18 — *The new criterion ("legislation under which benefits are provided") differs from that laid down by regulation No 3, which referred back to the legislation of the country of residence of the members of the family. The new provisions introduce no amendments with regard to the granting of medical treatment benefits in kind and family benefits for non-pensioned workers, which must be provided in accordance with the legislation of the country of residence of these members of the family. An exception has however been prescribed in the case of medical treatment during a temporary stay, where the application of the new criterion, which would not coincide with the previous one, would pose practical difficulties (ERER 1408/71).*

C 18a — *Definition of the expression "member of the family" — Case 40/76: (Slavica Kermaschek v. Bundesanstalt für Arbeit, Nürnberg), Judgment of 23 November 1976.*

In this case concerning unemployment allowance claimed by a national of the Socialist Federal Republic of Yugoslavia who had married a German national and who had resigned her job and left her residence in the Netherlands to go and live with her husband, the Court of Justice of the EC had, in the grounds for judgment, found that the members of the family did not, under regulation (EEC) 1408/71, have the same status as a worker who was a national of a Member State. The former have only derived rights, whereas the worker has rights of his own. It follows that members of the family or survivors may, under the EEC regulations, claim only those benefits expressly provided for them, and not, by being treated as workers, to the whole range of the system of coordination set up in favour of migrant workers (on this Case, see C 361b).

12 — Subject to the conditions required in addition concerning the determination of the applicable legislation, survivors benefit from the regulation whatever the nationality of the deceased worker, as long as they themselves are either nationals of a Member State or stateless persons or refugees residing in the territory of a Member State (R 1408/71, art. 2).

C 19 — This provision reproduces that appearing in article 4, subpara. 2 of regulation No 3.

F — Civil servants

13 — Civil servants and persons treated as such benefit from the regulation to the extent that they are or have been subject to the legislation of a Member State mentioned by it (R 1408/71, art. 2, subpara. 3).

C 20 — Regulation No 3, in its article 4, subpara. 5, expressly excluded from its application career diplomatic and consular staff including civil servants at chancery and governmental administration level who had been sent by their government to the territory of another Member State.

C 21 — The new regulation applies to civil servants so long as they do not benefit from special statutory provisions. Bearing in mind that, in several countries, civil servants are subject for certain risks to the general scheme for employed persons, and are thus regarded as employed persons in the sense of article 1, it was thought desirable to enable them expressly to benefit from the provisions prescribed for these risks by the regulation, even where they are posted to another Member State (cf. ERER 1408/71).

C 22 — However, career diplomatic or consular staff and ranking chancery personnel remain excluded from the field of application of the Community provisions in the light of the Vienna Convention (ERER 1408/71 ad art. 4).

G — Definition of the expression "national of one of the Member States"

C 22 a — Article 2 of regulation 1408/71, which defines the persons covered by the regulation, provides for two qualifying conditions:

a) *that the worker is or has been subject to the legislation of one or more Member States (this condition has been examined in sections A to F above), and*

b) *that that worker is a national of one of the Member States.*

The interpretation of the latter condition has raised the issue as to when the nationality of the applicant is to be taken into account: at the time the application for benefit is being considered, or, in the case of acquiring entitlement to an old-age pension, when the periods of insurance, employment or residence under the legislation of a Member State have been completed.

That issue was raised in the context of a dispute between the Bundesknappschaft and an underground worker who was born in Algeria in 1924 and who was a French national by birth. He had worked in France for 155 months and from 26 May 1961 in Germany. He lost French nationality on 1 July 1962, when Algeria became independent.

In reply to these questions, the Court of Justice EC pointed out first of all, in Case 10/78 (Tayeb Belbouab v Bundesknappschaft), that the principle of legal certainty, which is that any factual situation should normally, in the absence of any contrary provision, be examined in the light of the legal rules existing at the time when that situation obtained, the second condition must be interpreted as meaning that the status of being a national of one of the Member States refers to the time of the employment, of the payment of the contributions relating to the insurance periods and of the acquisition of the corresponding rights.

Consequently, the criterion of nationality laid down by article 2, (1) of regulation 1408/71 must be examined in direct relationship to the periods during which the worker in question carried on his work.

According to the Court, this interpretation is supported by article 94, (2) of regulation 1408/71 which provides that "All insurance periods, as also, where applicable, all periods of employment or residence completed under the legislation of a Member State before the date of entry into force on this Regulation..., shall be taken into consideration for the purpose of determining entitlement to benefits in accordance with the provisions of this Regulation". That article clearly implies that accrued rights are to be recognised and protected under the Community rules on social security for migrant workers if they were acquired by a migrant within the meaning of the aforesaid provisions, that is to say a national of a Member State.

In a Judgment of 12 October 1978, the Court of Justice rules as follows: "Articles 2, (1) and 94, (2) of Regulation (EEC) No 1408/71 read in conjunction with one another are to be interpreted as guaranteeing that all insurance periods and all periods of employment or residence completed under the legislation of a Member State before the entry into force of that Regulation shall be taken into consideration for the purpose of determining the acquisition of rights in accordance with its provisions subject to the condition that the migrant worker was a national of one of the Member States when the periods were completed."

On the other hand, in consideration of the questions asked, it is specified in the grounds for the Judgment that in reaching this solution, which provides the national court with all the factors for the interpretation of Community law which are necessary to resolve the problem with which it is confronted, it is not necessary to have recourse to the interpretation of article 16, (2) of regulation No 109/65 of 30 June 1965 amending and supplementing regulations No 3 and No 4 on social security for migrant workers, and which had the effect of deleting Algeria from the annex to regulation No 3 without prejudice to accrued rights (cf. the Judgment in Case 6/75, of 26 June 1975 (Horst)).

Regulation No 109/65 related to the inclusion of Algeria in the territories covered by regulations No 3 and No 4. It contained no provision relating to the inclusion of workers of Algerian origin in the persons covered by the two regulations.

Consequently, article 16, (2) of regulation No 109/65 is not applicable in the present case as Algeria is excluded from its geographical extent and nationals of the French Union are excluded from the definition of persons covered, whereas the plaintiff worked in France, not Algeria, and was, at that time, of French nationality and not a national of the French Union.

CHAPTER II

MATTERS COVERED

SECTION I — GUARANTEED CONTINGENCIES

Present regulations:	R 1408/71, art. 4
Corresponding text of abrogated regulations:	R 3, art. 2 R 36, art. 3
Court of Justice EC:	Case 24/64, 28/68, 1/72, 14/72, 15/72, 16/72, 187/73, 24/74, 39/74, 7/75, 93/75, 39/76, 63/76

A — Social security branches and schemes

14 — The regulation applies to branches of social security concerning sickness and maternity, invalidity, retirement and survivors, accidents at work and occupational diseases, death, unemployment, and family benefits, taking into consideration the following explanations (R 1408/71, art. 4, para. 1).

15 — Among invalidity benefits should be included those designed to maintain or ameliorate earning capacity (R 1408/71, art. 4, para. 1, *b)*).

16 — The regulation applies to all general and special social security schemes whether contributory or not and to schemes relating to the obligations of the employer or shipowner concerning social security benefits (R 1408/71, art. 4, para. 2).

17 — However, the provisions of the regulation relating specifically to the various categories of benefit do not affect the provisions of national legislation relating to the obligations of the shipowner (R 1408/71, art. 4, para. 3).

C 23 — *Regulation 1408/71, unlike regulation No 3, is applicable to seafarers and special provisions have had to be inserted for this purpose (c.f. No 16).*

C 24 — *"The judicial scheme of shipowner's obligations in case of sickness, accident, unemployment or death is thus subject to the general provisions of the regulation but is not affected by the provisions of the corresponding chapter of Title III (provisions relating specifically to the various categories of benefit), since shipowners are in a position to discharge these obligations directly, whichever territory of a Member State the beneficiary is in" (ERER 1408/71).*

C 25 — *For details concerning the benefits included in the field of application of the regulation, see the corresponding chapters...*

B — Exclusions

18 — The following are expressly excluded from the application of the regulation: social and medical assistance, benefit schemes for victims of the war or its consequences and special schemes for civil servants or persons treated as such (R 1408/71, art. 4, para. 4).

C 26 — *In the absence of precise definitions in the Community regulations, the Commission (ER Tech. Adapt. Sec. (71) 4376 and 4550) has drawn up the following practical criteria in order to distinguish between social security benefits and social assistance:*

"All social security benefits have been introduced to give assistance in cash or in kind to persons or to certain categories of persons who, because of one or other of the contingencies referred to both in ILO Convention No 102 and in article 4 of regulation 1408/71, have to meet expenses incurred or undergo a diminution of their means of livelihood.

For the determination of social assistance benefits, the Commission has taken essentially the following criteria:

— *The benefit must be designed to alleviate a manifest condition of need in the person concerned, established after a proper investigation into his resources and bearing in mind the standard of living in the country of residence. If cash benefits are concerned, the amount must be set, case by case, on the basis of the individual situation and means of livelihood of the person concerned.*

— *The award of the benefit should not be subject to any condition of length of employment or length of residence.*

— *The fact that a benefit is non-contributory does not determine its nature as a social assistance benefit or exempt it from the rules laid down in regulation 1408/71. In the same way, the fact that a benefit is linked to a means test is not sufficient in itself to give it the nature of a social assistance benefit."*

This situation has been ratified by the decisions of the Court of Justice EC (see notably C 30-2, C 30-5, C 30-6, C 30-7).

C 26 a — *Case 39/76 (Bestuur der Bedrijfsverenigingen voor de Metaalnijverheid, The Hague, v. Mr. L.J. Mouthaan), Judgment of 15 December 1976.*

In reply to the question as to whether the term "unemployment benefits" in article 4 (1), g) of regulation 1408/71 could be interpreted as applying to benefits such as those provided in Chapter III (a) of the "Werkloosheidwet" (Netherlands Law on Unemployment), the Court of Justice of the EC, considered that:

— Title III A of that Law provided for the subrogation of the competent professional or trade institution to the obligations, in relation to the worker, arising from the contract of employment, of the employer who had become insolvent;

— the aim of these provisions was to enable a worker who was owed wages following the insolvency of his employer to recover the amounts due to him within the limits laid down by that Law;

— such a subrogation did not partake of the nature of the unemployment benefits referred to in article 4 (1), g) of regulation 1408/71 which were essentially intended to guarantee to an unemployed worker the payment of sums which did not correspond to contributions made by that worker in the course of his employment,

ruled that

"Benefits such as those under Title III A of the Netherlands Law on Unemployment do not constitute "unemployment benefits" within the meaning of article 4 (1), g) of regulation 1408/71."

C 26 b — *In Case 9/78 (Directeur régional de la Sécurité sociale de Nancy v. Paulin Gillard), the Court of Justice EC, in a Judgment delivered on 6 July 1978, ruled that "Article 4 (4) of regulation 1408/71 must be interpreted as meaning that the regulation does not apply to social benefits for former prisoners of war such as the benefits provided under the French Law of 21 November 1973, Article L 332 (2) of the Code de la Sécurité sociale".*

The relevant provisions of French legislation provide for the award to ex-servicemen and former prisoners of war, with reference to the duration of their military service in wartime or of their captivity, of an old-age pension at the rate normally applicable at 65 at an age between 61 and 65 where such persons can prove that they have at least 37 1/2 years' insurance.

This benefit had been claimed by a worker of Belgian nationality and resident in Belgium who had been employed in France. Under the terms of the provisions referred to above he claimed an advance pension of 50% from the age of 60 on the grounds that for more than 60 months, from 28 May 1940 to 21 June 1945 he had been a prisoner of war in Germany as a member of the Belgian armed forces.

The Fund had rejected the application by the person concerned, observing that he could not prove that he was a former prisoner of war except by means of a document issued by the Belgian Ministry for Defence whereas the benefit claimed could only be awarded to insured persons who proved the length of their captivity and military service in wartime in the French or Allied Forces "by producing their service record or a certificate issued by the competent military authority or by the Ministry for Ex-Servicemen or the Office national des anciens combattants (National Ex-Servicemen's Office)".

In fact, the dispute concerned not the application of the principle of the equality of treatment between workers of a Member State and workers who were nationals of other Member States which was laid down in regulation 1408/71, but rather whether the French Law of 21 November 1973 was, pursuant to article 4 (4) of regulation 1408/71, within the scope of that regulation.

In reply to this question the Court of Justice EC, in support of its Judgment, found that:

— in fact, the distinction between benefits which were excluded from the field of application of regulation 1408/71 and benefits which came within it rested entirely on the factors relating to each benefit, in particular its purpose and the conditions for its grant;

— it appeared from the file that the benefit granted in pursuance of the national provisions in question had the essential purpose of providing for former prisoners of war who proved that they underwent a long period of captivity testimony of national gratitude for the hardships endured between 1939 and 1945 on behalf of France and its Allies and thus granting them, by an increase in the rate of old-age pension, a quid pro quo *for the services rendered to those States;*

— having regard to that purpose and those conditions of grant such a benefit did not exhibit the characteristics constituting a social security benefit within the meaning of article 4 (1) of regulation 1408/71;

— article 4 of regulation 1408/71, in defining the material field of application of that provision, provides in paragraph (4) that the regulation was not to apply inter alia *"to benefit schemes for victims of war or its consequences".*

C — References to abrogated regulations and to decisions of the Court of Justice of the European Communities

C 27 — *Subject to certain editorial amendments, regulation 1408/71 reproduces article 2 of regulation No 3 with regard to enumeration of legislations and schemes included in the material scope of the regulation or excluded from its scope.*

C 28 — The same comment applies to the corresponding text of regulation 36 since under article 3 of that regulation the provisions of regulations 3 and 4 were applicable to frontier workers except where special exemption provisions applied.

C 29 — However, Regulation 1408/71, article 4, covers legislation relating to family benefits and not only legislation relating to family allowances.

C 30 — With regard to the application of article 2 of regulation No 3 and of article 4 of regulation 1408/71, the Court of Justice of the European Communities had taken the following decisions:

C 30-1 — Case 24/64 (Dingemans v. Sociale Verzekeringsbank) of 2 December 1964. Regulation No 3 applies to all Netherlands legislation providing for invalidity insurance with invalidity benefits even if this legislation came into effect after regulation No 3 and was not notified as prescribed by the regulation.

C 30-2 — In case 28/68 (Caisse Régionale de Sécurité Sociale du Nord de la France v. Torrekens) of 7 May 1969, the Court of Justice of the European Communities considered that the system of aggregation of insurance periods laid down in article 27 para. 1 of regulation No 3 also applied to national social security legislations mentioned in the regulation (legislations referred to in Annex B), whether or not these set up a contributory scheme, unless prevented by a convention referred to in Annex D.

C 30-3 — Case 1/72 (Mrs. Rita Frilli v. Belgian Government) of 22 June 1972. The guaranteed income granted by the general legislation of a Member State providing elderly persons residing in that State entitlement to minimum pensions should be considered, with regard to employed persons and persons regarded as such in the sense of regulation No 3 who are entiled to pension in that State, as "retirement benefit" in the sense of article 2 para. 1 c) of the same regulation.

The award of such a benefit to a foreign worker is not subject to an agreement on reciprocity with the Member State of which the worker is a national. Such a condition would be incompatible with the equality of treatment which is one of the fundamental principles of Community law.

C 30-4 — Case 14/72 (Helmut Heinze v. Landsversicherungsanstalt Rheinprovinz), 15/72 (Land Niedersachsen v. Landesversicherungsanstalt, Hanover), 16/72 (Allgemeine Ortskrankenkasse Hamburg v. Landesversicherungsanstalt Schleswig-Holstein, Lubeck) of 16 November 1972.

The following should be considered as coming under a social security legislation mentioned in article 2 para. 1 of regulation No 3: a provision establishing a direct link between status as a member of a pension insurance scheme and acquisition of entitlement to benefit due from pension insurance organisations for insured persons and those who derive benefit from them on the basis of the fact that they have contracted tuberculosis, particularly with a view to obtaining a cure for them.

Social security benefits which, without being related to "earning capacity" on the part of the insured person, are also granted to members of his family and are designed principally for healing the sick person and protecting those around him should be considered as sickness benefits referred to in article 2, para. 1 a) of regulation No 3. For the purpose of obtaining entitlement to such benefits, aggregation of registration periods in the various Member States is consequently governed by articles 16 ff. of regulation No 3.

C 30-5 — Case 187/73, Odette Callemeyn v. Belgian State, Judgment of 28 May 1974: "The benefits mentioned in Article 4 (1) (b) Regulation No 1408/71 (see Nos 14 to 17 above) include those provided by national provisions granting benefits to the handicapped to the extent that these provisions concern workers within the meaning of Article 1 (a) of this Regulation (see No 1 above) and confer on the latter a legally protected right to the grant of these benefits." This particular case concerned the scheme for allowances for the handicapped laid down by the Belgian Law of 27 June 1969 which recognized the entitlement to allowances of Belgian nationals residing in Belgium who are at least 14 years of age, suffer from permanent incapacity for work of at least 30% whose resources do not exceed certain limits.

C 30-6 — This decision of the Court of Justice was confirmed in two similar cases by the Judgment of 13 November 1974 (Case 39/74, Luciana Mazzier née Costa v. Belgian State) within the framework of EEC Regulation No 3 (the decision to refuse the benefit had been taken on 8 March 1972) and by a judgment of 17 June 1975 (Case 7/75, Angelo Marie Fracas v. Belgian State) under Regulation No 1408/71. The former judgment specifies that "a national legislation granting a legally protected right to a benefit for the handicapped falls, as regards the person referred to by Regulation No 3, within the ambit of social security, within the meaning of Article 51 of the Treaty and of the Community Regulations thereunder."

The second judgment (17 June 1975) repeats this ruling and adds that:

— "in applying such a system the handicapped child of a worker must not, as compared with the nationals of the State of residence, be less favourably treated by reason only of the fact that he does not possess the nationality of that State;

— "in the case of a handicapped child who from his minority fulfils the conditions required to qualify for benefits for the handicapped as a member of a employed person's family, the equality of treatment cannot cease at the end of his minority if the child by reason of his handicap is prevented from himself acquiring the status of an employed person within the meaning of the Regulation."

C 30-7 — Case 24/74 Guiseppina Biason v. Caisse régionale d'assurance maladie de Paris, Judgment of 9 October 1974, 16th ground of judgment: "A supplementary allowance, paid by a national solidarity fund and granted by national legislation by reason of an invalidity pension to persons entitled to this pension, whose working capacity is reduced by at least two-thirds, constitutes, to the extent that the persons concerned have a legally protected right to the grant thereof, a 'benefit' within the meaning of Article 1s of Regulation No 3, and for that reason falls within the matters covered by this regulation." The dispute concerned the grant of supplementary allowance from the national solidarity fund set up in France by the law of 30 June 1956 which may be awarded to persons receiving a life pension provided by virtue of an invalidity that reduced the workers working or earning capacity by two-thirds.

C 30-8 — However, in response to the question whether a benefit granted under the legislation of a Member State (in this particular case under the German Law for compensation payments known as the "Bundesentschädigungsgesetz") was a form of social aid with a view to applying the legislation of another Member State (possible granting of an increase for dependant spouse under Article 71(6) of the French decree of 29 December 1945), the Court of Justice considered that it was not competent to give a preliminary ruling on the question of eligibility under the social legislation of a Member State for a benefit granted under the legislation of another State (Judgment 93/75 of 17 December 1975, Jacob Adlerblum v. Caisse nationale d'assurance vieillesse des travailleurs salariés, Paris).

C 30-9 — Case 63/76 (Vito Inzirillo v. Caisse d'Allocations Familiales de l'Arrondissement de Lyon), Judgment of 16 December 1976.

In response to the question whether the allowance for handicapped adults provided for by French Law No 71/563 of 13 July 1971 could be awarded to the son of an Italian national who resided in France, where he was employed, the Court of Justice of the EC, in a judgment delivered on 16 December 1976, ruled:

"Pursuant to regulation 1408/71 of the Council of 14 June 1971, a national law which, in a Member State, gives a legally protected right to allowances for handicapped adults to the nationals of that State who reside there also applies to a handicapped adult national of another Member State who has never worked in the State which adopted the legislation in question, but who resides there and is dependant upon his father who is employed there as a worker within the meaning of the said regulation".

To justify its ruling, the Court of Justice of the EC had, in its ninth ground for judgment, which referred to the judgment of 13 November 1974 on Case 39/74 (see C 30-6 above), specified that a national allowances scheme for the disabled granting a legally protected right to benefit for the handicapped fell, as regards the persons referred to by regulation 1408/71, within the ambit of social security in accordance with article 51 of the Treaty.

It also recorded that:

— the equality of treatment desired in Article 3 (1) of regulation 1408/71 could not be terminated on ceasing to be a minor if the child, because of its handicap, was prevented from acquiring the status of employed person within the meaning of regulation 1408/71;

— the obligation to ensure that a handicapped adult child of such a worker received treatment equal to that accorded to the nationals of the State in which he resided was laid down in other provisions of Community law relating to freedom of movement for workers: of article 7 (2) and article 10 (1) a) of Council regulation 1612/68 of 19 October 1968 (OJ 1968, L 257/2);

— in the light of the equality of treatment which regulation 1612/68 sought to bring about, the recognition in article 7 (2) of that regulation that workers who were nationals of a Member State were, in the territory of other Member States, entitled to the "same social and tax advantages as national workers" included all advantages of that type, whether or not linked to a contract of employment, such as an allowance for handicapped adults which was awarded by a Member State to its own nationals under legislation which gave a legally protected right thereto;

— the refusal to grant the benefit concerned would run counter to the objec sought to be attained by the principle of freedom of movement for workers within the Community, bearing in mind inter alia the right recognized under this principle to employed persons and to members of their families to remain within the territory of a Member State in which the employed person was employed, under the conditions determined by regulation 1251/70 of the Commission of 29 June 1970 (OJ English Special Edition 1970 (II), p. 402). Such a refusal might induce a worker, anxious to ensure to his child the lasting enjoyment of the allowances necessitated by his condition as a handicapped person, not to remain in the Member State where he had established himself and had found employment.

SECTION II — COORDINATED NATIONAL LEGISLATIONS

Present regulations:	R 1408/71, art. 1, 2, 5, 96, Annex V amended by Annex IX of the Act of Accession OJ EC L 73 of 27 March 1972
Corresponding text of abrogated regulations:	R 3 art. 1-3, 54, Annex B
Court of Justice EC:	Cases 61/65, 28/68, 87/76, 104/76, 109/76, 35/77

A — General principles

19 — The term "legislation" denotes for each Member State all laws, regulations, statutory provisions and any other application measures, present or future, which concern the branches and schemes of social security mentioned above under Nos 14 to 17 (R 1408/71, art. 1-*j*)).

C 31 — *This term also includes agreements concluded between the competent institutions and doctors' organizations (SRMC R 1408/71 and art. 1-j) first sentence.*

C 32 — *The definition of the term "legislation" takes in and extends that which had been given in article 1-b) of regulation No 3.*

C 33 — *In its new formulation this definition agrees with the interpretation given by the Court of Justice of the European Communities in its judgment of June 1966 (Case 61/65 of 10 December 1965 Vaasen-Göbbels v. Beambtenfonds voor het Mijnbedrijf, Collected Judgments of the Court, Vol. XIII 1966, p. 377).*

C 33 a — *Case 87/76 (Walter Bozzone v. Belgian Office de Sécurité Sociale d'Outre-Mer), Court of Justice ruling of 31 March 1977.*

In this case the Court of Justice gave a positive reply to the question whether a worker employed in an associated territory of a Member State and at the time covered by specific legislation (in this case the Belgian Colonial Decree of 7 August 1952) issued by that State with regard to that trrritory and the persons employed in it was to be considered as a worker who was or had been covered by the legislation of one or more Member States within the meaning of article 2 (1) of regulation 1408/71.

This problem was raised in an appeal by an Italian worker who resided in Italy against a Belgian social security institution, to reverse a decision by that institution refusing to award the plaintiff invalidity benefits in respect of insurance periods he had completed in the former Belgian Congo, now the Republic of Zaire.

The Court noted the following in support of its decision:

— the definition of the term "legislation" in article 1-j) of regulation 1408/71 was a wide one, meaning all laws, regulations and administrative measures adopted by the Member States, and should be understood as meaning all relevant national measures;

— the scheme under which the person concerned was insured (Colonial Decree of 7 August 1952) was guaranteed, and rights acquired under it were confirmed, by a Belgian Law of 16 June 1960 ensuring the continuity of the scheme set up under the Decree of 7 August 1952;

— that Law supplemented the Decree by providing for the award of supplementary benefits and by adjusting it to the cost of living in line with rules in force in Belgium;

— no special procedure for implementing the legislation concerned was laid down in the Annexes to the Regulation.

The Court of Justice therefore ruled as follows:

"Article 2, (1) of regulation (EEC) 1408/71 must be interpreted as applying to workers who have been or are subject to the insurance scheme established by the Decree of 7 August 1952, the continuity of which is ensured by the Belgian Law of 16 June 1960".

The Court was also asked if the first sentence of Article 10 (1) of regulation 1408/71, concerning the waiving of residence clauses, applicable to a recipient of benefits acquired in respect of gainful employment exercised exclusively in an associated territory when such recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of the relevant benefits.

The operative part of this judgment is set out in C 71-5 below.

C 33 b — Case 104/76 (Gerda Jansen v. Landesversicherungsanstalt Rheinprovinz, Düsseldorf), Court of Justice judgment of 5 May 1977.

In this case a German national who had, after her marriage on 5 March 1965, obtained, in accordance with German legislation then in force, a refund of contributions paid before that date, but who subsequently remained insured with the German invalidity and old-age insurance scheme from 1 April 1965 to 9 May 1968. The German institution had refused to reimburse contributions in respect of that period on the grounds that as the person concerned had transferred her residence to the Netherlands she was therefore compulsorily subject to the statutory invalidity and old-age insurance scheme in the Netherlands and that she did not therefore fulfil the condition laid down by German legislation that she cease insurance under a compulsory insurance scheme.

In reply to the various questions asked by the Landessozialgericht of North Rhine-Westphalia, the Court ruled as follows:

"1. *The reimbursement of social security contributions comes within the ambit of the general provisions of regulation No 3, by virtue of the determination under article 2 of the matters covered by that regulation.*

2. *The same interpretation must be given to article 4 of regulation (EEC) 1408/71. The application of the specific rule in article 10 (2) must however remain limited to the period covered by that Regulation.*"

(Under article 10 2) of regulation 1408/71, "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 as a worker under the legislation of another Member State".)

"3. *Provided that the conditions laid down by the applicable national legislation are satisfied, regulation No 3 does not prevent the reimbursement of social security contributions by reason of the fact that the person concerned falls within the ambit of another social security contributions by reason of the fact that the person concerned falls within the ambit of another social security scheme following the transfer of his residence to another Member State.*

4. *Under the system laid down by regulation No 3, the objectives pursued by the Treaty and by the regulation itself did not justify the refusal of the reimbursement of social security contributions to a person who could claim the benefit of such reimbursement under the national legislation of a Member State".*

C 33 c — *Case 109/76 (Mrs Blottner v. the board of the Nieuwe Algemene Bedrijfsvereniging, Amsterdam), Judgment of the Court of Justice of 9 June 1977.*

In these proceedings, which concerned the refusal by a Netherlands institution to pay an invalidity pension to a German national who had been employed in the Netherlands from 1928 to 1940, and then returned to Germany, where she had worked until 1946, and where, after having ceased all professional or trade activities, she suffered an accident in 1973 as a result of which she became disabled, the question asked was whether, for the purpose of investigating the rights of the person concerned, account had to be taken of the legislation (of type B) of a Member State to which the applicant had been subject but which was no longer in force, as the legislation now in force was of type A,

Having regard to the aims set out in article 51 of the Treaty, the Court of Justice considered that the expression "existing or future", in the context of the laws, regulations, statutory provisions and all other implementing measures comprising the Community coordination measures should not be interpreted in such a way as to exclude provisions which had once been in force but which were no longer in force at the time the Community Regulations were adopted (in this Case, see also C 213b and C 243a).

20 — Annex V I 8 of regulation 1408/71, amended by the Treaty of Accession, (OJEC L 73, 27 March 1972) explains that, with regard to the United Kingdom, the regulation does not apply to the provisions of United Kingdom legislation designed to give effect to a social security agreement concluded between the United Kingdom and another State.

With regard to the provisions concerning the attendance allowance, these apply to persons coming under the regulation under the conditions set out in Annex V I 6.

21 — Industrial agreements are excluded from the scope of the regulation whether or not they have been the subject of a decision of the public authorities making them compulsory or extending their application (R 1408/71, art. 1-*j*).

22 — However, this exclusion may at any time be lifted by a Member State with regard to industrial agreements serving to put into effect an insurance obligation resulting from legislative or regulatory texts or setting up a scheme the administration of which is carried out by the same institution as that which administers the social security schemes mentioned above (R 1408/71, art. 1 letter *j*), amended by the Act of Accession — Annex IX).

23 — The statement in notified by the Member State concerned to the President of the Council of the European Communities with an indication of the date of entry into force and is published in the Official Journal of the European Communities (R 1408/71 art. 1 letter *j*) and art. 96).

24 — Referring to the provisions mentioned under No 21, the French government, in a statement notified to the Council in letter of 23 March 1973, has brought into the scope of the regulation the unemployment insurance scheme set up by a collective agreement of 31 December 1958 approved in application of order 59-129 of 7 January 1959 and extended by order 67-580 of 13 July 1967 (SRMC R 1408/71 art. 1 subpara. *j*), third and fourth sentences). This statement was published in the OJ EC L 90 of 6 April 1973.

C 34 — *The exclusion of industrial schemes from the regulation is founded on the impossibility of achieving their coordination at present at community level. But the Council and Member States are aware of the importance which certain of these schemes could have for migrant workers and they have asked the Commission to undertake a thorough study of the problem which this coordination would pose and the solutions which might be envisaged, and to present the results of this study to the Council.*

It is also considered desirable for the governments of Member States to examine what measures might be taken to promote the coordination of these schemes as far as possible at national level.

C 35 — *Although they are not contained within the scope of the regulation, industrial agreements may not include any discriminatory provisions based on nationality between nationals of Member States, because of the provisions of article 9 of EC regulation 1612/68 of 15 October 1968 (OJ EC 19 October 1968) on free movement of workers within the Community (c.f. ERER 1408/71 ad. art. 1).*

25 — The application of the provisions described above should not have the effect of removing from the scope of the revised regulation any schemes to which regulation No 3 was applied (R 1408/71 art. 1 letter *j*)).

B — Declarations of Member States concerning the scope of the regulation

26 — In order to determine the real scope of the regulation, Member States must list the legislations, schemes, minimum retirement benefits and benefits for dependent children of recipients of pensions and for orphans covered by the Community coordination (R 1408/71 art. 5).

27 — These lists should be contained in official statements sent to the President of the Council of the European Communities with an indication of their date of entry into force, and are published in the Official Journal of the Communities (R 1408/71, art. 5 and art. 96).

See OJ EC C 12, 24 March 1973 OJ EC C 59, 24 July 1973 OJ EC C 84, 12 October 1973 (amendment) OJ EC C 16, 20 February 1974 OJ EC C 70, 18 June 1974 (amendment) OJ EC C 34, 11 February 1977	Statements and modifications of statements of the original Member States
OJ EC C 43, 18 June 1973 OJ EC C 70, 18 June 1974 OJ EC C 147, 26 November 1974 OJ EC C 245, 25 October 1975 OJ EC C 89, 14 April 1977 OJ EC C 105, 3 May 1977	Statements and modifications of statements of the new Member States

It is relevant to add a specification of a temporary nature, inserted as an addendum to the Treaty of Accession, concerning the conditions in Ireland for free concessions in relation to the unemployment insurance scheme and to non contributory pension schemes for old age, widows, orphans and blind persons. For a maximum period of five years as from the first date of validity in Ireland of this regulation. Ireland may reserve the granting of such benefits solely for persons residing on Irish territory on condition that the benefits in question come under the authority of a system of legislation relative to sections of social security mentioned in article 4, para. 1, and that during the said period, equality of treatment be guaranteed in Ireland for nationals of the original Member States and of the other new Member States, as well as for refugees and stateless persons (art. 133 and Annex VII of the Act relating to conditions of accession and the adaptation of Treaties: OJ EC I. 73, 27 March 1972).

C 36 — *These lists of legislations, schemes and benefits are not exclusive in character (SRMC R 1408/71 ad art. 5).*

C 37 — Under the previous system, the legislations to which the regulation was to apply were, under article 3 of regulation No 3, defined in an Annex (Annex B). Regulation 1408/71 adopted a more flexible formula. Under article 5 of this regulation, the definition of the various legislations must be made by means of Statements by Member States.

C 38 — In the Minutes of the Council appear two statements concerning (Min. 19 May 1971, 552/1/71 — Soc. 60 rev. 1):

C 38-1 — the possible conclusion of a convention based on the Community regulations for the benefit of nationals of Surinam and the Netherlands Antilles if these parts of the Kingdom of the Netherlands so wish;

C 38-2 — the application of the provisions of the regulation to the French overseas territories.

C 38 a — Case 35/77 (Elisabeth Beerens v. Rijksdienst voor Arbeidsvoorziening), Judgment of the Court of Justice EC of 29 November 1977.

This case concerned the question whether the Dutch laws relating to social assistance which apply to workers who are unemployed allow of reliance on article 69 of regulation 1408/71, and whether benefits provided under those laws are unemployment benefits, allowing the beneficiary to transfer the rights of the person concerned to unemployment benefits to another Member State (Belgium) where such benefits are indeed social security benefits (on the points in dispute, see C 361 c below).

In its reply the Court of Justice EC, while recalling that social and medical assistance was excluded from the scope of application of regulation 1408/71, stated that article 5 of that regulation provided that "the Member States shall specify the legislation and schemes referred to in article 4 (1) and (2) ... in declarations to be notified and published in accordance with article 96". In the Netherlands declaration (OJ C 12 of 24 March 1973; cf. 27 above) the "Wet Werkloosheidsvoorziening" was listed under Heading "(d) Unemployment benefits". This was the law under which the person concerned had received unemployment benefits in the Netherlands.

The Court of Justice EC therefore found that "the fact that a national law or regulation had not been specified in the declarations referred to in article 5 of the regulation was not of itself proof that that law or regulation did not fall within the field of application of the said regulation; on the other hand, the fact that a Member State had specified a law in its declaration must be accepted as proof that the benefits granted on the basis of that law were social security benefits within the meaning of regulation 1408/71".

In its Judgment of 29 November 1977 the Court therefore ruled as follows:

"The fact that a Member State has specified a law in its declaration under article 5 of regulation 1408/71 must be accepted as proof that the benefits granted on the basis of that law are social security benefits within the meaning of the said regulation."

SECTION III — APPLICATION OF THE REGULATIONS AND OF INTERNATIONAL SOCIAL SECURITY CONVENTIONS RESPECTIVELY

Present regulations:	R 1408/71 art. 1 (*k*), art. 6, 7, 8, 96, Annex II, amended by the Treaty of Accession OJ EC L 73 of 27 March 1972, by R 1392/74 OJ EC L 152 of 8 June 1974, by R 1209/74 OJ EC L 138 of 26 May 1976, and by R 2595/77, OJ EC L 302 of 26 November 1977 R 574/72, Art. 4, 5, Annex 5, amended by R 878/73, OJ EC L 86 of 31 March 1973
Corresponding text of abrogated regulations:	R 3, art. 5, 6, 7, 54, Annex D R 4, art. 6, R 36, art. 4
Court of Justice EC:	Case 82/72, 187/73

A — Social security conventions which the regulation replaces

28 — The regulation in principle replaces the provisions of conventions adopted either exclusively between two or more Member States or between two or more Member States and one or more other States as long as they do not cover cases in the solution of which an institution of one of these latter States has to play a part (R 1408/71 art. 6).

29 — "Social Security Convention" means any bilateral or multilateral instrument between two or more Member States or between Member States and other States in the domain of social security for all or some of the branches and schemes to which the regulation applies (R 1408/71 art. 1 *(k)*).

30 — In accordance with the principles set out above, the provisions of the implementation regulation (R 574/72) replace those of the arrangements for the implementation of the conventions referred to in No 28. They also replace the texts for the implementation of social security conventions which are not affected by the regulation (c.f. No 32-3) but only to the extent that these are not implementation provisions for bilateral conventions maintained in force (provisions inserted in Annex 5 of regulation 574/72) (R 574/72 art. 5).

C 39 — *The provisions referred to above are similar to those set out in article 5 of regulation No 3, article 6 of regulation No 4 and article 4 of regulation No 36 respectively.*

On this matter, in case No 82/72 (MCJ Walder v. Bestuur der Sociale Verzekeringsbank Amsterdam), the Court of Justice EC pronounced on 7 June 1973 that regulations No 3 and 1408/71, in relation to the persons to which they apply, replaced the social security conventions between Member States which are not mentioned in articles 6 and 7 and in Annexes D and II of these regulations respectively, even if the application of these conventions would mean benefits superior to those in the said regulations for the person entitled to receive them.

B — International provisions not affected by the regulation

31 — The provisions of the regulation do not affect the obligations imposed by the Conventions adopted by the International Labour Organization where these have been ratified and have entered into force, nor by the European Interim Agreements of 11 December 1953 concluded between the Member States of the Council of Europe (R 1408/71 art. 7).

C 40 — The European Interim Agreements will later be replaced, in relations between the contracting parties, by the European Social Security Convention adopted by the Committee of Ministers on 10 March 1972 and opened for signature by Member States of the Council on 1 December 1972.

This Convention entered into force on 1 March 1977 after having been ratified by three countries (Austria, Luxembourg and Turkey).

C 40 a — In a decision of 28 May 1974 (Case 187/73, Odette Callemeyn v. État Belge) the Court of Justice specified that, "in the framework of both its personal and material application, regulation 1408/71 is applicable in preference to the interim European Agreement of 11 December 1953 concerning social security schemes relating to old age, the handicapped or to survivors... to the extent that this regulation is more favourable than the said Agreement to the person so entitled".

32 — The following also remain applicable:

32-1 — the Agreement of July 1950 (revised on 13 February 1961) concerning the Social Security of Rhine Boatmen;

32-2 — the European Convention of 9 July 1956 concerning the Social Security of Workers in International Transport;

32-3 — the provisions of the social security conventions referred to in Annex II to regulation 1408/71 as amended by the Treaty of Accession and by regulations 1392/74 and 2595/77. Statements on the inclusions of these provisions were written into the minutes of the Council (statements from Belgium, Italy and France).

33 — In consequence, the implementing texts of bilateral conventions maintained in force remain applicable in as far as these provisions are included in Annex V to Regulation 574/72 as amended by Regulations 878/73 and 1209/76 (Regulation 574/72, Article 5 and 120(2)).

C 41 — These may be implementation provisions not only from administrative arrangements but also possibly from basic conventions which may not have been inserted in Annex II of regulation 1408/71 because their subject corresponds to that of the implementation regulation and not to that of the regulation (ERER 574/72).

C 42 — *The preceding provisions are the same, subject to editorial variations, as the provisions contained in article 6, subparas. 1, 2, 3 of regulation No 3 and article 6 of regulation No 4 respectively.*

C 43 — *The provisions of article 4, subparas. 4 and 5, of regulation No 36 have become unnecessary because of the inclusion of frontier workers in the scope of regulation 1408/71.*

C 44 — *Annex II of regulation 1408/71 and Annex 5 of regulation 574/72 correspond to Annex D of regulation No 3 and Annex 6 of regulation No 4 respectively.*

C — Conclusion of conventions between Member States

34 — It is open to Member States to conclude, as necessary, conventions or agreements based on the principles and the spirit of the regulation. These conventions must be notified to the President of the Council and published in the Official Journal of the Communities.

Depending on whether they are social security conventions or implementation provisions, these texts must be referred to in Annex II of regulation 1408/71 or Annex 5 of regulation 574/72 (R 1408/71 art. 8, 96; R 574/72 art. 120).

C 45 — *The adoption of these provisions has led the Commission to stress that this manner of proceeding does not permit the achievement of provisions which are uniformly applied to all workers. It has recalled in this connexion that the provisions in bilateral agreements cannot be interpreted by the Court of Justice of the Communities, whose terms of reference are limited to Community provisions (SRMC R 1408/71 art. 8).*

C 46 — *Article 8 of regulation 1408/71 simply reproduces the provisions of article 7 of regulation No 3.*

C 47 — *Member States' ability to conclude new agreements is thus maintained "as long as these are supplementary agreements intended to govern the implementation of the regulation. These new agreements should be referred to in Annex II (see above No 32-3) and will only enter into force after their insertion in that Annex" (ERER 1408/71).*

CHAPTER III

APPLICATION IN TIME

SECTION I — ENTRY INTO FORCE OF THE NEW REGULATIONS

Present regulations:	R 1408/71 art. 99, amended by Treaty of Accession OJ EC L 73/27 March 1971 and by R 2864/72 art. 2 OJ EC L 306 of 31 December 1972 R 574/72 art. 121 and 122, amended by R 878/73 art. 2 OJ EC L 86 of 31 March 1973

35 — EEC regulations 1408/71 and 574/72 came into force for the original Member States on 1 October 1972 (R 1408/71 art. 99; R 574/72 art. 122).

36 — These two regulations and all the amendments made to them for implementation purposes came into force for all Member States of the enlarged Community on 1 April 1973 (Annex to Treaty of and R 2864 art. 2; R 878/73 art. 2).

37 — Annexes to the regulations can be amended by a further regulation of the Council on the proposal of the Commission, at the request of the Member States concerned and after the opinion of the Administrative Commission has been obtained (R 1408/71 art. 95; R 574/72 art. 121).

38 — Regulations 1408/71 and 574/72 abrogate EEC regulations No 3, No 4 and No 36 (R 1408/71 art. 99).

SECTION II — TRANSITIONAL PROVISIONS

Present regulations:	R 1408/71 art. 94, amended by the Treaty of Accession OJ EC L 73, 27 March 1972 R 575/72 art. 118, amended by R 878/73 OJ EC L 86 of 31 March 1973
Corresponding text of abrogated regulations:	R 3 art. 53 R 36 art. 24
Administrative Comm'n:	Decision No 43
Court of Justice EC:	Cases 32/76, 10/78

39 — The regulations give no entitlement for a period prior to the date of their entry into force in the territory of the Member State concerned (R 1408/71 art. 94 para. 1, amended by the Treaty of Accession).

40 — However, account may be taken, for the determination of entitlement under the new regulations, of any periods of insurance, residence or employment completed under the legislation of a Member State and of any contingency occurring before the date of entry into force of the said regulations in the territory of that State (R 1408/71, art. 94, para. 2, 3, amended by the Treaty of Accession).

C 48 — The provisions appearing under Nos 38 to 40 take in and extend the scope of the corresponding provisions of article 53 of regulation No 3.

41 — Benefits not awarded or suspended for considerations of nationality or residence may be awarded or resumed with effect from the dates of entry into force indicated under Nos 35 and 36 respectively, unless the entitlements of the person concerned have already been settled by means of a capital payment. Pensions, allowances or benefits for orphans previously awarded may also be reviewed in the same conditions (R 1408/71, art. 94, para. 4, 5, amended by the Treaty of Accession).

42 — Claims for the award, resumption or review must be submitted within a period of two years. Otherwise entitlement will take effect not at the date of entry into force of the regulations in the territory of the Member State concerned, but at that of the claim, provided that this is neither expired nor time-barred (R 1408/71, art. 94, para. 6, 7, amended by the Treaty of Accession).

C 48 a — In Case 32/76 (Mrs. Alfonsa Saieva v. La Caisse de Compensation des Allocations Familiales for the mining industry of the Charleroi and Basse-Sambre coalfields), the Court of Justice, in a judgment of 13 October 1976, ruled as follows:

"Article 94, para. 5 of regulation (EEC) 1408/71 must be interpreted as meaning that the competent institution of a Member State is not entitled to substitute itself for an insured person with regard to the review of the rights which that person acquired before the regulation came into force."

This Case concerned the child of an Italian worker who had died in Belgium as a result of an accident at work. Family allowances provided by Belgian legislation to that child pursuant to article 42, para. 5 of regulation (EEC) 3 were stopped on 1 October 1972, the date on which regulation 1408/71 entered into force. The Belgian institution had considered that, in accordance with article 78, para. 2, b), i) of that new regulation, the Italian institution was henceforth responsible for providing family benefits as the Italian worker concerned had completed an insurance period of five years, two months and four weeks in Italy.

The Court of Justice did not accept that line of argument as it considered that article 94, para. 5 of regulation 1408/71 did not entitle the competent institution of a Member State to substitute itself for an insured person with regard to the review of the rights which that person had acquired before the regulation came into force. See also C 397-1.

43 — The submission of a claim for invalidity, retirement or survivor's pension after the entry into force of the regulation must entail a review, in accordance with this regulation, of any benefit previously awarded for the same contingency before its entry into force (R 574/72, art. 118, para. 2).

C 49 — *The provisions appearing under No 42 constitute a transposition of the interpretative Decision No 43 of the Administrative Commission (OJ EC 4, March 1963) adopted under regulations 3 and 4. These provisions are designed to combine the procedures for the calculation of pensions, as the conditions required by the legislations to which the worker has been subject are met, with the application of the transitional provisions referred to under Nos 40 and 41, according to which pensions awarded before the entry into force of the regulation are reviewed only at the request of the persons concerned, and taking effect depending on the date of the request (ERER 574/72 ad art. 118).*

44 — Claims for pensions or allowances submitted before the date of entry into force of the regulation but which at that date had not been the subject of an award give rise to a double award (R 574/72, art. 118, para. 1, amended by R 878/73):

44-1 — For the period prior to the date of entry into force of the regulation, regulation No 3 or conventions in force between the Member States concerned are applied.

44-2 — The award operates in accordance with the provisions of regulation 1408/71 for the period after the date of entry into force.

44-3 — The person concerned continues to receive the amount calculated in application of the provisions referred to under 43-1 whenever this amount is higher than that calculated in application of the provisions referred to under 43-2.

C 50 — In its original wording, article 118 of regulation 574/72 excluded the maintenance of the amount of the pension awarded for the period prior to 1 October 1972 in accordance with the provisions of regulation No 3, even if this was higher than the amount resulting from an award operated in accordance with the provisions of regulation 1408/71. The application of this provision could therefore have results contrary to the principle of maintenance of accrued entitlement and did not agree with the terms of article 94, para. 5 of regulation 1408/71.

The new wording of article 118-1 of regulation 574/72 confirms the maintenance of accrued entitlement and also couples up with the provisions of article 94, para. 5 of regulation 1408/71 according to which persons whose pension has been awarded before 1 October 1972 under regulation No 3 may opt between maintaining this pension or having it reviewed in application of the provisions of the new regulation.

In addition, account had to be taken of the fact that, up to 1 April 1973, the award of entitlement to pension acquired under the legislations of two of the new Member States or one of the new Member States and one of the original Member States was governed by bilateral conventions and not by the provisions of regulation No 3.

Article 118-1 (new) inserted by regulation 878/73 is designed to remedy these problems by enabling the persons concerned, whose entitlement relates to a contingency which has occurred either before 1 October 1972 or before 1 April 1973, and whose claim for a pension or allowance has not been awarded before one or other of these dates, to benefit for the period after those dates from the most favourable solution, i.e. either a pension based on the provisions of regulation No 3 or bilateral conventions, or a pension established in accordance with the provisions of regulation 1408/71 (ERER 878/73).

C 51 — It is understood that benefits granted in accordance with regulation No 3 which turn out to be higher than those resulting from the application of regulation 1408/71 will not be reduced, in application of the principle of maintenance of accrued entitlement (SRMC R 1408/71 ad art. 94).

C 52 — Transitional measures are also laid down with regard to compensation for sclerogenic pneumoconiosis and in relation to family benefits. These measures are described under Nos 431, 568 and 572 respectively.

C 52 a — *In case 10/78 (Tayeb Belbouab v. Bundesknappschaft), the Court of Justice EC recorded, in the grounds for a Judgment delivered on 12 October 1978, that article 94 (2) of regulation 1408/71 clearly implied that rights acquired were recognised and protected in the framework of Community Regulations on social security for migrant workers once they had been acquired by a migrant worker within the meaning of that regulation, i.e. a national of a Member State.*

The Court therefore ruled as follows:

"Articles 2 (1) and 94 (2) of regulation (EEC) 1408/71 read in conjunction with one another are to be interpreted as guaranteeing that all insurance periods and all periods of employment or residence completed under the legislation of a Member State before the entry into force of that regulation shall be taken into consideration for the purpose of determining the acquisition of rights in accordance with its provisions subject to the condition that the migrant worker was a national of one of the Member States when the periods were completed."

For the points at issue, see C 22 above.

TITLE II

Guiding principles and technical organs of coordination

CHAPTER IV

EQUALITY OF TREATMENT

SECTION I — GENERAL PRINCIPLES

Present regulations:	R 1408/71, art. 1, *h), i);* art. 3; Annex VI, as amended by the Treaty of Accession and by R 1392/74, OJ EC L 152 of 8 June 1974
Corresponding text of abrogated regulations:	R 3, art. 6, para. 4 and art. 8
Court of Justice EC:	Case 79/76

A — Definitions

45 — For the application of the regulation, the terms "residence" and "stay" denote habitual residence and temporary stay respectively (R 1408/71, art. 1, *h)* and *i)*).

B — Entitlement under legislation of Member States

46 — Persons to whom the regulation apply receive equality of treatment under the legislation of all Member States under the same conditions as nationals of the latter. However, this principle is subject to two reservations (R 1408/71, art. 3, para. 1):

46-1 — The persons concerned must reside in the territory of a Member State;

46-2 — The principle of equality of treatment is applicable subject to provisions contained in the regulation.

C 53 — Except for the reservation indicated in 45-2, the principle of equality of treatment is expressed in similar terms to those in article 8 of Regulation No 3.

C 54 — The deletion of the condition of residence in the territory of a Member State had been envisaged in the first proposed revision of the regulation. The deletion of this restriction would have permitted the export of benefits to the territory of non-member States to the extent that the internal legislation of each Member State considered so laid down for the nationals of each of these States (ERER 1408/71).

C 55 — This restriction was kept in the final text of the regulation because the payment of pensions and allowances to beneficiaries residing in the territory of non-member States is not uniformly allowed by all legislations (some exclude any payment of these benefits or portions of these benefits for beneficiaries residing abroad or make payment abroad subject to a nationality condition) and so inequality of treatment could result between beneficiaries of pensions under the legislation of Member States (SRMC R 1408/71 ad art. 3 a)).

C 56 — However, the representatives of Member States on the Council stated that they were "willing to examine the possibility of taking the necessary steps to pay pensions and allowances due under their legislation to all persons to whom the regulation applies, even if they reside in the territory of a non-member State" (SRMC R 1408/71 ad art. 3 a)).

The Belgian government stated, however, that following a recent examination of this problem it could not consider taking such steps for the time being (SRMC R 1408/71 ad art. 3 b)).

C 57 — The reservation inserted in article 3 subpara. 1 of regulation 1408/71 concerning the possible application of special provisions contained in the regulation is in response to the concern to "dissipate any ambiguity with regard to the relationship between the general principle and certain special provisions of the regulation".

According to the explanation of the reasons for the proposed regulation, "these are essentially provisions which make the consideration of periods of employment completed in other countries for the acquisition of entitlement to unemployment benefit under the legislation of a Member State subject to the condition that the unemployed person has been subject to this legislation during the course of his last employment (except in the case of frontier or seasonal workers unemployed in the country of residence at the end of the season); such a condition is not required by Belgian legislation which gives benefit to all unemployed persons of Belgian nationality who have last been employed abroad, but the full application of this legislation to all the nationals of the other Member States becoming unemployed in their territory cannot be considered". (ERER R 1408/71.)

C 57 a — Case 79/76 (Carlo Fossi v. Bundesknappschaft, Bochum), Judgment by the Court of Justice of the EC of 31 March 1977.

In accordance with article 177 of the Treaty the Court of Justice of the EC was requested to interpret article 8 of regulation No 3 and article 3 (1) of regulation 1408/71 in proceedings about entitlement under German legislation to a pension for total incapacity for work of an Italian national residing in Italy who had worked, from 1 June 1942 to 1 July 1943, in a mine in the Sudetenland, a territory which had, at that time been a part of the former German Reich.

The German miners' fund had awarded him an invalidity pension and then suspended payment of the pension in pursuance of a provision of German legislation on social insurance for miners (art. 105 (1) of the RKG) to the effect the pension was suspended as long as the beneficiary resided outside the territorial scope of the competent German legislation.

The question was whether an Italian living in Italy who at no time lived or worked in the territory of the Federal Republic of Germany or of West Berlin was to be treated, by virtue of article 8 of regulation No 3 and article 3 (1) of regulation 1408/71, on the same footing as a German national when applying article 108-c) of the RKG which allowed, under certain conditions, the relevant benefits to be paid to Germans residing abroad.

The problem was whether the benefits provided under article 108-c) of the RKG fell within the scope of regulations Nos 3 and 1408/71 as legislation on social security, and if so, whether the award of such a benefit to a worker who was a national of another Community Member State was not subject to a condition of residence in the present territory of the Federal Republic of Germany, while the payment of the benefits in question to German nationals was of a discretionary nature where such nations resided abroad.

After recalling that legislation which conferred on the beneficiaries a legally defined position which involved no individual and discretionary assessment of needs or personal circumstances came in principle, within the field of social security within the meaning of article 51 of the Treaty and of regulations Nos 3 and 1408/71, the Court of Justice nevertheless considered that the benefits in question were not to be regarded as in the nature of social security. This decision was based on two considerations, one concerning German law, the other relating to Community law.

With reference to German law, it should be noted that the competent insurance institutions with which the persons referred to in the provision in question had been insured no longer existed or were situated outside the territory of the Federal Republic of Germany, that the purpose of the German legislation in question was to alleviate certain situations which had arisen out of events connected with the National Socialist régime and the Second World War, and, finally, that the payment of the benefits in question was of a discretionary nature where such nationals were residing abroad.

The reservation contained in Annex G I A 2 to Regulation No 3 and in Annex V C 1-b) to regulation 1408/71, which expressly stated that the payment of benefits in respect of periods completed outside the Federal Republic of Germany should be subject to certain conditions when those entitled to them resided outside that territory (cf 57 below).

The Court of Justice therefore ruled as follows:

"Article 8 of regulation No 3 and article 3 (1) of regulation (EEC) 1408/71 do not apply to benefits of the kind laid down in paragraph 108-c) of the Reichsknappschaftgesetz by reason of insurance periods completed before 1945 outside the territory of the Federal Republic of Germany and of West Berlin".

47 — Annex V I 9 to regulation 1408/71 (amended by Annex to the Treaty of Accession — OJ EC L 73 27 March 1972) states, with regard to the United Kingdom, that, whenever the legislation of that country so requires for the purpose of obtaining entitlement to benefit, a national of a Member State born in a non-member State is regarded as being a national of the United Kingdom born in a non-member State.

In addition, with regard to the territory of Gibraltar, for the purpose of the decree on non-contributory social security benefits and unemployment insurance, any person to whom the regulation is applicable is considered to be domiciled in Gibraltar if he resides in a Member State (R 1408/71 Annex V I amended by regulation 1392/74 (OJ No L 152 of 8 June, 1974).

C 57 b — *"Within the scope of application of regulation 1408/71 Article 7 of the Treaty, as implemented by Article 48 of the Treaty and Article 3, (1) of that Regulation, is directly applicable in Member States." These provisions, which prohibit all forms of discrimination on the grounds of nationality "do not prohibit — though they do not require — the treatment by the institutions of Member States of corresponding facts occurring in another Member State as equivalent to facts which, if they occur on the national territory, constitute a ground for the loss or suspension of the right to cash benefits; the decision on this matter is for the national authorities, provided that it applies without regard to nationality and that those facts are not described in such a way that they lead in fact to discrimination against nationals of the other Member States." (Court of Justice EC, Case 1/78 (Patrick Christopher Kenny v. Insurance Officer), Judgment of 28 June 1978).*

By this Judgment, the Court of Justice EC confirmed the refusal of a British institution to award cash benefits for sickness or incapacity for work to a citizen of Ireland who was subject to the National Insurance Act because he usually resided, and was employed, in the United Kingdom, on the grounds that those benefits were in respect of hospital treatment received while he was serving a term of imprisonment while in Ireland. Article 49, (1) b) of the National Insurance Act in the version then in force provided that "except where regulations otherwise provide, a person shall be disqualified for receiving any benefit... for any period during which that person... is undergoing imprisonment or detention in legal custody".

This confirmed that a national court of law could, pursuant to Community Law, treat imprisonment or detention in legal custody in another Member State as imprisonment or detention in the United Kingdom as a reason for the loss or suspension of benefits provided for under the National Insurance Act.

C — Right of election and eligibility to social security organs of institutions

48 — The principle of equality of treatment also applies with regard to the right to vote of the persons concerned on the organs of social security institutions. But this does not affect the provisions of national legislation concerning eligibility and methods of appointing persons concerned to these organs (R 1408/71, art. 3, para. 2).

C 58 — *It has however been understood that this provision would be examined again by the Council on the basis of a proposal by the Commission to be submitted within two years with effect from the date of entry into force of the regulation (SRMC R 1408/71 ad art. 3, para. 2).*

C 59 — *Under the abrogated regulations these matters were the subject of article 6, para. 4 of regulation No 3. According to this article, these matters were reserved for the legislative domain of each of the Member States.*

D — Rights under the provisions of social security conventions

49 — The principle of equality of treatment for the benefit of persons covered by the regulation applies with regard to the provisions of social security conventions maintained in force and to those which may be concluded between two or more Member States on the basis of the principles and spirit of the regulation; these provisions are referred to in Annex II A. as amended by the Treaty of Accession and by Regulations Nos 1392/74, 1209/76 and 2595/77.

C 60 — *Thus the provisions of the international conventions mentioned above can benefit all the persons covered by the regulation who find themselves in the situations referred to in those provisions, whether or not the scope of those provisions is limited to nationals of the two contracting parties (ERER 1408/71).*

50 — However, by way of exception to the principle of equality of treatment, the benefit of certain provisions of social security provisions maintained in force is not extended to all the persons to whom the regulation applies. The provisions concerned are referred to in Annex II B of the regulation (R 1408/71, art. 3, para. 3).

C 61 — *This reservation is intended "to exclude in particular bilateral provisions governing matters other than those of the regulation in particular provisions relating to times of war the application of which to persons other than those for whom they were adopted would raise innumerable difficulties" (ERER 1408/71).*

SECTION II — ADMISSION TO VOLUNTARY OR OPTIONAL CONTINUED INSURANCE

Present regulations:	R 1408/71 art. 9 R 574/72 art. 6 and Annex 10 as amended by R 878/73 OJ EC L 86 of 31 March 1973, R 1392/74 OJ EC L 152 of 8 June 1974, R 1209/76 OJ EC L 138 of 26 May 1976, R 2595/77 OJ EC L 302 of 26 November 1977
Corresponding text of abrogated regulations:	R 3, Article 9 R 4, Article 7
Court of Justice EC:	Case 43/75
Form used:	E 201

51 — For admission to voluntary or optional continued insurance :

51-1 — a condition of residence in the territory of a Member State cannot be put forward against persons who have formerly been subject to the legislation of that State and who reside in the territory of another Member State (R 1408/71, art. 9, para. 1).

51-2 — insurance or residence periods completed under the legislation of any Member State may be taken into consideration as far as necessary (R 1408/71, art. 9, para. 2, amended by R 2864/72).

C 62 — The amendment brought about by regulation 2864/72 was required by the special features of Danish legislation: residence periods, completed in Denmark may be taken into consideration for admission to voluntary or optional continued insurance in another Member State.

C 63 — The application of the rule set out in 51-2 is not subject to the worker having completed an insurance period in the Member State where he requests admission to voluntary insurance.

C 63 a — Case 93/76 (Fernand Liégeois v. Belgian Office National des Pensions pour Travailleurs Salariés), Judgment of the Court of Justice of the EC of 16 March 1977.

This Case concerned the interpretation of article 9 (2) of regulation 1408/71 in the action on the right of a Belgian national to have periods of study treated as periods of employment, which is, in certain conditions, allowed under Belgian legislation.

The person concerned had studied in Belgium from 1950 to 1954, in France from 1954 to 1956 and in the United States from 1960 to 1963. After completing his military service in Belgium in 1957, he had worked in France from 1958 to 1960 and in 1964 and 1965, and then in the United States until 1971, since when he worked in Belgium. He wanted to buy in periods of study from the competant Belgian institution in pursuance of the Belgian Royal Decree of 21 December 1967. The Belgian institution rejected this request on the ground that one of the requirements of the relevant Belgian legislation had not been fulfilled, namely, the pursuit, immediately after the period of study, of an occupation in which he was subject to Belgian law on old-age and survivors' pensions for employed persons.

Having regard, in particular, to the fact that:

— Article 9 (2) of regulation 1408/71 provides that "Where the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of insurance periods, any such periods completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State";

— despite the variations in the versions in the different languages of article 9 both as to the distinction between voluntary insurance and optional insurance and as to the concept of continued insurance, the Article showed a clear intention to cover every type of insurance incorporating a voluntary element, and it mattered little whether there was any continuance of existing insurance or not;

— treating periods of study as periods of employment was devoid of purpose unless it gave those concerned the benefit of insurance for the periods in question subject to their paying contributions prescribed by the national legislation;

the Court of Justice ruled as follows:

"The expression voluntary or optional continued insurance appearing in article 9 (2) of regulation (EEC) No 1408/71 covers assimilation to periods of employment for the purposes of insurance for periods of study whether there is any continuance of existing insurance or not".

52 — Where there are several voluntary or optional continued insurance schemes in the same Member State, the conditions for which are met by the person concerned, although he has not been subject to compulsory insurance in one of these schemes by virtue of his last employment, admission to voluntary or optional continued insurance may be granted to him in the scheme prescribed by the legislation of the Member State concerned or, otherwise, in the scheme of his choosing (R 574/72, art. 6 para. 1).

53 — The institutions or organizations appointed by the competent authorities in each Member State for the application of the preceding provisions are indicated in Annex 10 of Regulation No 574/72 (R 574/72, art. 4). Annex 10 has been amended by Regulations Nos 878/73, 1392/74, ~~and~~ 1209/76, and 2595/77.

54 — In order to benefit from the provisions described under No 51-2, the person concerned must submit to the institution of the Member State concerned a declaration drawn up on form E 201 by the institution or institutions which apply legislation under which the periods of insurance or residence have been completed (R 574/72, art. 6, para. 2, amended by R 878/73).

C 64 — Danish legislation, in some branches, takes "periods of residence" into consideration.

C 65 — The conditions for admission to voluntary insurance were formerly set out in article 9 of regulation No 3 and in article 7 of regulation No 4.

C 66 — Article 9 of regulation 1408/71 (cf. No 51) takes in the principle set out in article 9 of regulation No 3 but deletes two important restrictions: it is no longer required that the worker should reside in the country from which he is seeking insurance, nor that he cannot be admitted to compulsory insurance because of the legislation of the country of employment.

The practical scope of the new provisions is broad, bearing in mind that several legislations authorize workers residing abroad to belong to voluntary insurance schemes, even where they are in compulsory insurance in the country where they are employed. The new provisions will also enable workers who cease paid employment and whose last insurance periods have been completed abroad to belong to the voluntary or optional continued insurance scheme of their country by invoking these periods (ERER 1408/71).

C 67 — *The provisions of article 6 of regulation 574/72 described under Nos 52 and 54 correspond to those of article 7 of regulation No 4, subject to editorial simplifications and adaptations taking account of the fact that the last compulsorily applicable legislation is not necessarily that of the last country of employment and that article 9 of regulation 1408/71 is not limited, as was article 9 of regulation No 3, to admission to voluntary or optional continued insurance under the legislation of the country of residence (ERER 574/72).*

C 68 — *See Chapter V Section III for determination of the applicable legislation with regard to voluntary or optional continued insurance.*

SECTION III — EXEMPTION FROM THE RESIDENCE CONDITION

Present regulations:	R 1408/71 art. 10 and Annex V amended by the Treaty of Accession OJ EC L 73 of 27 March 1972 and by R 1209/76 OJ EC L 138 of 26 May 1976
Corresponding text of abrogated regulations:	R 3 art. 10
EC Court of Justice:	Case 51/73, 110/73, 24/74, 17/75, 69/76, 87/76, 104/76

55 — The general principle is stated of exemption from the residence condition in national legislation.

Subject to the special provisions of the regulation (health treatment, unemployment benefit and award of pensions or allowances), all cash benefits for invalidity, retirement or survivors, accident at work, allowances and occupational disease benefits, and death grants, acquired under the legislation of one or more Member States, cannot in any way be affected by the fact that the beneficiary resides in the territory of a Member State other than that of the debtor institution (R 1408/71, art. 10 para. 1).

56 — This rule also applies to capital benefits granted, in case of remarriage, to widows who were entitled to a widow's pension or allowance (R 1408/71, art. 10 para. 1).

56 a — Points 15 and 16 added to Annex V-I to Regulation No 1408/71 by Regulation No 1209/76 specify that for the purpose of applying Article 10 of Regulation No 1408/71:

— the attendance allowance granted to a worker under United Kingdom legislation shall be regarded as an invalidity benefit;

— beneficiaries of a benefit due under United Kingdom legislation who are staying in the territory of another Member State shall be considered, for the period of their stay, as resident in the territory of that other Member State.

57 — Notwithstanding the provisions described under No 55, accidents and occupational diseases occurring outside the territory of the Federal Republic of Germany, together with the periods completed outside that territory, do not give rise, or give rise only under certain conditions, to payment of benefit where the recipients reside outside the territory of the Federal Republic of Germany (R 1408/71 Annex V, amended by the Treaty of Accession *C 1*, letter *b)*).

C 68 a — *Case 79/76 (Carlo Fossi v. Bundesknappschaft, Bochum), Judgment by the Court of Justice of the EC of 31 March 1977.*

Referring, in particular, to the provisions outlined in No 57, the Court of Justice ruled as follows:

"Article 8 of regulation No 3 and article 3 (1) of regulation (EEC) 1408/71 do not apply to benefits of the kind laid down in paragraph 108-c) of the Reichsknappschaftgesetz by reason of insurance periods completed before 1945 outside the territory of the Federal Republic of Germany and of West Berlin".

On this Case, see also C 57a.

C 69 — *Article 10 of regulation 1408/71 takes in and gives general application to the principle set out in article 10 of regulation No 3 so that all benefits, pensions, allowances and death grants acquired under the legislation of one or more Member States cannot in any way be affected by the fact that the beneficiary resides in the territory of a Member State other than that of the debtor institution.*

C 70 — *The reference made in No 55 to "special provisions of the regulation" does not in fact constitute a restriction but an explanation designed to avoid all ambiguity with regard to the relationship established between the general exemption from the residence condition and the special provisions laying down that health treatment or unemployment benefits are provided under the legislation of the country where the beneficiary resides or stays, and the special provisions on the award of pensions or allowances in cases where the worker has been subject to several legislations (ERER 1408/71).*

C 71 — *Thus all the benefits previously referred to in Annex E of regulation No 3 are in future payable in the various countries of the Community: Belgian pensions as regards the part corresponding to years of employment during which the beneficiary is regarded, in the absence of insurance periods, as having completed a full working life; French allowance for elderly employed persons; part of pensions under the Luxembourg scheme for private employees corresponding to periods of employment prior to the entry into force of the scheme; transitional benefits under general retirement insurance in the Netherlands... (EMPR 1408/71).*

C 71a — *Irrespective of the Case outlined in C 68a, the implementation of article 10 of regulation No 3 and of article 10 of regulation 1408/71 has given rise to judgments by the Court of Justice of the European Communities (cf. C 71-1, C 71-2, C 71-3, C 71-4, C 71-5).*

C 71-1 — Case 51/73 of 7 November 1973 (Bestuur der Sociale Verzerkingsbank, Amsterdam, v. Dame B. Smieja). In this case the Court of Justice specified that "..... the expression in view of the laws of one or several Member States appearing in article 10, para. 1, of regulation No 3, and the expression ..... by virtue of the legislation of one or of several Membrr States... appearing in article 10, para. 1, of EEC regulation 1408/71, are concerned with national legislative provisions, due account having been taken of the application of the arrangements for community rights and especially the principle of non-discrimination between nationals of other Member States".

The word "acquired" which appears in article 10, § 1 of regulations Nos 3 and 1408/71 should be understood here to mean that the protection insured by this provision extends to the advantages resulting from individual schemes of national entitlement, and which are passed on by means of an increase in the level of the benefit which would otherwise revert to the beneficiary.

C 71-2 — Case 110/73 of 10 October 1973, Fiege v. Caisse régionale d'assurance maladie de Strasbourg (Regional Office for Sickness Benefits, Strasbourg).

In this case concerning a German national who had been covered successively by social insurance schemes in Germany, France and Algeria, and who had obtained, as from 1 November 1962, a disability pension from an Algerian Payment Office, the Court of Justice of the European Communities gave judgment that:

"Annex A of Regulation No 3, in its original wording, indicates that entitlements acquired in Algeria before 19 January 1965 by a migrant worker must be honoured by French institutions.

The fact that such rights may have been recognized by an Algerian Payment Office before 19 January 1965 does not release the French institutions from their obligations even if application for transfer has only been made to those institutions after the bringing into force of Regulation 109/65.

A migrant worker having resided on French territory as defined in Annex A of Regulation No 3 before 19 January 1975 is justified in submitting his request for a pension to the last French institution with which he had previously been registered".

This judgment may be compared with the judgments in Cases 6/75, 25 June 1975, Ulrich Horst v. Bundesknappschaft, Bochum (C 276a) and 112/75 — Auguste Hirardin v. Caisse régionale d'assurance maladie du Nord-Est, Nancy (C 276b).

C 71-3 — Case 24/74 of 9 October 1974 (Giuseppina Biason v. Caisse régionale d'assurance maladie de Paris). "An insured person, the holder of a disability sickness pension acquired by virtue of his paid employment in a single Member State where he was residing, and receiving because of this pension a supplementary benefit (in this particular case it was in fact the supplementary benefit from the national trust fund established in France by the Act of 30 June 1956; see C 30-6 above), retains this benefit in the case of transfer of residence to the territory of another Member State, so long as this benefit comes within the sphere of Regulation No 3, and this remains valid even if this supplementary benefit is reserved by national law only for persons residing on national territory".

C 71-4 — In Case 17/75 (Antonio Anselmetti v. Caisse de compensation des allocations familiales de l'industrie charbonnière, Belgium) the EC Court of Justice Judgment of 25 June 1975 specifies that Articles 10 and 42 of Regulation No 3 include: "Migrant workers who are the beneficiaries of what is termed in Belgium 'invalidity allowance' according to the strict wording of Article 53, of the Belgian Law of 9 August 1963 concerning sickness/invalidity insurance referred to in Annex F to such Regulation No 3" (see also C 269-1 and C 392-1).

C 71-5 — In Case 87/76, Walter Bozzone v. Belgian Office de Sécurité Sociale d'Outre-Mer — Court of Justice ruling of 31 March 1977.

In this action, in which an Italian worker who resided in Italy appealed against the decision of a Belgian social security institution's refusal to grant him invalidity benefits in respect of insurance periods he had completed in the former Belgian Congo, now the Republic of Zaire, the following two questions were asked as to whether:

1. *a worker employed in an associated territory and at the time covered by specific legislation issued by one of the Member States with regard to this territory was to be considered as a worker who is or was covered by the legislation of one or more Member States within the meaning of article 2, para. 1, of regulation 1408/71, and*
2. *the waiving of residence clauses for in the first sentence of article 10, para. 1, of regulation 1408/71 was applicable to a recipient of benefits acquired in respect of gainful employment exercised exclusively in an associated territory when such recipient, who was a national of a Member State, resided in the territory of a Member State other than that which was responsible for payment of the relevant benefits.*

The answer to the first question may be found in C 33a above.

The Belgian institution had based its refusal to grant benefit on the ground that, under the competent national legislation, the relevant benefits were awarded only to persons who actually and usually resided in Belgium or in a former Belgian colony. That was not the case here, as the applicant resided in Italy.

In reply to this question, and having regard to the fact that the Regulation did not contain any provisions derogating from the first sentence of article 10, para. 1, of regulation 1408/71 in cases such as this, the Court of Justice ruled as follows:

"In the absence of express provisions to the contrary, the waiving of residence clauses provided for in the first subparagraph of article 10, para. 1, of Regulation (EEC) No 1408/71 applies to the situation of a recipient of benefits guaranteed by the legislation of a Member State in respect of employment exclusively in a territory which had at that time a special relationship with a Member State, when such recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of the social security benefits in respect of employment in the said territory".

58 — Although the legislation of a Member State may make reimbursement of contributions subject to the condition that the person concerned has ceased to be covered by compulsory insurance, this condition is not deemed to be met while the person is covered, as a worker, by compulsory insurance under another legislation (R 1408/71 art. 10 para. 2).

C 72 — This rule is designed to prevent reimbursement of contributions, as laid down by certain legislations for workers who cease to be covered by compulsory insurance, to persons who later are subject, still as workers, to the legislation of another Member State. Such reimbursement would present an obstacle to the aggregation of insurance periods corresponding to these contributions with insurance periods completed in other Member States for the purpose of awarding benefit at the time the risk materializes (ERER 1408/71).

C 72 a — In Case 104/76 (Gerda Jansen v. Landesversicherungsanstalt Rheinprovinz), judgment of 5 May 1977, the Court of Justice had stated that the specific rule in article 10, para. 2, of regulation 1408/71, which provided that "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 as a worker under the legislation of Member State", must remain limited to the period covered by that Regulation. The action on the reimbursement of contributions related to a period before the entry into force of regulation 1408/71 and came within the ambit of Regulation (EEC) No 3. (On this Case, see also C 33b).

SECTION IV — REVALORIZATION OF BENEFITS

Present regulation: R 1408/71 art. 11

59 — All benefits due under a legislation, in accordance with the regulation, may be revalorized to the extent and under the conditions laid down by that legislation (R 1408/71 art. 11).

C 73 — This rule did not appear in regulation No 3. It is thus a new provision which does however confirm a current practice.

SECTION V — OVERLAP OF BENEFITS

Present regulations:	R 1408/71 art. 12 R 574/72 art. 7 to 10, amended by R 878/73 OJ EC L 86 of 31 March 1973 and by R 1209/76 OJ EC L 138 of 26 May 1976
Corresponding text of repealed regulations:	R 3 art. 11 R 4 art. 8 to 10
EC Court of Justice:	Case 34/69, 130/73, 184/73, 22/77, 75/76
Administrative Commission:	No 78

A — Definitions

60 — "Benefits", "pensions" and "allowances".

These terms include, together with benefits, pensions and allowances as such, all elements due from public funds, revalorization increases or supplementary allowances, capital benefits replacing pensions or allowances and payments made by way of reimbursement of contributions (R 1408/71 art. 1 letter *t)*).

C 73 a — According to the Judgment of 27 November 1973 of the Court of Justice of the European Communities in Case 130/73 (widow Magdalena Vandeweghe et Solange Verhelle v. Berufsgenossenschaft für die chemische Industrie Heidelberg) the provisions of Regulation No 1408/71 must be understood as meaning that the words "income" and "pension" include the lump-sum indemnity to be paid to the widow in the case of re-marriage, but do not include the death grant.

B — Principle of non-overlap of benefits

61 — The regulation cannot have the effect of conferring or maintaining entitlement to several benefits of the same nature relating to the same period of compulsory insurance except with regard to invalidity, retirement, death (pensions) or occupational disease benefits awarded by the institutions of two or more Member States under the conditions laid down by the regulation (R 1408/71, art. 12, para. 1).

62 — The application of reduction, suspension or withdrawal clauses laid down in the legislation of a Member State in case of overlap of one benefit with other social security benefits or other income is extended to benefits or incomes acquired or obtained under the legislation or in the territory of another Member State, except where these are benefits of the same kind for invalidity, retirement, death (pensions) or occupational diseases awarded by the institutions of several Member States in accordance with the provisions of the regulation (R 1408/71 art. 12, para. 2).

For the implementation of these provisions for Danish, Irish and British legislations, disability, old age and widows' pensions are considered as benefits of the same nature (R 1408/71, Annex V B II, E 6, I 13, addition made by R 1392/74).

C 73b — *The provisions outlined in No 62 (2nd para.) have been added by regulation 1392/74 to take into account special features of Danish, Irish and British laws.*

Since the age of retirement varies according to the countries, and their regulations for preventing overlap differ, it became necessary to avoid a situation where the coordination of national legislations might involve a reallocation of the responsibility for cash benefits and a reduction of advantages given to widows or to the disabled which were not intended by those who originally drew up the regulations.

The modifications brought about by regulation 1392/74 tend to avoid these anomalies (ERER 1392/74).

63 — Reduction, suspension or withdrawal clauses applicable in a Member State in case of undertaking paid employment may be used against a recipient of invalidity benefit or early retirement benefit even if the person concerned is employed in the territory of another Member State (R 1408/71 art. 12 para. 3).

64 — The application of the principle of non-over lap cannot, however, have the effect of reducing benefit below a certain minimum. While this principle involves the reduction or suspension of several benefits granted under the legislations of various Member States, each of them cannot be reduced or suspended for an amount greater than that obtained by dividing the amount subject to reduction or suspension by the number of benefits to which the recipient is entitled (R 574/72 art. 7 para. 1 *a)*).

C 74 — *The words "amount subject to reduction or suspension" should be interpreted as being the amount which would not be paid if strict application were made of the provisions of article 12 para. 2 and 3 of Regulation 1408/71 (AC Decision No 78 of 22 February 1973; OJ EC C 75 of 19 September 1973 replacing decision No 31 — OJ EC 17 February 1961 adopted under regulations Nos 3 and 4).*

C 75 — *The provisions appearing under No 64 correspond to the text of article 9 (1) of regulation No 4. They aim to avoid the situation where the application of national rules against overlapping might result in negative conflicts of entitlement.*

65 — Where a Netherlands institution, which is called upon under national legislation to pay an invalidity pension, is also obliged to participate in responsibility for an occupational disease benefit awarded under the legislation of another Member State, this invalidity pension is reduced by the amount due to the institution responsible for paying the occupational disease benefit (R 1408/71 art. 12 para. 4).

66 — The application of the non-overlap principle in the eventuality of entitlement under the legislation of several Member States is dealt with by special rules relating to:

66-1 — invalidity, retirement and death (pensions) benefits (R 574/72 art. 7) (c.f. below Nos 320 to 323);

66-2 — maternity benefits (R 574/72 art. 8 modified by R 878/73 OJ EC L 86 31 March 1973) (c.f. below No 142);

66-3 — death grants (R 574/72 art. 9) (c.f. below No 507);

66-4 — family allowances (R 1408/71 art. 76; R 574/72 art. 10 amended by R 878/73) (c.f. below Nos 583 to 589).

C 76 — *The provisions of article 12 of regulation 1408/71 relating to non-overlapping of benefits are similar to those of article 11 of regulation No 3 except with regard to overlap of a normal retirement pension or a survivor's pension with paid employment.*

C 77 — *Reduction, suspension or withdrawal clauses, in case of undertaking paid employment, are from now on limited, where the paid employment is undertaken in another country, to invalidity benefit or early retirement benefit. "These clauses will thus no longer be applicable to normal retirement pensions and survivor pensions the recipients of which are in paid employment in another country, since such clauses are generally laid down in consideration of the situation in the national employment market and their application requires checks which are in practice impossible to make where the employment is in foreign territory" (ERER 1408/71).*

C 78 — *The provisions referred to under No 65 have had to be adopted in order to enable non-overlap clauses to operate, bearing in mind the special features of Netherlands legislation.*

C 79 — The combination of provisions against overlapping laid down by the legislations of the Member States and Community provisions against overlapping (R No 3, art. 11 and R 1408/71, art. 11) has given rise to numerous problems of interpretation with which the Court of Justice EC has dealt in the following Judgments:

C 79-1 — Court of Justice of the European Communities — Case 34/79 of 10 December 1969 (Mrs. Jeanne Duffi v. Caisse d'assurance vieillesse de travailleurs de Paris):

The reduction or suspension clauses set out by the legislation of a Member State in case of overlap of one benefit with other social security benefits cannot be used under article 11, para. 2 of regulation No 3 against insured persons except to the extent that they are in receipt of benefits acquired thanks to the application of the said regulation. Apart from such a case, "this type of limitation cannot be justified since it would have the effect of placing the worker in a situation less favourable than that which, in the absence of the regulations, would arise from the application of national law or individual conventions concluded between Member States".

C 79-2 — Court of Justice of the European Communities — Case 184/73, 15 May 1974 (Bestuur van de Nieuwe Algemene Bedrijfsvereniging Amsterdam v. H.W. Kaufman).

Considering that the provision against overlapping laid down in article 11 (2) of regulation No 3 was, "in the light of articles 48 to 51 of the Treaty, the counterweight to the advantages which regulations Nos 3 and 4 procure for workers by enabling them to claim benefit simultaneously under the social security laws of several Member States, and its purpose is to prevent them deriving from that claim advantages which the national legislation considers excessive", the Court of Justice ruled as follows:

"1. A provision of national law intended to forbid the simultaneous receipt of sickness benefit and benefit from insurance against incapacity to work constitutes a provision for suspension or reduction within the meaning of article 11 (2) of regulation No 3.

2. The expression "benefits acquired under a scheme in another Member State" cannot be limited merely to the case where the provision against overlapping is expressed in terms covering all benefits in general, whether acquired under the scheme in other Member States or under that of the State concerned.

3. The expression "benefits acquired under a scheme in another Member State" can only mean the amount actually paid as assimilated benefit."

C 79-3 — Case 23/77 (Giovanni Naselli v. Caisse auxiliaire d'assurance maladie-invalidité), Judgment of 14 March 1978.

The dispute concerned the calculation by a Belgian institution of the invalidity pension payable to an Italian national who was the plaintiff in the main action, who had worked in Italy and in Belgium and who had obtained invalidity benefits payable by the insurance institutions of both countries. The Belgian institution, relying on the rules against the overlapping of benefits laid down by its national legislation (law of 9 August 1963, art. 70 (2)), reduced with retroactive effect the amount of the pension which it had previously awarded to the person concerned without availing of articles 27 and 28 of regulation No 3 on the grounds that the person concerned had been awarded, in Italy, a pro-rata invalidity pension pursuant to an agreement between Italy and Belgium.

Referring back to Judgments delivered in earlier cases, and in particular of 6 December 1973 in case 140/73 (Mancuso) (cf. C 210 a below) and of 15 May 1974 in case 154/73 (Kaufmann) (cf. C 79-2 above), the Court of Justice ruled as follows:

"1. Consideration of the provisions of regulation No 3 shows that none of them precludes the application of benefits acquired by virtue of national legislation alone of national rules against the overlapping of benefits.

2. Article 9 (2) of regulation No 4 applies only when the benefit in question has been awarded through the application of the processes of aggregation and apportionment."

In the grounds for its Judgment, the Court of Justice had, in particular, recorded that articles 11 (2), 27 and 28 of regulation No 3 and article 9 (2) of regulation No 4 should be applied only to pensions acquired pursuant to the aggregation and apportionment laid down by those regulations.

C 79-4 — Court of Justice of the European Communities: Case 22/77 (Belgian Fonds National de Retraite des Ouvriers Mineurs v. Giovanni Mura and Case 37/77 — Fernando Greco v. Belgian Fonds National de Retraite des Ouvriers Mineurs), judgments of 13 October 1977.

The facts of these cases are identical to those of Cases 62/76 (Strehl) and 112/76 (Manzoni) (cf C-256b below). The persons concerned are Italian nationals who worked, respectively, as a miner in France and Belgium (Case 27/77) and as a building worker in Italy and as a miner in Belgium (Case 37/77).

In both cases, the competent Belgian institution had applied the national rules against the overlapping of benefits (art. 23, para. 1) of the Royal Decree of 19 November 1970), and deducted the amount of the Italian and French pensions, awarded by the institutions of those countries, from the Belgian pension (to which the persons concerned were entitled on the basis of insurance periods completed in Belgium).

The national courts which referred these cases to the Court of Justice wanted to know whether the reductions of pensions effected were valid not only with regard to Article 46, para. 3 of regulation 1408/71, as in Cases 62/76 (Strehl) and 112/76 (Manzoni), but also with reference to article 12 of regulation 1408/71 authorizing the overlapping of benefits in respect of invalidity, old age, death (pensions) or occupational disease which are awarded by the institutions of two or more Member States in conditions laid down by the regulation.

In the first case (Case 22/77, Mura), the Court was requested to rule on whether "article 12 of regulation (EEC) No 1408/71 authorizing the overlapping of benefits (must) take precedence over national rules against overlapping in cases in which the Community provisions result in a migrant worker being placed in a more favourable position than a non-migrant worker".

In the second case (Case 37/77, Greco), the question put was somewhat different. It was worded as follows: "is article 12, para. 2 of regulation (EEC) No 1408/71 compatible with the reduction of an invalidity pension granted by a Member State under article 46, para. 1 on the ground that similar benefits are awarded by the competent institution of another Member State, where such reduction is effected on the basis of provisions of the internal law of the first Member State?"

In judgments of 13 October 1977, the Court of Justice gave an identical reply to both of these questions, when it ruled that "So long as a worker is receiving a pension by virtue of national legislation alone, the provisions of regulation 1408/71 do not prevent the national legislation, including the national rules against the overlapping of benefits, from being applied to him in its entirety, provided that if the application of such national legislation proves less favourable than the application of the rules regarding aggregation and apportionment those rules must, by virtue of article 46, para. 1 of regulation 1408/71, be applied."

This ruling was based on the following grounds:

— *Article 46, para. 3 is incompatible with article 51 of the Treaty to the extent to which it imposes a limitation on benefits acquired in different Member States by a reduction in the amount of the benefit acquired under national legislation alone (restatement of the judgment in Case 24/75, Petroni).*

— *It follows, in the situation outlined above, that the provisions of article 46, para. 3 are not applicable and that, where that is the case, the second sentence of article 12, para. 2, which derogates from the national provisions against overlapping, is also applicable.*

— *When the second sentence of article 12, para 2 is not applicable, the first sentence applies, with the consequence that national legislative provisions for reduction, suspension or withdrawal of benefit may be invoked.*

— *However, it appears from article 46, para 1 that if the application of national provisions on entitlement and calculation alone is less advantageous for the worker than the application of the rules for aggregation and apportionment, the latter must be applied.*

In Case 22/75 (Mura), the Court of Justice dismissed, in its grounds for judgment, the charge by the referring court that migrant workers obtained an advantage over workers who had never left their own country, by pointing out that the legal situation of these two categories of workers were not comparable, and that any differences which might exist to the benefit of migrant workers did not result from the interpretation of Community law but rather from the lack of any common social security system or of any harmonization of the existing national schemes.

C 79-5 — Case 98/77 (Max Schaap v. Bestuur van de Bedrijfsvereniging voor Bank- en Verzekeringswezen, Groothandel en Vrije Beroepen), Judgment of 14 March 1978; Case 105/77 (Bestuur van de Sociale Verzekeringsbank v. Mrs Boerboom-Kersjes), Judgment of 14 March 1978.

The point at issue in these two cases was the calculation by two Netherlands institutions of, respectively, an invalidity pension for a Netherlands national who had worked, and acquired pension rights, first in Germany and then in the Netherlands (Case 98/77), and a survivor's pension for a Netherlands national whose husband had completed insurance periods in the Netherlands and in the Federal Republic of Germany (Case 105/77). These two cases were basically analogous to Case 37/77 (Greco) (see C 79-4 above).

The Court of Justice EC therefore delivered two identical Judgments, the text of which was identical to the Judgment in the Greco Case, viz.

"So long as a worker is receiving a pension by virtue of national legislation alone, the provisions of regulation 1408/71 do not prevent the national legislation, including the national rules against the overlapping of benefits, from being applied to him in its entirety, provided that if the application of such national legislation proves less favourable than the application of the rules laid down by article 46 of regulation 1408/71 the provisions of that article must be applied."

C 79-6 — Court of Justice of the European Communities; Case 75/76 (Silvana Kaucic and Anna Maria Kaucic v. Institut National d'Assurance Maladie-Invalidité); Judgment of 10 March 1977.

In this Case, in the framework of the scope of regulations (EEC) Nos 3 and 4, the action concerned the right to invalidity pensions acquired, on the one hand, under the legislation of Member States of the EEC concurrently with those acquired, on the other, under the legislation of a third country.

In its reply to this question, the Court of Justice of the European Communities found, in particular that the second sentence of article 11, para. 2 of regulation No 3 which prohibited the application to beneficiaries of provisions in the legislation of a Member State for the reduction of benefit referred only to cases where benefits of the same kind were acquired in accordance with the provisions of articles 27 and 28 of the regulation, and accordingly did not prohibit the application of provisions for reduction where one of the benefits had been acquired pursuant to the legislation of a third country.

On this case, see also C 213 c and C 256 c.

C 79-7 — Institut national d'assurance maladie-invalidité and Union nationale des Fédérations mutualistes neutres v. Antonio Viola.

As in Case 83/77 (Naselli, cf. C 79-3 above) the dispute concerned the calculation, by a Belgian institution, of an invalidity pension for an Italian national who had worked in Italy and in Belgium, and who had been awarded, in the latter country (Belgium), an invalidity pension in accordance with the legislation of that country, and an Italian pension which was apportioned in accordance with regulation No 3.

The question was to what extent the Belgian institution could reduce his pension pursuant to the provisions against overlapping laid down in article 70 (2) of the Belgian law of 9 August 1963, and, more specifically, whether for the application of the rules against the overlapping of benefits, the pension supplements for a dependent spouse and the annual supplement awarded at Christmas time, provided for by the Italian legislation, were an integral part of the invalidity pension. In other words, could the pension to which the person concerned was entitled under Belgian legislation only be reduced not only by the amount of the Italian basic pension but also by the amount of supplements to that pension provided under Italian legislation?

In its observations, the Commission took the view that for the purpose of applying regulation No 3 benefits granted by the legislation of a Member State to a person entitled to a pension for a dependent spouse by way of a supplement payable at Christmas which were inseparable from the payment of the pension constitute supplements within the meaning of article 1 (s) of regulation No 3 and formed an integral part of the pension.

The Advocate General, on the other hand, recalled in his opinion the Court was not competent to give a preliminary ruling on the question of eligibility under the legislation of a Member State for a benefit granted under the legislation of another Member State (cf. Case 93/75, Adlerblum, C 30-8 above).

Referring to the grounds for judgment given and the Judgments delivered in Cases 83/77 (Naselli) and 140/73 (Mancuso) (cf. C 210 a below) the Court of Justice EC gave the following grounds:

— the restrictions referred to in article 11 (2) of the regulation applied to insured persons only as regards benefits acquired by applying regulations No 3 and No 4; no provision of regulation No 3 precluded the application to benefits acquired by virtue of national legislation alone of national rules against the overlapping of benefits;

— applying the rules on apportioning laid down by the regulation implied that a prior aggregation of periods completed under the legislations of various Member States was necessary to acquire entitlement to benefit.

In a Judgment of 5 October 1978 the Court therefore ruled as follows:

"In applying the national rules against the overlapping of benefits, it is for the national court to classify the supplement for a dependent spouse and the "13th month" in accordance with the applicable national legislation, regard being had to the rules relating to conflict of laws since the Community provisions are not relevant.

However, if the application of the relevant national legislation is less favourable than that of the system of aggregation and apportionment, the latter system must be applied."

C 80 — *With a view to the application of rules against overlapping, the date to be taken into consideration for the determination of the exchange rate valid for the calculation of the various benefits is laid down in Administrative Commission Decision No 101 of 29 May 1975 (OJ EC C 44 of 26 February 1976).*

CHAPTER V

DETERMINATION OF APPLICABLE LEGISLATION

C 81 — *In order to avoid any possibility of conflicting laws, the regulation, having posed the principle of a single applicable legislation, determines for the various contingencies which that legislation should be.*

SECTION I — GENERAL RULES

Present regulations:	R 1408/71, art. 13
Corresponding text of abrogated regulations:	R 3, art. 12, 13
Court of Justice EC:	Case 92/63, 19/67, 50/75, 102/76

67 — Normally, workers coming under the regulation can, with regard to compulsory insurance, be subject only to the legislation of one Member State (R 1408/71 art. 13, para. 1).

C 82 — *However, this rule does not prevent Member States, other than that in whose territory employed persons or persons regarded as such are employed, from applying their social security legislation to them. It is only different if a Member State other than that in whose territory the worker is employed compels him to contribute to the financing of an institution which would not provide him with any supplementary social cover for the same risk and the same period (Judgment CJEC Case 92/63 of 9 June 1964, Dame Nonnemacher v. Bestuur der Sociale Verzekeringsbank).*

68 — Subject to the special provisions described below, the applicable legislation is that:

68-1 — of the place of work, even if the worker resides in the territory of another Member State or if the undertaking employing him has its registered office in another Member State (R 1408/71 art. 13, para. 2, letter *a)*);

68-2 — of the flag for workers employed on board ship, subject to what is said below in Nos 82 to 85 (R 1408/71, art. 12, para. 2 *b)*);

68-3 — covering the Administration employing them in the case of civil servants and persons treated as such (R 1408/71, art. 13, para. 2, *c)*).

69 — Workers called up or recalled for military service in a Member State retain their status as workers and are subject to the legislation of that State. For the purpose of obtaining benefit from this legislation account is taken to the extent necessary of insurance periods completed under the legislation of any other Member State (R 1408/71, art. 13, para. 2, d)).

C 83 — Periods of imprisonment are automatically covered by the preceding provision (SRMC R 1408/71 ad art. 13, para 2, d)).

C 84 — The provisions of article 13 of regulation 1408/71 do not differ in substance from those of article 12 of regulation No 3. But, under the new provisions, the principle of a single applicable legislation is expressed in a clearer and more precise manner than in regulation No 3.

C 85 — The interpretation of regulation No 3 had in fact shown that the principle of a single applicable legislation, justified by very important technical considerations, could be misunderstood in the absence of explicit provisions (ERER 1408/71).

C 86 — Supplementary rules have had to be adopted because regulation 1408/71 also applies to seafarers and to civil servants and persons regarded as such coming under a scheme covered by the regulation, i.e. not benefiting from special statutory provisions.

The rules laid down above with regard to civil servants and persons treated as such apply in particular to those serving or on a mission to another Member State (ERER 1408/71).

C 87 — As regards the application of article 12 of regulation No 3 and article 13 of regulation No 1408/71 (cf C 84 above), the Court of Justice of the European Communities, apart from Case No C 92/63 described above (under No C 82), has given the following interpretations:

C 87-1 — Case 19/67, 5 December 1967, Bestuur der Sociale Verzekeringsbank v. Van der Vecht. "A worker who is employed in the territory of one Member State but who resides in the territory of another Member State and who is conveyed at his employer's expense between his place of residence and his place of employment remains subject to the legislation of the former State by virtue of article 12 of regulation No 3 (now art. 13, para. 1 of regulation 1408/71) even as regards that part of the journey which takes place in the territory of the State in which he resides and in which the undertaking is established;"

"Article 12 of regulation No 3 (now art. 13 (1) of regulation 1408/71 prohibits a Member State other than that in whose territory a worker is employed from applying its social security legislation to such worker where to do so would lead to an increase in the charges borne by wage-earners or their employers, without any corresponding supplementary protection by way of social security".

C 87-2 — "Article 12 of regulation No 3, according to which the worker is subject to the legislation of the State where he is employed, is to avoid any plurality or purposeless overlapping of contributions and liabilities which would result from the simultaneous or alternative application of several legislative systems and, moreover, preventing those concerned, in the absence of legislation applying to them, from remaining without protection in the matter of social security. That provision, which is designed to settle conflicts of law both positive and negative, which may arise in the field of the application of the regulation, does not authorize a national insurance institution either expressly or by implication to reduce the benefits which are due to a worker or those entitled under him under national legislation alone." (15th and 16th grounds for the judgment delivered on 25 November 1975 by the EC Court of Justice in Case 50/75, Caisse de pension des employés privés de Luxembourg v. Helga Massonet, widow of Weber). (On the same case, see also C 242a).

C 87-3 — Case 102/76, Judgment of 5 May 1977 (Mr H.O.A.G.M. Perenboom v. Inspecteur der Directe Belastingen, Nijmegen.

"Pursuant both to article 12 of regulation No 3 and article 13 of regulation (EEC) 1408/71 the State of residence may not, pursuant to its own social security legislation levy contributions on wages earned by the worker in respect of employment in another Member State which are thereby subject to the social security legislation of that State.

This action concerned a Dutch national who lived with his parents in Nijmegen and who, after obtaining a secondary school leaving certificate, was employed in Germany for 143 days in 1972. During that period of work, Mr Perenboom had paid income tax and social security contributions in Germany in respect of wages received in that State. In 1972, principally on account of his age (17) and his residence in the Netherlands, he fulfilled the conditions for affiliation to the Netherlands "general insurance" scheme. The Netherlands authorities thereupon assessed the wages earned in Germany for the social security contributions laid down by the general insurance scheme. For this purpose, those authorities had assessed these earnings for contributions corresponding to the 217 days out of 360 during which he remained in the Netherlands and did not work in Germany.

In support of its ruling, the Court had, in particular, considered that:

— the fact that a worker was required to pay, in respect of the same earned income, social charges arising under the application of several national legislations, although he could be an insured person only in respect of one of those legislations, involved the worker in payment of contributions twice over, contrary to article 12 of regulation No 3 and article 13 of regulation 1408/71;

— accordingly, since the social legislation of the Member State of residence was not applicable in respect of periods of work performed in another Member State, the remuneration received by a worker for that work did not constitute a basis of assessment for contributions levied, even partially, under that legislation and was exempt, therefore, from the social charges arising from its application.

SECTION II — SPECIAL FEATURES AND EXCEPTIONS

Present regulations:	R 1408/71, art. 14 and 17, as amended by R 2595/77, OJ EC L 302 of 26 November 1977 R 574/72, art. 11, 12, 13, 14, 16, 20, para. 2, and 60, para. 2, Annex 10 as amended by R 878/73, OJ EC L 86 of 31 March 1973, R 1392/74, OJ EC L 152 of 8 June 1974, R 1209/76, OJ EC L 138 of 26 May 1976 and R 2595/77, OJ EC L 302 of 26 November 1977
Corresponding text of abrogated regulations:	R 3, art. 13, 14 and 15 R 4, art. 11 and 12 R 36, art. 6
Court of Justice EC:	Cases 19/67, 35/70, 73/72, 13/73 and 8/75
Administrative Commission:	Decision 12, 15, 87, 89, 97 and 98
Forms to be used:	E 101, E 102, E 103, and E 110

A — Special rules

§ 1 — *Posted workers*

70 — This term means workers temporarily employed on behalf of their employer in the territory of a Member State other than that of the undertaking to which they are normally attached (R 1408/71, art. 14, para. 1, letter *a), i)*).

C 88 — *Among these workers must also be included the worker who has been engaged for employment in the Member State where the undertaking is based or a firm shortly to be moved to the territory of a different Member State or to a vessel flying the flag of another Member State as long as there is a close link maintained between this undertaking and the worker during the period of his work elsewhere (CA No 87 of 20 March 1973, OJ EC No C 86 of 20 July 1974 cancelling and replacing Decision No 12 published in OJ EC No 64 of 17 December 1959, as amended by Decision No 110 of 16 December 1977, OJ EC No C 125 of 30 May 1978).*

71 — Posted workers remain subject to the legislation of the country from which they are sent, provided that the anticipated duration of the work to be carried out on behalf of their undertaking in the new country of employment does not exceed twelve months and that they are not sent in replacement of other workers who have completed their period of posting (R 1408/71, art. 14, para. 1 letter *a), i)*).

72 — The legislation of the habitual country of employment remains applicable until this work is completed where this extends beyond the twelve-month period because of unforeseen circumstances, subject to the agreement of the competent authority or the prescribed organization in the country of posting. This agreement cannot be given for a period exceeding twelve months with effect from the expiry of the first period of posting (R 1408/71, art. 14, para. 1 letter *a), ii)*).

C 89 — *However, Member States have, in a Statement recorded in the Minutes of the Council, agreed that they are willing to grant exemptions from this rule where the maximum extension of twelve months would not be sufficient, for well-founded and objective reasons, to complete the work undertaken. In such a case use would be made of the provisions of article 17 of the regulation permitting the competent authorities of Member States to set out jointly agreed exceptions to the provisions of articles 13 to 16 (SRMC R 1408/71 ad art. 14 para. 1, letter a), ii)).*

73 — Proof that the worker remains subject to the legislation of the country where the undertaking has its registered office consists of a certificate drawn up on form E 101. This certificate is issued to the worker, at his request or that of his employer, by the competent authority of the Member State whose legislation remains applicable. The institutions qualified to issue certificates of posting are indicated in Annex 10 to Regulation 574/72 as amended by regulations Nos 878/73, 1392/74, 1209/76 and 2595/77. The certificate of posting states in particular the period during which the person concerned stays subject to the legislation of the country where the undertaking has its registered office (R 574/72, art. 11, para. 1).

C 90 — *The certificate of posting is drawn up in a simplified form in case of postings not exceeding three months (AC No 97, 15 March 1974 published in OJ EC No C 126 on 17 October 1974. This cancels and replaces decision No 15 published in OJ EC No 494 on 27 December 1960).*

74 — Authorization to extend a posting must be requested by the employer. Form E 102 should be used (R 574/72, art. 11, para. 2).

C 90 a — *Since Article 11 of EEC Regulation No 574/72 does not lay down a deadline by which the certificate of posting (E 101) should be issued, the institution referred to in No 73 above should deliver this certificate to the worker satisfying the conditions laid down (cf. No 71), even if the issue of the said certificate is requested after the beginning of the period of posting (Administrative Commission Decision No 98 of 4 February 1975 published in OJ EC C 88 of 19 April 1975).*

C 91 — *Regulation No 36 article 5 para. 1 contained provisions determining the applicable legislation with regard to a frontier worker sent by the undertaking to which he is normally attached to the territory of another Member State in order to take employment there for a period which would probably not exceed four months. These provisions have not been included in the revised regulations since they have become unnecessary in view of the extension of regulation 1408/71 to frontier workers.*

C 92 — *The provisions of article 13 a) of regulation No 3 relating to posted workers are applicable to a worker engaged by an undertaking providing for temporary work carrying out its activity in a Member State who, receiving his salary from that undertaking and attached to it in particular in matters of misconduct and dismissal, goes on behalf of that undertaking to take up a period of work in another undertaking in another Member State (OJ EC 17 December 1970 (Case 35/70 Sàrl Manpower v. Caisse primaire d'assurance maladie de Strasbourg).*

C 93 — *In case 19/67 Bestuur der Sociale Verzekeringsbank v. Van der Vecht, the Court of Justice of the European Communities ruled, in a Judgment of 5 December 1977, that:*

Article 13 a) of regulation No 3, in its wording prior to regulation 24/64, applies to a worker engaged exclusively for the purpose of employment in the territory of a Member State other than that of the establishment to which he is normally attached, to the extent that the probable duration of his employment in the territory of the first State does not exceed twelve months. It had also explained that article 13 a), in the said version, meant by the words "the probable duration of his employment" the duration of the personal employment of the worker.

Account has been taken of this interpretation in the wording of article 14 of regulation 1408/71.

§ 2 — *Workers in International Transport*

75 — These workers are in principle subject to the legislation of the Member State in the territory of which the undertaking employing them has its registered office (art. 14, para. 1 *b)*).

76 — However, by way of exception to what precedes, workers in international transport are subject to the legislation of the country:

76-1 — where the undertaking has a branch or permanent representation, if the said workers are themselves employed by this branch or permanent representation (R 1408/71 art. 14, para. 1 letter *b), i);*

76-2 — of their residence, if they are mainly employed in the territory of that Member State (R 1408/71, art. 14, para. 1 letter *b), ii)*).

77 — In the cases referred to in Nos 75 and 76, special provisions are applied for membership of the German social security scheme. These provisions are set out in article 12 of Regulation 574/72 (R 574/72 art. 12).

78 — For the purpose of providing benefits in case of sickness, maternity and accidents at work, these workers are issued with a certificate drawn up on form E 110 (R 574/72 art. 20 para. 2, 62 para. 2).

§ 3 — *Workers other than those in international transport working in the territory of several Member States*

79 — These workers are subject to the legislation of the country of their residence if they perform part of their work there or are attached to several undertakings with registered offices in different Member States (R 1408/71 art. 14, para. 1, letter *c), i)*).

In other cases they are subject to the legislation of the country of the registered office of the undertaking (R 1408/71, art. 14, para. 1, letter *c) ii)*).

C 94 — *The provisions relating to the applicable legislation for workers other than those in international transport, performing their work in the territory of several Member States, raised juridical problems in the framework of regulation No 3. These gave rise to the following interpretations by the Court of Justice of the European Communities (these appear to be still valid within the framework of regulation 1408/71 because of the similarity of the provisions of article 13 subpara. c) of regulation No 3 and article 14 subpara. c) of regulation 1408/71):*

C 94-1 — article 13, para. 1, letter c), i) of regulation No 3 (application of the legislation of the Member State of residence) should be interpreted as applying independently of whether the worker is in the service of one or more employers (CJ EC 1 March 1973 — Case 73/72 Hubert Bentzinger v. Steinbruchs-Berufsgenossenschaft);

C 94-2 — concerning a commercial representative coming under regulation No 3 because of national legislation, constantly making tours in a caravan within a Member State for part of the year (in this case nine months of the year) but whose activity also extends into the territory of another Member State in which are the registered offices of the undertakings he represents and with which he resumes contact outside the period of his travels, the term "residence" in the sense used for determining the social security institution of registration in article 13, para. 1, c), first paragraph, of article No 3 amended by regulation 24/64 and defined in article 1, h) of the same regulation (now article 14, para. 1 subpara. c), i) and article 1, h) of regulation 1408/71) should be understood as being the place where the person concerned has established the permanent centre of his interests and to which he returns between trips. The same judgment explains that the employment described above does not enter into the scope of article 13, paragraph 1 of regulation No 3 (now article 14, para. 1, letter a)-i) of regulation 1408/71) relating to "posted" workers (cf. above Nos 70 to 74) (CJ EC 12 July 1973 — Case 13/73 Société Anciens Établissements D. Angenieux & others v. Willy Hakenberg).

C 94-3 — "By virtue of the first sentence of article 13(1), c) (as amended) of Regulation No 3, a worker having his permanent residence in one State who occasionally pursues his activity in another Member State is subject to the legislation of the State of his residence in so far as he is affiliated as a wage earner or an assimilated worker to the social security scheme of that State. If he is not so affiliated he is subject to the social security legislation of the Member State in which he occasionally pursues his activity" (EC Court of Justice, 24 June 1975, Case 8/75, Caisse primaire d'assurance maladie de Selestat v. Association du Foot-Ball Club d'Andlau).

This case concerned German musicians who resided in the Federal Republic of Germany and who occasionally worked in France as performing artists. Whereas, according to the dossier, the leader of the group was affiliated to a recognized private fund, the position of the other musicians with regard to German legislation on social security was unclear (see also C 307a).

80 — Where German legislation is applicable, under the rules set out at paragraphs 1, 2 and 3 of this section, to a worker employed by an undertaking or an employer whose registered office or place of business is not situated in the territory of Germany and if that worker has no permanent job in the territory of that country, the said legislation shall be applied as if the worker was employed in his place of residence in the territory of Germany. If the worker has no place of residence in Germany, German legislation shall be applied as if the person concerned was employed in a place for which the Allgemeine Ortskrankenkasse Bonn (General local sickness insurance fund of Bonn) is competent in respect of him (R 574/72, art. 12, as amended by R 1392/74 and R 1209/76).

C 95 — The provisions of article 12 of Regulation No 574/72, relating to the determination of the internal territorial competence of the German institutions, have been amended by Regulations Nos 1392/74 and 1209/76.

The amendments made thereto by Regulation No 1209/76 lay down the special provisions regarding affiliation to the German social security scheme in all the cases referred to in paragraphs 1, 2 and 3 of this section.

In the original drafting of Regulation 574/72, a second paragraph was included in article 12 making provision for the possibility of paying contributions, should the case arise, in the circumstances indicated in No 79, as a supplementary insurance in Germany during the period of compulsory subjection to the legislation of another Member State. This possibility was explained by the fact that German legislation on the matter of pensions contains a special form of voluntary insurance known as supplementary insurance (Höherversicherung) designed to give entitlement to benefits supplementary to those due under compulsory insurance.

These provisions have been withdrawn as from 1 April 1973 by Regulation 1392/74. They had in fact become obsolete since the reform of voluntary German insurance achieved by federal law on 16 October 1972 (see C 101, a) above).

§ 4 — *Workers in frontier undertakings*

81 — Workers employed by an undertaking straddling a frontier common to two Member States are subject to the legislation of the State in the territory of which this undertaking has its registered office (R 1408/71, art. 14, para. 1, *d)*).

§ 5 — *Workers posted or employed on board ship*

82 — The rules applicable to posted workers also apply to workers posted on board a ship registered under the flag of a Member State (R 1408/71, art. 14, para. 2, *a)*).

83 — In the cases referred to in the preceding item, application may be made of the special provisions set out in article 12 of regulation 574/72 concerning registration with the German social security scheme (R 574/72 art. 12, para. 1-2).

84 — Workers employed in territorial waters or in the port of a Member State on board a ship registered under the flag of another Member State are subject to the legislation of the first State if they do not form part of the ship's crew (R 1408/71, art. 14, para. 2, *b)*).

85 — Workers employed on board a ship registered under the flag of a Member State and who reside in the territory of another Member State where the undertaking employing them has its registered office are subject to the legislation of the latter State (R 1408/71, art. 14, para. 2, *c)*).

§ 6 — *Pensioners in paid employment*

86 — Exemption from insurance permitted by the legislation of a Member State for pensioners in paid employment is extended to pensioners whose benefit is acquired under the legislation of another Member State provided the person concerned does not expressly request, by applying to the competent institution of the first Member State referred to in Annex 10 C, para. 8, to regulation 574/72, to be subjected to the compulsory insurance scheme (R 1408/71, art. 14, para. 3 as amended by R 2595/77).

C 96 — *Apart from some changes in the wording, the original provisions of article 14, para. 3 of regulation 1408/71 were analogous to those of article 13 of Regulation No 3. Pursuant to the amendments made by regulation 2595/77, a worker who is receiving a pension under the legislation of a Member State and who is employed in the territory of another Member State may take out insurance cover under the legislation of the latter Member State even if that legislation exempts pensioners from compulsory insurance.*

§ 7 — *Special rules concerning service personnel of diplomatic missions and auxiliary staff of the European Communities*

87 — Members of the service personnel of diplomatic missions and consular offices and private domestic staff in the service of employees of these missions or offices are subject to the legislation of the country of employment (R 1408/71, art. 16, para. 1).

88 — However, those of them who are of the nationality of the accrediting State may opt for the legislation of that State. This option may be renewed annually (R 1408/71, art. 16, para. 2).

89 — The option must be excercised for the first time within three months of engagement or entry into service and takes effect from the date when it is exercised. Where the worker again exercises his right of option at the end of a calendar year, the option takes effect on the first day of the following calendar year (R 574/72, art. 13, para. 1).

90 — In order to exercise his right of option, the worker has only to communicate his choice to the institution prescribed by the competent authority of the Member State for whose legislation he has opted, and also advise his employer. The institutions thus appointed are indicated in Annex 10 of regulation 574/72 amended by regulations 878/73, 1392/74, 1209/76 and 2595/77, they must to the extent necessary, communicate the choice of the person concerned to other institutions of the State in question which are responsible for the various branches of social security (R 574/72, art. 13, para. 2).

91 — The institution advised of the option exercised by the worker should supply him with a certificate drawn up on form E 103 indicating the national social security legislation to which the person concerned is subject by reason of this option (R 574/72 art. 13 para. 3).

92 — If the option concerns German legislation, the provisions of that legislation are applied as if the worker was employed at the place where the German government has its seat. The competent institution for sickness insurance is the local general sickness insurance office in Bonn, except in case of registration with an auxiliary fund (R 574/72 art. 4, 13 para. 4 and Annex 10 B — 3 *b)*).

C 96a — *The provisions referred to in Nos 87 to 92 apply to all workers, other than officials and attached personnel mentioned in No 13 above, who are occupied in diplomatic missions or in Consular posts or who are in the service of agents of the missions or posts (AC No 89 of 20 March 1973, OJ EC No 86 of 20 July 1974).*

C 97 — *The provisions referred to above take in the substance of the provisions of article 14 of regulation No 3 and article 12 of regulation No 4.*

In the proposed regulation submitted to the Council, it had been planned, in order to avoid complications at administrative level, that this right of option could be exercised only once and that it could not have retroactive effect (ERER 1408/71). This proposal was not adopted in the final version.

93 — Auxiliary staff of the European Communities may opt between the application of the legislation of the Member State in whose territory they are employed and the application of the legislation of the Member State to which they were last subject or that of the Member State of which they are nationals. This right of option does not extend to family benefits schemes, since the persons concerned come under a special scheme. In any case, this right of option may be exercised only once and takes effect from the date of entry into service (R 1408/71 art. 16 para. 3).

94 — The option must be exercised at the time of concluding the employment contract. The procedure is the same as that laid down under Nos 90 and 91, except that the authority authorised to conclude the engagement itself informs the institution of the Member State whose legislation has been chosen of the option exercised by the auxiliary staff member. Proof of the applicable legislation is contained in a certificate drawn up on form E 103. The institutions appointed in the various Member States to provide benefit are indicated in Annex 10 of Regulation 574/72, amended by R 878/73 and by Regulation 1392/74, (R 574/72, art. 4, 14).

1209/76 and 2595/77

95 — If the option relates to German legislation, the provisions of that legislation are applied as if the auxiliary staff member were employed at the place where the German government has its seat. The competent institution with regard to sickness insurance is that indicated under No 92 (R 574/72 art. 4, 14 para. 4).

C 98 — *The provisions described above reproduce those of article 14*bis *of regulation No 3 and article 12*bis *of regulation No 4, with the difference, however, that under the revised regulations and in order to avoid complications at administrative level, the right of option granted to auxiliary staff of the European Communities cannot be exercised more than once and has no retroactive effect.*

B — Possibility of exemptions through agreements

96 — Member States may make exceptions by agreement, for certain workers or certain categories of workers, to the rules set out in the regulation and described in Sections I, II A and III of this Chapter (R 1408/71 art. 17).

C 99 — *Governments of Member States should communicate to the Commission any texts adopted between them and which may be of interest to that institution. The Commission can then inform the Administrative Commission of them at its meetings and supply the interested delegations with copies of the texts concerned (SRMC R 1408/71 ad art. 17).*

C 100 — *Such exemption agreements may in future be used with regard to extension of a posting (SRMC R 1408/71 ad art. 14 para. 1, subpara. a), ii)).*

C 101 — *The provisions described under No 96 reproduce those already set out in article 15 of regulation No 3.*

SECTION III — RULES CONCERNING VOLUNTARY OR OPTIONAL CONTINUED INSURANCE

Present regulations: R 1408/71 art. 15, amended by Treaty of Accession OJ EC L 73 of 27 March 1972 and by R 1392/74 of 4 June 1974, OJ EC L 152 of 8 June 1974

97 — The rules contained in Sections I and II A above are not applicable with regard to voluntary or optional continued insurance, unless for one of the social security branches referred to in article 4 of the regulation there is in a Member State only a voluntary insurance scheme (R 1408/71 art. 15-1 amended by the Treaty of Accession (OJ EC L 73 27 March 1972)). This domain is governed by the above provisions (nos. 51 to 54, *C 62* to *C 68*).

98 — If the application of several legislations involves overlapping registrations with a compulsory insurance scheme and one or more voluntary or optional continued insurance schemes, the person concerned is subject exclusively to the compulsory insurance scheme. (R 1408/71 art. 15 para. 2).

99 — If the application of several legislations involves overlapping of two or more voluntary or optional continued insurance schemes, the person concerned can be admitted only to a single scheme: that for which he has opted (R 1408/71 art. 75 para. 2).

100 — Where overlapping registration with voluntary or optional continued insurance and compulsory insurance is explicitly or implicitly allowed by the legislation of a Member State, a worker may belong to the voluntary insurance of that State with regard to invalidity, retirement and death (pensions) insurance even if he is compulsorily subject to the legislation of another Member State where he resides (R 1408/71 art. 15 para. 3).

101 — EEC Regulation 1392/74, of 4 June 1974, has rescinded article 15 § 3 of Regulation 1408/71 (as from 19 October 1972 in communications between Member States of the EEC in its original composition and as from 1 April 1973 for new Member States) — providing that if legislation of one Member State included voluntary or optional insurance kept on in addition to an optional supplementary insurance, the interested party could only be accepted for this latter insurance.

C 101a — The provisions detailed in Nos 100 and 101 refer to the German legislation.

With a view to giving nationals of other Member States the facility enjoyed by German nationals, article 15 § 3 subsection 1 of Regulation 1408/71 (No 100 above) authorises overlapping registration with one compulsory insurance scheme in a Member State and one voluntary insurance scheme in another Member State when such an overlap is allowed explicitly or implicitly in the second Member State.

The restriction originally brought about by article 15 § 3 (2nd subsection) was explained by the co-existence in German legislation of a voluntary insurance scheme and an optional supplementary insurance scheme equally intended for workers obliged to take out compulsory insurance. Now, the law of 16 October 1972 dealing with the reform of pension schemes in Germany has, amongst other things, modified its provisions relating to voluntary insurance. All persons resident in the Federal Republic and all Germans resident abroad can voluntarily contribute on condition that they are not already insured compulsorily.

The new law authorises the payment of voluntary contributions with retrospective effect, backdating to 1 January 1956.

Because of the extension of voluntary insurance, it has proved possible to abandon the restrictive provisions of article 15 § 3 subsection 2 of Regulation 1408/71 (ERER 1392/74).

CHAPTER VI

GENERAL RULES ON AGGREGATION OF PERIODS

SECTION I — DEFINITIONS

Applicable provisions: R 1408/71 art. 1 letter *r)*, *s)* and *sbis)* added by the Treaty of Accession OJ EC L 73 27 March 1972 and by R 2864/72 OJ EC L 306 31 December 1972

Corresponding text of abrogated regulations: R 3 art. 1 letter *p)*, *q)*, *r)*

102 — The terms "insurance periods" and "employment periods" denote on the one hand contribution periods or employment periods and credited periods defined or admitted as insurance periods under the applicable legislation and on the other hand periods defined or admitted as employment periods by the legislation under which they have been completed (R 1408/71 art. 1 letter *r)*, *s)*).

C 102 — The definition of these terms has been extended to cover also "credited periods" (which were defined in regulation No 3 in article 1, letter r) in order to simplify the text of the provisions relating to the aggregation of insurance periods by avoiding repetition of the words "or credited periods" (ERER 1408/71).

103 — The terms "residence periods" denotes periods defined or admitted as such by the legislation under which they have been completed or are considered as having been completed (R 1408/71 art. 1 letter *s* bis added by the Treaty of Adherence and by R 2864/72).

C 103 — With regard to invalidity and widow's pensions, Danish legislation lays down that the calculation of the pensions is carried out not only on the basis of years of actual residence but also on the basis of years of presumed residence (those separating the date from which the pension is awarded from age 67). Account should therefore be taken of these latter **years** *in the definition of the term "residence periods" (ERER 2864/72).*

SECTION II — PERIODS WHICH MAY BE AGGREGATED

Applicable provisions: R 574/72 art. 15, amended by R 878/73 OJ EC L 86 of 31 March 1973
R 1408/71 art. 94 para. 2, amended by the Treaty of Accession OJ EC L 73 27 March 1972

Corresponding text of abrogated regulations: R 4 art. 13

Court of Justice Case 33/75

C 104 — The provisions relating to the aggregation of periods completed under the legislation of several Member States apply in all cases set out in the various chapters of the regulation whenever aggregation is necessary for acquisition, maintenance or recovery of entitlement to benefit (SRMC of a general character R 1408/71).

A — General rule on non-overlapping of periods

104 — Insurance or residence periods completed under the legislation of several Member States are aggregated as long as they are not superimposed, for the acquisition, maintenance or recovery of entitlement to benefit. This aggregation takes place only where necessary (R 574/72 art. 15 para. 1 *a)*, amended by R 878/73).

105 — Where invalidity, retirement and death (pensions) benefits are concerned, each institution must add together all the periods completed for the calculation of the pensions to be awarded under para. 2 of article 46 of the regulation, except for the case where special benefits are awarded under a special scheme or by virtue of a prescribed employment, according to the provisions of para. 2 of article 45 of the regulation (R 574/72 art. 15 para. 1 *a)* amended by R 878/73).

106 — In this aggregation may be included insurance or residence periods completed under the legislation of a Member State before the entry into force of the regulation in its territory (R 1408/71 art. 94 para. 2, amended by the Treaty of Accession).

C 105 — Residence periods completed under the legislation of a Member State are only to be considered by the institution of another Member State for the purpose of aggregation to the extent that the provisions of regulation 1408/71 referred to in article 15 of regulation 574/72 so provide (SRMC R 878/73 ad art. 1 item 7).

C 106 — In the application of the regulation, the term "aggregation" does not always correspond exactly to the operations which it covers. In fact, particularly for short-term benefits, the word does not necessarily imply the sum of all the periods completed as long as they are not superimposed; aggregation relates only to periods required for obtaining entitlement. In addition, for legislations which provide for the extinction of entitlement, aggregation operations will concern both the duration and the date of periods completed under the legislations of the various Member States, to the extent that the consideration of these periods prevents the extinction of entitlement. The word "aggregation" which is traditional in international social security law, has been preserved to show that the regulation is not in any way introducing a new concept into the technique of preserving entitlement in course of acquisition (ERER 574/72).

C 107 — *However, aggregation as a means of preserving entitlement in course of acquisition should not be deflected from its aim in order to entail even a partial overlapping of entitlement. For this reason it is not possible to aggregate insurance or residence periods which are superimposed in time. Where two such periods are superimposed, they are counted only once (ERER 574/72).*

B — Order of consideration in case of coincidence or overlap of periods completed in the various Member States

107 — In case of coincidence or overlap of insurance or residence periods completed under compulsory insurance with voluntary or optional continued insurance periods, priority is accorded for the purpose of their consideration:

107-1 — to insurance or residence periods completed under compulsory insurance over periods of voluntary or optional continued insurance, except if the superimposition of the periods results from an overlap of compulsory insurance and voluntary or optional continued insurance admitted for invalidity, retirement and death (pensions) (see above No 100) (R 574/72 art. 15 para. 1 *b)*, amended by R 878/73; R 1408/71 art. 15 para. 3).

107-2 — to actual insurance or residence periods over credited periods (R 574/72 art. 15 para. 1 *c)*, amended by R 878/73).

108 — Where the legislations of several Member States recognise the same credited period, this is taken into consideration (R 574/72 art. 15 para. 1 *d)*):

108-1 — by the competent institution with which the person concerned was last compulsorily insured before the said period;

108-2 — by the competent institution with which the person concerned was first compulsorily insured after the period in question if, before the said period, he was not compulsorily insured under any legislation referred to in the regulation.

109 — Where insurance or residence periods have been completed at a time which cannot be exactly determined, they are presumed not to overlap and may therefore be taken into account to the extent necessary (R 574/72 art. 15 para. 1 letter *e)*, amended by R 878/73).

110 — On the other hand, if, under the terms of a legislation, entitlement to benefit is subject to the completion of a prescribed insurance or residence period within a particular time span, this condition is applicable to similar periods completed in the various Member States (R 574/72 art. 15 para. 1 letter *f), i)*, amended by R 878/73).

C 108 — In accordance with article 1 subpara. a) of regulation 1408/71, credited periods recognized as insurance periods by the legislation of a Member State must be taken into account as such by the institutions of other Member States even if the conditions required by the legislation of these States for crediting periods of the same type are not met (SRMC R 574/72 ad art. 15 para. 1 letter f), i)).

111 — In case of "neutralized" insurance or residence periods, i.e. periods which may be taken into account only for the maintenance of entitlement in course of acquisition, the reference period required for entitlement is, where necessary, extended by the duration of the neutralized periods to the extent to which the said periods are contained, in whole or in part, within the reference period (R 574/72, art. 15, para. 1, letter *f), ii)*, amended by R 878/73).

112 — Included in aggregation as insurance or residence periods are periods completed under social security schemes to which the regulation does not apply, from the time when they are taken into account under a scheme to which the regulation is applicable (R 574/72, art. 15, para. 2, amended by R 878/73).

C 109 — The above provisions correspond to those of article 13 of regulation No 4. But in order to avoid the controversies to which the interpretation of this article gave rise, the words "by employed persons" appearing after the words "insurance periods completed" were deleted so that the expression "insurance periods completed under the legislation of a Member State to which the regulation does not apply" cannot exclude insurance periods completed under a legislation applicable to non-employed persons. There are in fact workers who have completed what is called a mixed career in the sense that they have been successively or alternately or even concurrently employed and non-employed persons. To the extent that periods completed under the legislation of a Member State to which the regulation is not applicable are taken into account under legislation of that State to which the regulation is applicable, either because there has been internal coordination between the two legislations or because a single legislation applies to all residents of the State concerned, whatever their employment status, these periods must be considered as insurance periods to be taken into account for the purposes of aggregation when applying the legislations of other Member States concerned (ERER 574/72).

C 110 — The provisions of para. 3 of article 13 of regulation No 4, which set out the special rules for aggregation of periods completed in a special scheme, have not been included in regulation 574/72 since the corresponding explanations have already been brought into the last sentence of para. 2 of article 38 and the last sentence of para. 2 of article 45 of regulation 1408/71.

C 111 — Paragraph 5 of article 13 of regulation No 4 has not been included. In fact these provisions concerning the consideration, for the calculation of benefit, of contributions relating to periods of voluntary or optional continued insurance overlapping with periods of compulsory insurance have become unnecessary bearing in mind the provisions of para. 3 of article 15 and of article 46 of regulation 1408/71 and those of subpara. b) of para. 1 of article 15 of regulation 574/72.

C — Conversion of periods where these are expressed in differing units of time

113 — A table of equivalence between periods of time expressed in differing units (day, week, month, year) is set out in regulation 574/72 (R 574/72 art. 15 para. 3 letter *a), b)*).

114 — The application of these rules cannot result in the whole of the periods completed during the course of a calendar year being taken into consideration for a total greater than 264 days or 52 weeks or 12 months or 4 quarters (R 574/72 art. 15 para. 3 letter *b), ii)*).

*C 112 — Any difficulties arising from the application of the table of equivalence may be resolved within the Administrative Commission (SRMC R 574/72 **ad** art. 15 para. 3).*

C 113 — The provisions of regulation 574/72 referred to above correspond to those of para. 4 of article 3 of regulation No 4.

C 113 a — However, the Community provisions do not specify what should be done with any decimals that may appear after conversion.

In case 33/75 (Benito Galati v. Landesversicherungsanstalt Schwaben), the EC Court of Justice gave the following ruling on 30 October 1975: "If an insurance period of less than one month completed in the Federal Republic of Germany must, under German legislation, be treated as a whole month, an insurance period completed in accordance with the legislation of another Member State and which, on conversion into months for the purpose of aggregation, produces a decimal fraction, must also be rounded up to the next highest figure in months, in order to ensure that employed workers do not, because of emigration, lose the rights which they have acquired in their country of origin."

CHAPTER VII

ADMINISTRATIVE OR CONSULTATIVE AUTHORITIES, INSTITUTIONS AND ORGANS

SECTION I — COMMUNITY ORGANS

A — Administrative Commission for the social security of migrant workers

Present regulations:	R 1408/71 art. 1 *m)*, art. 80 and 81 R 574/72 art. 2, 101
Corresponding text of abrogated regulations:	R 3 art. 43 and 44 R 4 art. 2

§ 1 — *Composition and working methods*

a) Composition

115 — The Administrative Commission consists of a governmental representative from each Member State, assited where appropriate by technical advisers. A representative of the Commission of the European Communities takes part in its meetings in a consultative capacity.

It receives technical assistance from the International Labour Office and its secretariat is provided by the Commission of the European Communities (R 1408/71 art. 1-*m)*, art. 80 paras. 1, 2, 4).

C 114 — The representative of the Commission of the European Communities on the Administrative Commission may be assisted by colleagues (SRMC R 1408/71 ad art. 80 para. 1).

b) Working methods

116 — The constitution of the Administrative Commission is drawn up by joint agreement of its members (R 1408/71 art. 80 para. 3).

C 115 — The provisions of regulation 1408/71 described above take in the provisions of article 44 of regulation No 3.

As decided by the Council in 1959, the new regulation lays down that the Secretariat of the Administrative Commission is provided by the Commission of the European Communities (ERER 1408/71).

The Statutes of the Administrative Commission have been adopted by the conditions shown above on 20 and 21 March 1973 and published in OJ EC No C 68 on 21 August 1973.

§ 2 — *Duties of the Administrative Commission*

117 — The Administrative Commission is responsible in particular for dealing with any administrative or interpretative matter arising from the regulations or from any agreement or arrangement adopted within their framework; arranging for the translation of all documents or requests referring to the application of the regulations; promoting and developing collaboration between Member States with regard to social security, health and social services of common interest and the acceleration of the procedures for the award of pensions. It brings together the elements to be taken into consideration for the establishment of accounts of charges between institutions and adopts these accounts annually. It may also submit proposals to the Commission of the European Communities for the revision of the regulations and the preparation of further regulations (R 1408/71 art. 81; R 574/72 art. 101).

118 — Decisions on matters of interpretation of the regulations and of any agreement or arrangement concluded within their framework must be taken unanimously. They are given the necessary publicity (R 1408/71 art. 80 para. 3).

C 116 — The substitution of the term "dealing with" for "settling" which appeared in article 43 of Regulation No 3 was made in order to conform to the jurisprudence of the Court of Justice; the substitution does not in any way reduce the competence of the Administrative Commission (SRMC R 1408/71 ad art. 81 para. a).

C 117 — Governments of Member States have pledged themselves, prior to any appeal to the Court of Justice, to arrange for direct negotiations between the competent authorities of the Member States concerned where a difference arises between two or more Member States with regard to the interpretation or application of the regulation. If it is a question of principle affecting all States, the difference will be examined by the Administrative Commission prior to any appeal to the Court of Justice (SRMC R 1408/71 ad art. 81).

C 118 — Article 81 of regulation 1408/71 gives the Administrative Commission the same duties as those set out in article 43 of regulation No 3. However, with regard to financial matters it is no longer laid down that the Administrative Commission carries out the reimbursements to be made between the affected institutions of Member States. All States have in fact adopted the procedure of direct settlement in relations between themselves. However, the Administrative Commission retains the right to oversee reimbursements: it has to set down the procedures for reimbursement, bring together the elements to be taken into consideration for the establishment of accounts and adopt the annual accounts between the institutions concerned (EREP 1408/71).

119 — The Administrative Commission may also (R 574/72, art. 2):

119-1 — draw up model certificates, declarations, statements, requests and other documents necessary for the application of the regulations, although it is understood that after consulting the Administrative Commission any two Member States may, by joint agreement, adopt simplified Community or national models in relations between themselves (R 574/72 art. 2 para. 1 and SRMC R 574/72 ad art. 2 para. 1 second paragraph);

119-2 — gather information on the provisions of national legislations included within the scope of the regulation (R 574/72 art. 2 para. 2);

119-3 — prepare guides for the use of the persons concerned (R 574/72 art. 2 para. 3).

C 119 — The provisions of regulation 574/72 described above correspond to those of article 2 of regulation No 4.

It should be noted that to the duties previously conferred on the Administrative Commission are added those of promoting and developing collaboration between Member States in order, bearing in mind the evolution of administrative management techniques, to speed up the award of benefits due, especially pensions.

C 119a — In its decision No 72 on 1 October 1972 (OJ EC L 261 of 20 November 1972) the Administrative Commission adopted 53 types of set forms concerning various benefits and circumstances for the putting into practice of the regulations. These models of set forms have been adapted, in view of their use in the enlarged Community, by decision No 88 of 12 July 1973 and published in the official journal of the Communities — No L 363 of 21 December 1973.

B — Advisory Committee for the social security of migrant workers

Present regulations: R 1408/71 art. 82, amended by the Treaty of Accession OJ EC L 73 27 March 1972 and art. 83
R 574/72 art. 2 and 3

§ 1 — *Creation, composition and working methods of the Advisory Committee*

120 — The Advisory Committee consists of titular and Deputy Members with the following representation for each of the Member States (R 1408/71 art. 82 § 1 amended by the Treaty of Accession and by the decision of the Council concerned with the adaptation of acts relating to the accession of the new Member States (OJ EC No L 2 of 1 January 1973):

— two titular representatives of the government, of which at least one must be a member of the Administrative Commission, and one deputy;

— two titular representatives and one deputy representative of workers' trade union organisations;

— two titular representatives and one deputy representative of employers' organisations.

121 — The members are appointed by the Council for two years. Their period of office may be renewed. The Council attempts, when appointing the representatives of the employers and the workers, to achieve fair representation within the Committee of the various interested parties. At the expiry of their term of office, the members of the Committee remain in office until they are replaced or their appointment is renewed (R 1408/71 art. 82 paras. 2 and 3).

122 — The Chairmanship of the Advisory Committee is taken by a member of the Commission of the Communities or his representative. The Chairman does not take part in voting. The Secretariat is provided by the Commission of the European Communities. The Committee, like the Administrative Commission, receives technical assistance from the International Labour Office (R 1408/71 art. 82, paras. 4, 6, 8).

123 — The Advisory Committee draws up its own internal standing orders, which are submitted to the Council for approval, and meets at least once a year when summoned by the Chairman, either on his own initiative or at the written request of at least one-third of the members. It may, exceptionally, decide to hear the views of any persons or representatives of organisations which have a wide experience of social security matters (R 1408/71 art. 82 paras. 5, 6, 7).

124 — The Committee adopts opinions or proposals, which must be reasoned, by absolute majority of the properly cast votes (R 1408/71 art. 82 para. 7)

C 120 — *One of the important innovations of regulation 1408/71 is the creation of an Advisory Committee for the Social Security of Migrant Workers within which representatives of national organisations of workers and employers meet alongside those of governments and the Commission of the European Communities to examine general matters or questions of principle posed by the application of the social security regulations.*

The rules concerning composition and working methods of this Advisory Committee are parallel to those of the Advisory Committee for the Free Movement of Workers.

§ 2 — *Duties of the Advisory Committee*

125 — The Advisory Committee is qualified (R 1408/71 art. 83; R 574/72 art. 2 para. 3):

125-1 — to examine general matters or questions of principle and problems raised by the application of the European social security regulations;

125-2 — to formulate for submission to the Administrative Commission its opinions in the matter and any proposed revisions of the regulations.

126 — The Advisory Committee carries out its tasks either at the request of the Commission of the Communities, or at the request of the Administrative Commission, or on its own initiative (R 1408/71 art. 83).

C — Audit Board

Present regulations:	R 574/72 art. 101 and 102
Corresponding text of abrogated regulations:	R 4 art. 78 para. 4
Administrative Commission:	Decision No 86

127 — The decisions of the Administrative Commission concerning the mutual credit position between the institutions of the various Member States are taken on the reasoned advice of an Audit Board, the composition and working methods of which are laid down by the Commission (R 574/72 art. 101 para. 3).

C 121 — The Audit Board, known as the "Audit Board associated with the Administrative Commission of the European Communities for the Social Security of Migrant Workers", functions under the authority of the Administrative Commission. Its methods of work and its composition are defined by Administrative Commission Decisions No 86 of 24 September 1973, OJ EC C 96 of 13 November 1973 (cancelling and replacing Decision No 81 of 21 December 1960) and No 106 of 8 July 1976, OJ EC C 190 of 13 August 1976. The office of chairman is held for periods of one year by the representatives of the Member States in the alphabetical order of the names of those States. The chairman may, in conjunction with the Secretariat, take all steps required to solve without delay all problems within the competence of the Audit Board. All the work required for the functioning of the Board is carried out by the Secretariat of the Administrative Commission.

128 — The Audit Board is responsible for gathering the necessary data, for undertaking calculations and for preparing any opinions, suggestions, proposals etc. and carrying out any work, studies or missions of a financial nature concerning the application of the regulations (R 574/72 art. 102).

C 122 — The provisions described above correspond to those set out in para. 4 of article 78 of regulation No 4. But in article 102, regulation 574/72 gives a detailed description of the Audit Board's purpose.

SECTION II — NATIONAL AUTHORITIES, INSTITUTIONS AND ORGANIZATIONS

Present regulations:	R 1408/71, art. 1, letter *l), n), o), p)* and *q)*, R 574/72, art. 3 and 4 and Annexes 1, 2, 3 and 4, as amended by R 878/73, OJ EC L 86 of 31 March 1973, by R 1209/76, OJ EC L 138 of 26 May 1976, and by R 2595/77, OJ EC L 301 of 26 November 1977
Corresponding text of abrogated regulations:	R 3 art. 1, letter *d), e), f), h), i)* R 4 art. 3, 5

A — Competent authorities

129 — The term "competent authorities" denotes, for each Member State, the minister or a competent authority responsible for the social security schemes (R 1408/71 art. 1 letter *l)*).

130 — The competent authorities of each Member State are mentioned in Annex 1 of regulation 574/72. This Annex mentioned in article 4 of R 574/72 has been amended by Regulations 878/73 (OJ EC No L 86 of 31 March 1973, 1392/74, OJ EC L 152 of 8 June 1974 and 1209/76, OJ EC L 138 of 26 May 1976).

B — Institutions

131 — The terms "institutions", "competent institutions" and "institutions of the place of residence or of the place of stay" denote respectively: the organization responsible for applying the legislation, the institution to which the person concerned belongs at the time when the claim is submitted or from which he is entitled to benefit or would be entitled to benefit, the institution qualified to provide benefit of the place of residence or the place of stay (R 1408/71 art. 1 letter *n), o), p)*).

132 — In its Annexes 2 and 3 amended by regulations 878/73 (OJ EC L 86 of 31 March 1973), 1392/74 (OJ EC L 152 of 8 June 1974), 1209/76 (OJ EC L 138 of 26 May 1976) and 2595/77 (OJ EC L 302 of 26 November 1977). Regulation 574/72 gives a list of (R 574/72 amended, art. 4) for each Member State.

132-1 — of the competent institutions (Annex 2);

132-2 — of the institutions of the place of residence and the place of stay (Annex 3).

133 — The term "competent State" denotes the Member State in the territory of which is the competent institution (R 1408/71 art. 1 letter *q)*).

C — Liaison organizations

134 — Liaison organizations which may communicate directly with each other may be appointed by the competent authorities (R 574/72 art. 3 para. 1).

135 — These liaison organizations are listed in Annex 4 of Regulation 574/72 (R 574/72 art. 4). This Annex has been amended by Regulations 878/73 (OJ EC No L 86 of 31 March 1973), 1392/74 (OJ EC No L 152 of 8 June 1974) and 1209/76 (OJ EC L 138 of 26 May 1976).

136 — Any institution or person concerned may apply to the institution of another Member State, either directly or through the intermediary of the liaison organizations (R 574/72 art. 3 para. 2).

C 123 — The provision appearing under No 136 does not represent any obstacle in the way of an institution of a Member State also approaching persons residing or staying in the territory of another Member State (SRMC R 574/72 ad art. 3 para. 2).

PART TWO

Provisions concerning the various categories of benefit

CHAPTER VIII

SICKNESS AND MATERNITY

SECTION I — COMMON PROVISIONS

Present regulations:	R 1408/71 art. 12 to 18, amended by Treaty of Accession OJ EC L 73 27 March 1973 and by R 2864/72 OJ EC L 306, 31 December 1972 R 574/72 art. 8, 16, modified by R 878/73 OJ EC L 86, 31 March 1973
Corresponding text of abrogated regulations:	R 3 art. 11 to 15, 16, 17, 21 R 4 art. 11 to 13, 14, 15 R 36 art. 5
Court of Justice EC:	Case 14/72, 15/72, 16/72
Forms to be used:	E 104

A — Applicable legislations

§ 1 — *Guiding principles*

137 — The determination of entitlement rests on the two following principles:

137-1 — Entitlement to benefit resulting from several legislations may not overlap (R 1408/71 art. 12 para. 1 (see above No 61).

137-2 — The applicable legislation is that of the Member State in whose territory the worker is employed at the time when the risk materialises (R 1408/71 art. 13 para. 2 *a)*) (see No 68-1).

§ 2 — *Exceptions*

138 — The second principle, however, contains certain exceptions with regard to:

— workers employed on board ship (see No 68-2 and Nos 82 to 85);

— civil servants and persons treated as such (see No 68-3);

— posted workers (see No 70 to 74);

— workers in international transport (see Nos 75 to 78);

— workers other than those in international transport performing their work in the territory of several Member States (see Nos 79 and 80);

— workers in frontier enterprises (see Nos 81);

— service personnel of diplomatic missions and auxiliary staff of the European Communities (see Nos 87 to 95).

B — Aggregation of insurance, residence or employment periods

139 — Account may be taken, to the extent necessary under each national legislation, of insurance, employment or residence periods completed under the legislation of any other Member State as long as these periods do not overlap (R 1408/71 art. 18 para. 1 amended by the Treaty of Accession and by R 2864/72).

C 124 — The consideration of employment or residence periods is explained by the particular features of the legislations of the new Member States. Thus Danish legislation makes the right to certain sickness and maternity benefits subject to either a prescribed period of employment (cash benefits) or to a six-months residence condition for persons who have come from another country (benefits in kind) (sec. (71) 4376 and 4550).

C 125 — This aggregation must of course bear in mind the rules set out in Chapter VI above.

C 126 — The above provisions apply both to workers and to recipients of pensions or allowances (ERER 1408/71).

C 127 — With regard to workers, it should be noted that the consideration of periods completed under other legislations is no longer subject to the condition that a period longer than one month must not have elapsed between the end of these periods and the commencement of insurance in the new country of registration.

C 128 — In addition, it should be stressed that the right to benefit under the legislation of the new country of insurance is no longer, as laid down in article 17 para 1 of regulation No 3, subject to the condition that the person concerned was fit for work at the time of his registration. In fact there is no longer any need to impose any condition other than that already required by national legislations provided that with regard to recruitment the persons concerned cannot be subject to discriminatory medical criteria because of their nationality (EEC Regulation No 1612/68 of 15 October 1968 OJ EC 9 October 1968) (ERER 1408/71).

140 — However, with regard to seasonal workers, the aggregation of periods is possible only if there has not been an interruption of insurance longer than four months (R 1408/71 art. 18 para. 2).

C 129 — The preceding provision was inserted to take account of the special features of Belgian and French legislations (ERER 1408/71).

C 130 — In three judgments issued on 16 November 1972 (Case 14/72 Helmut Heinze v. Landesversicherungsanstalt Rhein Provinz; 15/72 Land Niedersachsen v. Landesversicherungsanstalt Hanover; 16/72 Allgemeine Ortskrankenkasse Hamburg v. Landesversicherungsanstalt Schleswig-Holstein), the Court of Justice of the European Communities laid down:
Social security benefits which, without being related to "earning capacity" on the part of the insured person, are also granted to his family and are designed principally for the purpose of healing the sick person and protecting the people around him must be considered as sickness benefits as referred to in article 2 para. 1 a) of regulation No 3. For the purpose of obtaining entitlement to such benefits, aggregation of insurance periods completed in the various Member States is consequently governed by articles 16 and following of regulation No 3:

141 — In order to benefit from the preceding provision, the worker must submit to the competent institution a declaration drawn up on form E 104 concerning the aggregation of periods. This declaration is issued by the institution or institutions of the Member State to whose legislation he was last subject, at the request either of the person concerned or of the competent institution of the State in which he resides (R 574/72 art. 16).

C 131 — The expression "legislation to which the worker was last previously subject" means that the declaration on form E 104 should list only insurance, residence or employment periods most recently completed under legislations other than those of the competent State, to the extent that these periods are necessary to meet the minimum time conditions required with regard to sickness and maternity insurance:

Given the brevity of these minimum time conditions, it is not necessary as a general rule to reconstruct the whole of the person's working life.

C 132 — The declaration should, normally, be requested by the person concerned. However, his failure to do so may not entail loss of entitlement. It is in fact up to the competent institution in the second place to ask for the declaration itself if the person concerned has not presented it (ERER 574/72).

C — Rules applicable in case of overlapping rights to sickness or maternity benefits under the legislations of several Member States

142 — Where maternity benefits are due for one person (female worker or member of a worker's family) under the legislation of two or more Member States, their award is made exclusively under the terms of the legislation of that State in the territory of which the confinement took place or, if the confinement did not take place in the territory of one of these States, under the legislation to which the worker (male or female) was last subject (R 574/72 art. 8).

C 133 — The provisions described under No 142 correspond to those of article 21 of regulation No 3. It appeared better to place these provisions in the implementation regulation among the "general rules concerning the application of non-overlap provisions" since they are intended to avoid overlapping maternity benefits which might be due for the same person (female worker or members of the family of a worker) under the legislation of two or more Member States.

143 — If, for the same period of incapacity for work, entitlement to sickness benefit exists under the legislations of the United Kingdom and of Ireland, benefit is awarded, exclusively, under the legislation of the *Member State to which the worker was last subject (R 574/72 art. 8,* 2nd paragraph added by R 878/73).

C 134 — The provision of No 143 is intended to exclude the possibility of overlapping contrary to article 12 para. 1 of regulation 1408/71 between sickness insurance cash benefits under the legislations of the United Kingdom and of Ireland. In fact, while according to the legislations of the original Member States entitlement to benefit with regard to daily sickness benefit is withdrawn at the end of a short period following cessation of registration for insurance, this entitlement may remain for a period of up to 23 months under the legislations of Ireland and the United Kingdom.

SECTION II — BENEFITS FOR WORKERS AND MEMBERS OF THEIR FAMILIES

Applicable provisions:	R 1408/71, art. 19 to 24, amended by Treaty of Accession, OJ EC L 73 of 27 March 1972, by R 2864/72, OJ EC L 306 of 31 December 1972 and by R 2595/77, OJ EC L 302 of 26 November 1977 R 574/72, art. 17 to 25, art. 113 and 121, amended by R 878/73, OJ EC L 86 of of 31 March 1973 and by R 1392/74, OJ EC L 152 of 8 June 1974
Corresponding text of abrogated regulations:	R 3 art. 17 to 31 R 4 art. 14 to 23 R 36 art. 6 to 9
Court of Justice EC:	Case 61/65, 75/63, 33/65, 117/77
Administrative Commission:	Decisions Nos 74, 82, 90, 92, 93, 100 and 109
Forms to be used:	E 101, E 102, E 104, E 105, E 106, E 107, E 108, E 109, E 110, E 111, E 112, E 113, E 114, E 115, E 116, E 117, E 118

A — Persons residing in the territory of a Member State other than the country of insurance

§ 1 — *Organizations from which benefits are due*

144 — Where he is residing in the territory of a Member State other than the country of insurance, the worker who meets the conditions required by the legislation of that country receives benefit in the following manner (R 1408/71 art. 19 para. 1):

144-1 — Benefits in kind are provided to him on behalf of the insurance institution by the institution of the place of residence in accordance with the legislation which it applies;

144-2 — Cash benefits are those laid down in the legislation of the competent State. They are paid either directly by the insurance institution or through the intermediary of the institution of the place of residence.

C 135 — Among the workers who may benefit from these provisions, should be noted in particular the inclusion of frontier workers, seasonal workers, commercial representatives, persons performing their work in the territory of two or more Member States, workers in embassies or consulates who have opted for the application of the legislation of their country of origin and workers in frontier undertakings subject to the legislation of the country where the undertaking has its registered office, but residing and working in the neighbouring Member State (ERER 1408/71).

C 135 a — The Council acknowledged a statement from the German delegation reminding the members that in the German Federal Republic a law concerning the continuity of payment of salary in the case of a worker becoming sick was brought into force on 1 January 1970. The German delegation reserved for itself the opportunity of analysing the provisions of article 19 of Regulation 1408/71, with respect to this law which, according to the delegation, would not come within the realm of Social Security, but of the right to work (SRMC 14 June 1971, to article 19 § 1 subpara. a)).

145 — Members of the family receive benefit in the same conditions, provided that they are not entitled in their own right to benefit under the legislation of the State of residence (R 1408/71 art. 19 para. 2, amended by the Treaty of Accession).

C 136 — The provisions of article 19 of regulation 1408/71 correspond to those of article 17 and article 20 of regulation No 3 with the addition of the basic rules contained in articles 6 and 7 of regulation No 36.

C 137 — However, regulation 1408/71 now makes it possible, in certain contingencies, for members of the family to receive cash benefits. This is the case under Danish legislation (cash payments for persons at home who are not in paid employment), Irish legislation (lump-sum maternity grant) and United Kingdom legislation (lump-sum maternity grant) (Sec. (71) 4376 and 4550).

146 — In a Member State where entitlement to benefit is not subject to insurance or employment conditions, benefits granted to members of the family are considered to be on behalf of the institution with which the worker is insured, except if the spouse or the person in charge of the children is in paid employment in the State of residence (R 1408/71 art. 19 para. 2 added by R 2864/72).

C 138 — The preceding provision was added to take account of the fact that the Danish Public Health Act of 9 June 1971 introduced a scheme applicable to the whole population in which entitlement to benefit is based solely on residence in Danish territory (ERER 2864/72).

§ 2 — *Benefits in kind*

a) General provisions

147 — The provision of benefits in kind is carried out in accordance with a single procedure which is, normally, that set out in the legislation of the country of residence (R 574/72 art. 17 para. 5), it being understood, however, that other procedures may be adopted between two or more States after consulting Administrative Commission (R 574/72 art. 17 para. 9).

C 139 — This single procedure, based on that set out in paragraph 1 of article 9 of regulation No 36 and in paragraph 3 and 8 of article 22 of regulation No 4, replaces the three alternative procedures previously applied under article 22 of regulation No 4 (ERER 574/72).

148 — Lump-sum contributions to the expenses incurred for confinement, awarded under German legislation, are considered as a benefit in kind (R 1408/71 Annex V added to by R 574/72 art. 121 para. 3).

C 139 a — Similarly, even though they may be provided in cash, the following must be considered as benefits in kind as defined in articles 19, paras. 1 and 2, 22, 25, paras. 1, 3 and 4, 26, 28-i), 28a, 29 and 31 of regulation 1408/71: the benefits provided under German legislation and set out in article 185-b) of the German insurance code ("Haushaltshilfe") and in article 35 of the Law on sickness insurance for farmers ("Haushaltshilfe"). These benefits are to be included in the expenditure referred to in C 200b below (AC Decision No 109 of 30 November 1977, OJ EC C 125 of 30 May 1978).

C 140 — In judgement 61/65 of 30 June 1966 (Vaasen-Göbbels v. Beambtenfonds voor het Mijnbedrijf) the Court of Justice EC explained that the expression "benefits in kind" also applies to benefits awarded in the form of reimbursement of medical and pharmaceutical expenses.

This interpretation agrees with those issued by the Administrative Commission in its decision No 28 (OJ EC 17 February 1961) and decision No 65 (OJ EC 25 March 1969) which have become unnecessary within the framework of the new regulations.

C 141 — On the other hand, in case 33/65 (Adrianus Dekker v. Bundesversicherungsanstalt für Angestellte) the Court of Justice of the Communities decided on 1 December 1965 that the term "benefits in kind" did not refer to supplementary pension benefits intended to contribute to financing sickness insurance for the pensioner.

149 — However, certain substantial benefits in kind are the subject of notification by the institution of the place of residence to the competent institution (R 574/72, article 17, para. 6 and 7).

This is the case with hospitalization and in the case of prostheses and other substantial benefits in kind appearing on a list drawn up by the Administrative Commission in application of article 24 of regulation 1408/71. For these notifications, use is made of forms E 113 (hospitalization) and E 114 (prostheses and major appliances).

C 142 — The list of prostheses, major appliances and other substantial benefits in kind was the subject of Administrative Commission decision No 93 of 24 January 1974 (OJ EC C 105 of 14 September 1974 cancelling decision No 45 published in OJ EC No 14 of 29 January 1964).

150 — The award of substantial benefits in kind may, except in cases of absolute urgency, be opposed by the competent institution within fifteen days (R 574/72, art. 17, para. 7).

C 143 — According to the definition given by the Administrative Commission, absolute urgency exists whenever the provision of one of the benefits subject to prior agreement cannot be postponed without placing the life or health of the person concerned in serious danger. If it is a prosthesis or appliance, absolute urgency is established from the time when the need for repair or renewal is proved (AC Decision No 45 OJ EC 29 January 1964).

C 144 — The right of reasoned opposition replaces prior authorization by the competent institution as required under the abrogated regulations (art. 19, para. 5 of regulation No 4 and art. 9 para. 2 subpara. b) of regulation No 36).

C 145 — This right of reasoned opposition cannot have the effect of preventing the award of substantial benefits in kind not provided for in the legislation of the competent country. The scope of the benefits referred to under No 149 is in fact determined only by the provisions of the legislation applied by the institution of the place of residence.

Reasoned opposition is essentially in response to the concern to give the competent institution a means of avoiding abuses by assessing the medical need to award such benefits, in particular where it has already itself provided similar benefits (AC decision No 82 of 22 February 1973, OJ EC C 75 of 19 September 1973 replacing decision No 56, OJ EC 31 March 1956).

151 — Notification is not necessary in case of lump-sum reimbursement to the institution of the place of residence (R 574/72, art. 17, para. 6-7).

C 146 — In this case, in fact, the award of a prescribed benefit has no direct influence on the determination of amounts to be reimbursed.

152 — Where the right to a prosthesis or other substantial benefit in kind has been recognized for a worker or a member of his family by the institution of a Member State before migration, the charge for these benefits falls to the said institution, even if the benefits are actually provided after the entry of the person concerned into the territory of the second Member State (R 1408/71, art. 24, para. 1).

C 147 — This provision is the same as that appearing previously in article 14(4) of regulation No 4.

b) Special provisions for frontier workers and members of their families

153 — Medicines, bandages, spectacles, small appliances, examinations and laboratory analyses can only be issued or carried out in the territory and in accordance with the legislation of the State where they have been prescribed, unless there are more favourable provisions resulting either from national legislation or from agreements concluded between the States or institutions concerned (R 574/72, art. 19, amended by R 878/73).

C 148 — The provisions appearing in the first part of the sentence in No 153 take in those of article 7 para. 4 of regulation No 36. The provisions of para. 5 of article 7 of regulation No 36 have not been included; these laid down that maternity benefits in kind were compulsorily provided by the institution of the Member State in whose territory the confinement had taken place. Neither have the provisions of regulation No 36 (article 9, para. 1, third paragraph) been included; under these the institution of the place of the frontier worker's residence had to check periodically whether the person concerned resided in a frontier zone. These provisions have become unnecessary since the new definition of a frontier worker (art. 1 subpara. b) of the regulation) no longer contains any reference to a frontier zone.

C 149 — The exemption provision mentioned in the second part of the sentence under No 153 results from regulation 878/73 in order to take into account the fact that frontier workers of the Irish Republic and the United Kingdom are able to obtain medicines in the territory of either of these States (ERER 878/73).

c) Formalities and procedures

154 — Entitlement to benefits in kind is proved by the production of a declaration issued on form E 106 by the competent institution for the purpose of registering beneficiaries with the institution of the place of residence prior to the award of benefit. If the persons concerned do not submit this declaration, it may be requested, by the use of form E 107, from the competent institution direct by the institution of the place of residence (R 574/72 art. 17 para. 1).

155 — The award of benefit to the worker and to members of his family is subject to prior registration of these persons with the institution of the place of residence. The registration of the members of his family requires the issue of form E 109 which serves to establish inventories for the settlement of accounts between institutions (R 574/72 art. 17 para. 1).

C 150 — These provisions reproduce those which appeared in the first paragraph, subpara. 1 of article 9 of regulation No 36 and in paragraph 3, subpara. a) i) of article 22 of regulation No 4.

156 — The declaration referred to under No 154 does not have a period of validity which is limited in advance, except where it emanates from a French institution (validity limited in this case to three months renewable) or where it deals with a seasonal worker (estimated duration of the seasonable work) (R 574/72 art. 17 para. 2, 3).

The declaration thus normally remains valid as long as it has not been cancelled by a notification of suspension or withdrawal of entitlement sent on form E 108 by the insurance institution to the institution of the place of residence.

C 151 — These provisions correspond to paragraph 3 subpara. a) i) end and paragraph 8 of article 22 of regulation No 4 respectively and to paragraph 1 subpara. 2 of article 9 of regulation 36. The limit of three months validity for the declaration where it emanates from a French institution is explained by the fact that these latter institutions, since they do not undertake the deletion of their insured persons, would find it impossible to notify any cancellation of the declaration (ERER 574/72).

157 — The institution of the place of residence must inform the competent institution of any registration of a beneficiary which it undertakes (R 574/72 article 17 para. 4).

C 152 — This information is useful, even though the inventory of members of the family drawn up by the institution of the place of residence under paragraph 4 of article 94 of the implementation regulation may no longer be established contradictorily with the competent institution as provided for in article 74 of regulation No 4.

The methods according to which this inventory should be drawn up were fixed by the decision of the Administrative Commission No C 90 of 24 May 1973 and published in OJ EC No C 131 of 25 October 1974.

158 — Any change of situation which may alter entitlement to benefits in kind must be communicated by the persons concerned or by the competent institution to the institution of place of residence which may, on its own initiative, arrange for a check on the existence of entitlement with the competent institution (R 574/72 art. 17 para. 8).

C 153 — These provisions take in those appearing in paragraphs 4 and 5 of article 22 of regulation No 4.

§ 3 — *Cash benefits*

a) Calculation of cash benefits

159 — The competent institution of the State whose legislation is to be applied calculates cash benefits as follows (R 1408/71 art. 23):

159-1 — where this legislation provides for consideration of an average salary, this salary is determined exclusively on the basis of salary payments shown during the periods completed under this legislation;

159-2 — where this legislation provides for the consideration of a standard salary, account is exclusively taken of the standard salary or, where appropriate, of the average of the standard salaries corresponding to the periods completed under this legislation;

159-3 — where the amount of benefit varies according to the number of persons in the family, members of the family residing in another country must also be taken into consideration as if they resided in the territory of the competent State.

C 154 — The preceding provisions correspond to those of article 18 of regulation No 3, bearing in mind an additional provision (consideration of a standard salary) relating to seafarers in particular (ERER 1408/71).

C 154a — See 247 (c) below and C 196b.

160 — For the calculation of benefit on the basis of the number of persons in the family, a declaration drawn up on form E 105 must where necessary be issued by the institution of the place of residence of those members of the family. The validity of each declaration is twelve months; it is renewable (R 574/72 art. 25 para. 1 and 2).

161 — Any change in the composition of the family must be notified without delay by the worker (R 574/72 art. 25 para. 2).

162 — Instead of this declaration, the competent institution may make do with the production of recent civil status documents (R 574/72 art. 25 para. 3).

C 155 — The provisions concerning the issue of the declaration by the institution of the place of residence, its validity and its renewal are taken from article 16 of regulation No 4, paras. 1 and 2. However, because of the amendment adopted to the definition of members of the family (art. 1 subpara. f) of the regulation) which refers to the legislation under which cash benefits are paid, i.e. the legislation of the competent State and no longer that of the country of residence of the members of the family, it has been provided that the competent institution could, instead of the declaration, make do with the production of recent civil status documents in the interests of simplification (ERER 574/72 ad art. 25).

b) Conditions for the award of benefit

163 — The conditions for the award of cash benefit indicated below are in principle valid for all Member States. They may, however, or their competent authorities may, after consulting the Administrative Commission, adopt other implementation procedures (R 574/72, art. 18, para. 9).

164 — For the receipt of cash benefit the person concerned, within three days after the commencement of his incapacity for work, must submit to the institution of the place of residence a claim supported by notification of cessation of work or, if the applicable legislation so prescribes, by a certificate of incapacity for work issued by his doctor. This institution draws up a form E 115 and sends it to the competent institution. This form may be accompanied by medical certificates and a medical report drawn up on form E 116 (R 574/72, art. 18, para. 1 and 2).

165 — In order to establish incapacity for work the person concerned applies directly to the institution of the place of residence where doctors in that country do not issue certificates of incapacity for work (R 574/72 art. 18, para. 2).

C 156 — This provision is taken from the administrative arrangement (revised) (art. 5, para. 2) of the Agreement concerning the Social Security of Rhine Boatmen and was adopted in order to take account in particular of the situation in the Netherlands where doctors do not issue certificates of incapacity for work (ERER 574/72).

166 — Apart from the contingency referred to under Nos 164 and 165, the institution of the place of residence undertakes a medical examination of the worker as soon as possible and in any case within three days following the date when the worker applied to it, as if it were a case of one of its own insured persons (R 574/72, art. 18. para. 3).

C 157 — Where the legislation of a Member State does not lay down any time limit within which the worker must be medically examined, the period set out in article 18, of para. 3, first sentence, may be extended, provided however that the institution of the place of residence must arrange for an examination as soon as possible and in any case as quickly as it would in the case of one of its own insured persons (SRMC R 574/72 ad art. 18, para. 3, first sentence).

167 — The institution of the place of residence arranges where necessary for any administrative checks or medical examination of the worker as it would in the case of one of its own insured persons.

Non-recognition or the end of incapacity for work must be notified to the competent institution, by means of form E 118 (R 574/72, art. 18, para. 4).

C 158 — The provision of benefit cannot be affected by the fact that the institution of the place of residence does not conform to the obligations placed upon it under the provisions referred to above (SRMC 574/72 ad art. 18, para. 6).

168 — The competent institution retains the right to arrange for a medical examination by a doctor of its choice (R 574/72, art. 18, para. 5).

169 — It notifies its decision concerning the award of cash benefit simultaneously to the worker and to the institution of the place of residence, by completing form E 117. If it is a refusal of benefit, this is sent to the worker with a copy to the institution of the place of residence by the joint use of forms E 117 and E 118 (R 574/72, art. 18, para. 6).

C 159 — The formalities referred to above merge the previously provided procedures of article 20 of regulation No 4 and of paragraphs 5, 6 and 7 of article 21 of regulation No 4 and of article 8 of regulation No 36.

170 — If the applicable legislation so provides, the worker, on resuming work, should so inform the competent institution (R 574/72, art. 18, para. 7).

171 — Cash benefits are paid by the insurance institution either directly by international money order or through the intermediary of the institution of the place of residence (R 574/72, art. 18, para. 8).

C 160 — The formalities to be completed in case of resumption of work and the methods of paying cash benefits either directly or through the institution of the place of residence are similar, respectively, to the provisions of regulation No 4, (art. 20, para. 2, art. 21, para. 5 to 7) and regulation No 36, article 8, para. 3, 4 and 6 on the one hand, and para. 4 of article 20 of regulation No 4 and para. 2 of article 6 of regulation No 36 on the other.

C 161 — These provisions are more flexible than those laid down previously by article 20, para. 4 of regulation No 4.

C 161 a — The Administrative Commission has decided (Decision No 100 of 22 January 1975 published in OJ No C 150 of 5 July 1975 repealing and replacing Decision No 17 of 18 February 1960 published in the OJ of 3 May 1960) that the cash benefits referred to at No 144-2 above that were paid to the institution of the place of residence or stay on behalf of the competent institution should be refunded in full by the latter in the currency of the country of residence or stay.

B — Claimants of benefit staying in or transferring their residence to the territory of the competent State

§ 1 — *Frontier workers and members of their families — Special rules*

172 — Frontier workers may also obtain benefit in the competent country in accordance with its legislation and as if they were resident there. The same goes for members of their families but, except in case of urgency, subject to an agreement having been made between the States concerned or their authorities or, in the absence of this, subject to the competent institution having given prior authorization (R 1408/71, art. 20, amended by the Treaty of Accession).

C 162 — The preceding provisions correspond to those contained in articles 6 and 7, para. 2 of regulation 36.

§ 2 — *All workers and members of their families*

173 — Workers who do not reside in the territory of the competent State may be entitled to benefits in that country if they are staying in it. They are awarded such benefits in accordance with the legislation of that State as if they were resident there and even if they had already received benefits for the same case of sickness or maternity before the beginning of their stay or before they transferred their residence there. These provisions do not, however, apply to frontier workers (R 1408/71, art. 21, para. 1 as amended by R 2595/77).

173 a — The above provisions apply by analogy to the members of the family with the exception of the members of the family of a frontier worker who reside in the territory of a Member State other than the State to whose legislation the worker is subject, in so far as they are not entitled to such benefits pursuant to the legislation of the State in whose territory they reside. If, however, the latter reside in the territory of a Member State other than the State in whose territory the worker resides, benefits in kind shall be provided by the institution of the place of stay on behalf of the institution of the place of residence of the persons concerned (R 1408/71, art. 21, as amended and supplemented by R 2595/77).

C 162a — The amendments made by regulation 2595/77 apply to members of the family who, as they reside in the territory of a Member State other than the competent State and other than the Member State in which the worker resides, require benefits during a stay in the competent State. If the members of a worker's family reside in a Member State other than the State to whose legislation the worker is subject, the institution of the latter Member State shall pay to the institution of the country of residence an annual lump-sum to compensate for the cost of providing sickness and maternity insurance benefits in kind to those members of the family. It is logical that the institution of the place of residence of the members of the family bear the cost of benefits in kind provided during a stay in another Member State. The purpose of the amendments made by regulation 2595/77 is to transfer that cost from the competent institution to the institution of the country of residence. These amendments in no way affect the rights of the persons concerned. These provisions do not, of course, apply to the members of the families of frontier workers.

174 — All workers (including frontier workers) and members of their families transferring their residence to the territory of the competent State receive benefit in accordance with the legislation of that State even if they have already received benefit for the same case of sickness or maternity before their transfer of residence (R 1408/71, art. 21, para. 2, as amended by R 2595/77).

C — Stay outside the competent State — Return or transfer of residence to another Member State during the course of a period of sickness or maternity — Stay in another Member State in order to receive appropriate treatment

§ 1 — *Guaranteed contingencies*

175 — Subject to the satisfaction of the conditions required by the legislation of the competent State, workers and members of their families may receive benefit (R 1408/71, art. 22, para. 1, letter *a)*, *b)* and para. 3, amended by Treaty of Accession):

175-1 — if the award of such benefit is required by their state of health during a stay in the territory of another Member State (R 1408/71, art. 22, para. 1, letter *a)* and para. 3);

175-2 — if, after being awarded benefit, they are authorised by the competent institution to return to the territory of the State where they reside or to transfer their residence to another Member State (R 1408/71, art. 22, para. 1, letter *b)*);

175-3 — if they are authorised by the competent institution to go to the territory of that country in order to obtain appropriate treatment for their condition (R 1408/71, art. 22, para. 1-*c)*).

176 — The authorisations referred to above can only be refused by the competent institution if it is established, according to the case in question, that the movement of the person concerned would compromise his state of health or the effectiveness of his medical treatment (No 175-2) or that the treatment concerned may be obtained in the country of residence (No 175-3) (R 1408/71, art. 22, para. 2).

C 163 — The preceding provisions take in the main provisions of article 19 of Regulation No 3. However, amendments have been adopted concerning the issue of the authorisation required for preservation of benefit.

The authorisations required so that the worker can preserve his benefit or can obtain treatment in another country no longer, under the new regulations, depend on discretionary powers on the part of the registration institution, as was the case previously under article 19 of Regulation No 3. Under the terms of the new regulations, these authorisations may not be refused except in prescribed situations: either because the movement of the person concerned is not advisable for duly established medical reasons, or because the treatment concerned does not justify movement to the territory of another Member State.

177 — Entitlement of members of the family to benefit is not affected by the fact that the worker is receiving benefit in the territory of a Member State other than that where they themselves reside (R 1408/71, art. 22, para. 4).

C 164 — In case 75/63 (Mrs M.K.H. Unger v. Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten) the Court of Justice of the Communities pronounced, on 19 March 1964, that employed persons or persons regarded as such who find themselves in the situation referred to in article 19 (1) of Regulation No 3 (now article 22, para. 1 a) of regulation 1408/71) (c.f. No 175-1) receive the rights laid down by these provisions whatever the reason for their stay abroad. The provisions of the regulation have priority over any internal law subjecting the award of the benefits concerned in the case of such a stay to more onerous conditions than those which would have applied if the person concerned had fallen ill while in the territory of the State of the insuring organisation.

C 164 a — Case 117/77 (Bestuur van het Algemeen Ziekenfonds Drenthe — Platteland v. Mrs. G. Pierik), Judgment of 16 March 1978.

The case concerned the refusal of a Netherlands social security institution to reimburse a worker, who resided in the Netherlands and who was in receipt of an invalidity benefit provided under Netherlands legislation, for the cost of a course of spa treatment in the Federal Republic of Germany.

In reply to several questions on the interpretation of article 22 of regulation 1408/71, the Court of Justice EC ruled as follows:

— "The words 'who satisfies the conditions of the legislation of the competent State for entitlement to benefits' at the beginning of article 22 (1) determine the persons who in principle are entitled to benefits in pursuance of the relevant national legislation."

— "The words 'the treatment in question' in the second subparagraph of article 22 (2) refer to any appropriate treatment of the sickness or disease from which the person concerned suffers."

— "The words 'benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence' do not refer solely to benefits in kind provided in the Member State of residence but also to benefits which the competent institution is empowered to provide."

— "The duty laid down in the second subparagraph of article 22 (2) to grant the authorization required under article 22 (1) (c) covers both cases where the treatment provided in another Member State is more effective than that which the person concerned can receive in the Member State where he resides and those in which the treatment in question cannot be provided on the territory of the latter State.

— "The costs relating to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence are to be fully refunded."

— "The words 'institution of the place of stay or residence' in article 22 (1) (c) (i) of regulation 1408/71 mean the institution empowered to provide the benefits in the State of residence or stay as listed in Annex 3 to regulation 574/72 of the Council, as amended by regulation 878/73 of the Council."

In its observations on the case, the Commission had expressed doubts about the relevance of and purpose served by the questions submitted, as article 22 and perhaps article 31 of regulation 1408/71 did not, in its opinion, refer to the case which had been brought before the national court. According to the Commission, the main case was governed by the domestic law of the Netherlands.

The Court of Justice EC accordingly specified, in its grounds for judgment, that article 177 of the Treaty, which was based on a clear separation of functions between national courts and the Court of Justice, did not permit the latter to pass judgment on the relevance of the questions submitted. The question whether the provisions or concepts of Community law whose interpretation was requested were in fact applicable to the case in question therefore lay outside the jurisdiction of the Court of Justice and fell within the jurisdiction of the national court.

§ 2 — *Institutions responsible for benefit*

178 — Benefits are due from the competent institution. They are determined and provided:

178-1 — With regard to benefits in kind, by the institution of the place of stay and of residence in the conditions laid down by the legislation which it applies, as if the worker were insured there but within the limits of duration set by the legislation of the competent State (R 1408/71 art. 22, para. 1, *i)*);

178-2 — With regard to cash benefits, according to the procedures laid down by the legislation of the competent State, either directly by the competent institution or, after agreement and on its behalf, by the institution of the place of stay or residence (R 1408/71 art. 22, para. 1, *ii)*).

178a — The members of the family who are staying in the territory of a Member State other than the competent State and other than the Member State in whose territory the worker resides whose state of health requires immediate treatment (cf art. 22, para. *a)*) or who were authorized by the institution of the Member State in whose territory they reside to go to the territory of another Member State for the necessary treatment are entitled to sickness and maternity benefits in kind. Such benefits are provided on behalf of the institution of the Member State in whose territory the members of the family reside by the institution of the place of stay in accordance with the legislation it applies as if the worker were insured there. The period during which benefits are provided is, however, that laid down by the legislation of the Member State of residence of the members of the family. The authorization required by article 22, para. 1, *c)* of regulation 1408/71 shall be granted by the institution of the Member State in whose territory the members of the family reside (R 1408/71, art. 22, para. 3 as amended by R 2595/77).

178b — In the abovementioned cases, the institution of the place of residence and the legislation of the country of residence of the members of the family shall be deemed to be the competent institution and the legislation of the competent State for the purpose of applying the provisions referred to above in Nos 149, 150, 151, 179, 180 and 181 (R 574/72, art. 23 as extended by R 2595/77).

C 164 b — The preceding provisions concern members of the family who, as they reside in the territory of a Member State other than the competent State and other than the Member State in whose territory the worker resides, require benefits during a stay in another Member State. In that case, as in the cases referred to in sections 173 and C 162a, the institution of the Member State to whose legislation the worker is subject shall pay to the institution of the country of residence an annual lump-sum to compensate for the cost of providing sickness and maternity insurance benefits in kind to those members of the family. The new provisions are intended to transfer to the institution of the country of residence of the members the cost of benefits provided to those members of the family during a stay in another Member State. These amendments in no way affect the rights of the persons concerned.

§ 3 — *Formalities and procedures*

a) Benefits in kind

179 — In order to receive benefits in kind, the worker or the members of his family, in case of stay in a Member State other than the country of insurance (above No 175-1), must submit a declaration of entitlement, form E 111, drawn up by the competent institution before leaving. If this declaration has not been obtained, the institution of the place of stay should ask for it from the competent institution by means of form E 107 (R 574/72 art. 21, para. 1, art. 23).

C 165 — The institution of the place of stay only awards benefits in kind under the conditions set out in No 177 above if the person concerned applies to it before the end of his temporary stay, either in order to submit the declaration drawn up on form E 111 or to request it to obtain a statement concerning his entitlement to benefit from the competent institution by means of form E 107.

The fact that the reply of the competent institution may arrive after the person concerned has left cannot be grounds for refusing him benefit (AC No 74 of 22 February 1973; OJ EC C 75 of 19 September 1973 replacing decision No 24 published in the OJ EC on 16 July 1960).

The lay-out of Form E 111 as reproduced in OJ EC No L 363 of 30 December 1973 was simplified by Administrative Commission Decision No 108 of 24 March 1977, published in OJ EC No C 144 of 18 June 1977.

C 166 — Benefits in kind during a stay in a Member State other than the competent State cannot be refused on the grounds that the person concerned has submitted a form drawn up in a language other than that of the country from which benefit is being claimed (AC decision No 72 of 1 October 1972 OJ EC L 261 of 20 November 1972).

C 167 — It should be noted that form E 111, which constitutes the declaration of entitlement to benefits in kind during a stay in a Member State, is not required in the case of a stay in the United Kingdom by an insured person from a Member State. Health care is in fact provided in that country by the "National Health Service" without any documentary proof or special form. On the other hand, the British delegation to the Administrative Commission of the European Communities has expressed its willingness to disseminate widely to British nationals the need to obtain a form E 111 before leaving Great Britain for a temporary stay in one of the other Member States.

C 168 — In accordance with the possibility set out in art. 2, para. 1 (paragraph 2) of regulation 574/72, Belgian institutions have been authorized, after consulting the Administrative Commission, to issue holidaymakers with a form E 111 identical to the EEC form but which contains additional spaces for successive validations.

180 — In case of transfer of residence to the territory of another Member State or of return to the country of residence (above, No 175-2), and in case of movement to another Member State to obtain appropriate treatment (above, No 175-3), the persons concerned (workers or members of their families) should submit a declaration of maintenance of entitlement, drawn up on form E 112 by the competent institution. This declaration may be submitted after departure and at the request of the worker where it has not been able to be drawn up earlier for reasons of force majeure (R 574/72 art. 22 paras. 1, 3; art. 23).

C 169 — The provisions described above under Nos 179 and 180 take in, subject to simplifications suggested by practical experience, the procedure set out in regulation No 4 (art. 18, 21 para. 1, 2, 4, and 8).

The provisions of para. 3 of article 21 of regulation No 4, making the institution of the place of residence responsible for making periodic checks on its own initiative or at the request of the competent institution, to see if treatment is being effectively and regularly dispensed, have not been taken in. Such checks could always, in case of need, be carried out at the request of the competent institution under the heading of administrative cooperation (ERER 574/72).

181 — In case of hospitalization or the award of substantial benefits in kind, in the contingencies referred to in Nos 178-1, 179 and 180 above, the provisions decribed in Nos 147, 149, 150 and 151 apply by analogy (R 574/72 art. 21 and 22 para. 2).

C 170 — The award of prostheses and other substantial benefits in kind in the country of stay or of new residence is thus no longer subject to authorization by the insurance institution. In fact legislations generally make the provision of such benefits subject to the prior agreement of the insuring organization, and so the persons concerned cannot receive such benefits in the country where they are staying or have transferred their residence without the agreement of the institution of that country. It therefore did not appear to be necessary to complicate the procedure by also requiring the authorization of the insurance institution.

b) Cash benefits for workers in case of stay outside the competent State (cf. Nos 175-1 and 178-2 above)

182 — The procedure set out for workers residing in a Member State other than the competent State is applicable by analogy. (Nos 163 to 171 above.) However, a worker staying in a Member State without undertaking paid employment there is not obliged to submit notification of cessation of work referred to in No 164 above. He may, however, produce a certificate of incapacity for work (R 574/72 art. 24).

C 170 a — By reference to the new provisions referred to at No C 161, it is recalled that, under Administrative Commission Decision No 100 of 23 January 1975 (published in OJ No C 150 of 5 July 1975), the cash benefits referred to above that were paid by the institution of the place of residence or stay on behalf of the competent institution must be reimbursed in full by the latter in the currency of the country of residence or stay.

§ 4 — *Special cases of posted workers and workers in international transport and the members of their families*

a) Provision of benefit

183 — For the purpose of obtaining benefits in kind for themselves and for the members of their families, posted workers and workers in international transport must submit to the institution of the place of stay:

183-1 — either the declaration of entitlement form E 111. This form states in particular the maximum duration for the provision of medical treatment as laid down in the legislation of the competent country. In this case the provisions referred to in 183-2, 184, 185, and 186 below are not applicable (R 574/72 art. 20 para. 5).

183-2 — or, for posted workers, the certificate of posting form E 101 and, where applicable, form E 102, and for workers in international transport, a special declaration issued on form E 110 by the employer or his agent during the course of the calendar month of its presentation or the two preceding calendar months (R 574/72 art. 20 para. 1, 2).

184 — In the contingency referred to in No 183-2 above, the production of the certificate of posting or the special declaration by the employer constitutes a presumption of entitlement for the institution of the place of stay (R 574/72 art. 20, para. 1, 2).

185 — A check on entitlement with the competent institution is carried out by the institution of the place of stay, by means of form E 107, within three days of the production of the certificate of posting or the special declaration (R 574/72 art. 20 para. 3).

186 — The competent institution should, by the use of form E 107, make known its decision on the existence of entitlement within ten days with effect from the date of receiving the request. This decision should lay down the maximum duration for the provision of benefits in kind under the applicable legislation (R 574/72 art. 20 para. 4).

187 — In case of hospitalisation or the provision of substantial benefits in kind, the provisions described under Nos 147, 149, 150 and 151 are applied (R 574/72 art. 20 para. 6).

188 — Benefits in kind provided in the light of the presumption referred to in No 184 above are the subject of full reimbursement on the part of the competent institution (R 574/72 art. 20 para. 7).

C 171 — The provisions described above concerning posted workers and workers in international transport contain a special procedure based on a presumption of entitlement. For posted workers, these provisions are taken from article 17 para 1 and 2 of regulation No 4.

For international transport workers who are employed successively and frequently in an impromptu manner for periods of short duration in the territories of two or more Member States, a procedure has been adopted which is drawn from the arrangements for the application of the agreement concerning the social security of Rhine boatmen and from the European convention concerning the social security of workers in international transport. For these workers a simple declaration by the employer enables them to receive benefits in kind in the country of stay. If the worker is not able to apply to the institution of the place of stay before obtaining medical treatment, in particular because of the place or the time when he has need of treatment, he will still receive benefit on production of the declaration as if he had been subject to the legislation of the country of stay. As already provided in regulation No 4 for posted workers only, the institution of the place of stay provides benefit to the person concerned until receiving notification from the competent institution which indicates the maximum duration for the provision of benefit, subject to a maximum of thirty days if this notification is late in coming. In order to prevent the provision of benefit being interrupted after the passage of this thirty-day period, the competent institution has been given a period of 10 days to reply to the institution of the place of stay (ERER 574/72).

C 172 — According to the indications appearing in No 183-1 above (last sentence) the procedure normally laid down in case of temporary stay by article 21 of regulation 574/72 (c.f. No 179 above) may be applied where the persons concerned have been able to obtain the declaration of entitlement issued on form E 111 by the competent institution before their departure. In this case, the provision of benefits in kind is carried out in the same way as for all workers staying in a Member State other than the competent State.

C 173 — The provisions of para. 6 of article 17 (second sentence) of regulation No 4 relating to the repetition of benefits provided in error have become unnecessary because of the general provisions of article 111 of regulation 574/72 (ERER 574/72 under article 20).

b) Recuperation of benefits in kind provided in error to workers in international transport

189 — The competent institution must reimburse to the institution of the place of stay the cost of benefits provided by the latter without entitlement being present but on the basis of the presumption referred to under No 184 (R 574/72 art. 113 para. 1).

190 — Reimbursement is carried out by the institution indicated in the declaration referred to in No 183-2 above or by any other institution, or by any other institution appointed for the purpose with regard to the Member State concerned in Annex 10 of regulation 574/72 modified by regulation 878/73 and by regulation 1392/74 (R 574/72 art. 113 § 2).

191 — The institution which has undertaken the reimbursement retains the right to claim from the beneficiary a credit equal to the value of the benefits provided in error. This credit is notified to the Audit Board which draws up a statement (R 574/72 art. 113 para. 3).

C 174 — The preceding provisions are based on article 36 of the administrative arrangement for the application of the revised agreement on the social security of Rhine boatmen of 13 February 1961. They are justified by the fact that the extension to workers in international transport by means of articles 20 and 62 of regulation 574/72 of a presumption of entitlement to sickness and accident at work insurance benefits in kind, in case of temporary stay, must also provide the counterpart of an obligation on the part of the competent institution to reimburse to the institution of the place of stay the value of any benefits which the latter may have provided without entitlement existing (ERER 574/72).

SECTION III — BENEFITS DUE TO UNEMPLOYED PERSONS AND MEMBERS OF THEIR FAMILIES

Present regulations:	R 1408/71 art. 25, amended by Treaty of Accession OJ EC L 73, 27 March 1972 R 574/72 art. 26 amended by R 2059/72 OJ EC L 222, 29 September 1972 and article 27
Corresponding text of abrogated regulations:	R 36 art. 10
Administrative Commission:	Decision No 100
Forms to be used:	E 106, E 107, E 108, E 113, E 114, E 115, E 116, E 117, E 118, E 119, E 303

A — Beneficiaries

192 — Totally unemployed workers receive benefit, or are entitled to benefits as unemployed persons in the situations referred to in 529, 530, 531, 540, 549 and 551 below when they go to one or several other Member States in order to seek work there, or when, after having been considered eligible for benefits under the legislation to which they were last subject in their last place, they put themselves at the disposal of the employment services of the Member State where they reside or when they return to that territory (R 1408/71 art. 25 § 1).

C 175 — Partially unemployed or intermittently unemployed workers who reside in the territory of a Member State other than the competent State receive benefit under the conditions laid down for workers by articles 19 para. 1 and 20 of regulation 1408/71 (cf. Nos 144 and 172 above) since these unemployed persons are considered as workers in view of the fact that their labour contract has not been interrupted (SRMC R 1408/71 ad art. 25 para. 2).

B — Nature and conditions for the award of benefit

193 — Subject to their satisfying the conditions required for entitlement, where necessary bearing in mind the rules for aggregation of insurance periods, totally unemployed workers (referred to under No 192) receive benefits in kind and cash benefits to the charge of the competent institution in the following conditions:

193-1 — benefits in kind are awarded on behalf of the competent institution by the institution of the country where the person concerned is seeking employment, in accordance with the provisions of that country's legislation (R 1408/71 art. 25 para. 1 *a)*);

193-2 — cash benefits are paid by the competent institution in accordance with the provisions of its legislation, either directly by the said institution or, after agreement and on its behalf, by the institution of the country where employment is sought. The payment of cash benefits involves suspension of unemployment benefit while the former are being paid (R 1408/71 art. 25 para. 1 *b)*).

194 — The benefits referred to above are paid for a maximum period of three months, corresponding to that during which unemployment benefit is payable in accordance with article 69 para. 1 *c)* of regulation 1408/71 (cf. No 530 below) (R 1408/71 art. 25 para. 1).

195 — However, in cases of force majeure, the duration of benefit payment, which is normally limited to three months, may be extended by the competent institution to the limit set by the legislation which it applies (R 1408/71 art. 25 para. 4).

C 176 — Member States have undertaken to give all necessary instructions to their competent institutions or to take all appropriate steps to ensure that requests for extension of benefit are looked at in a liberal manner, taking as much account as possible of the possible social implications which they may entail (SRMC R 1408/71 ad art. 25).

C 176 a — Under Administrative Commission Decision No 100 of 23 January 1975 (published in OJ No C 150 of 5 July 1975), the cash benefits referred to at No 193-2 above that are paid by the institution of the place of residence or stay on behalf of the competent institution must be refunded in full by the latter in the currency of the country of residence or stay.

196 — Totally unemployed frontier workers and totally unemployed workers other than frontier workers who place themselves at the disposal of the employment services in the territory of the Member State where they reside or who return to that territory, receive benefits in kind and cash benefits to the charge of the competent institution of that State and in accordance with the provisions of the legislation which it applies, bearing in mind where appropriate the aggregation of insurance, residence or employment periods in accordance with the provisions described under No 139 above (R 1408/71 art. 25 para. 2).

197 — To the extent that entitlement to benefit exists for the unemployed person, members of his family also benefit whatever the Member States in whose territory they reside or stay (R 1408/71 art. 25 para. 3, amended by the Treaty of Accession).

198 — These benefits are to the charge of the competent institution of the State which assumes unemployment benefit. They are provided:

198-1 — benefits in kind: on behalf of the competent institution by the institution of residence or stay according to the legislation which it applies (R 1408/71 art. 25 para. 3-*i)*, amended by the Treaty of Accession);

198-2 — cash benefits: by the competent institution of the Member State responsible for unemployment benefit according to the legislation which it applies (R 1408/71 art. 25 para. 3 *ii)*, amended by the Treaty of Accession).

C 177 — The preceding provisions generalize and extend an entitlement which was previously only laid down for benefits in kind for frontier workers only (art. 10 of regulation No 36).

C — Procedures and formalities

§ 1 — *Benefits in kind and cash benefits for unemployed persons going to a Member State other than the competent State in order to seek work there*

199 — The unemployed person must submit to the sickness insurance institution of the place where he has gone a declaration drawn up on form E 119. This declaration is issued by the competent institution for sickness insurance, either at the request of the person concerned or at that of the institution of the place where the unemployed person has gone (R 574/72 art. 26 para. 1).

200 — In order to receive cash benefits he must also produce a certificate of incapacity for work issued by his doctor and indicate up to what date he has received unemployment insurance benefit and his address in the country where he is at the time (R 574/72 art. 26 para. 4 added by R 2059/72).

201 — The unemployment insurance institution of the place where the unemployed person has gone certifies, on a copy of form E 303, that the person concerned is indeed registered as seeking work and states the date from which he is receiving unemployment benefit on behalf of the competent institution (R 574/72 art. 26 para. 2).

202 — The commencement and the end of incapacity for work are notified within three days by the sickness insurance institution of the place where the unemployed person has gone to the competent sickness insurance institution, to the competent unemployment insurance institution and to the institution with which the person concerned is registered as seeking work respectively (R 574/72 art. 26 para. 5 added by R 2059/72).

203 — In the case referred to under No 195 above, the competent sickness insurance institution makes a decision on the extension of provision of benefit to the sick unemployed person in the light of the reasoned advice, supported by a detailed report, of the medical examiner of the sickness insurance institution of the place where the unemployed person has gone.

The competent unemployment insurance institution is advised of any extension of provision of benefit. The provisions described above in Nos 163 (second sentence), 165, 166, 167, 168, 169, 171 are applicable by analogy (R 574/72 art. 26 para. 6 and 7 added by R 2059/72).

204 — The provisions relating to hospitalization and the provisions of substantial benefits in kind (cf. Nos 149, 150 and 151 above) are applicable by analogy (R 574/72 art. 26 para. 3).

§ 2 — *Benefits in kind for members of the family of unemployed persons in case of residence in the territory of a Member State other than the competent State*

205 — Benefit is awarded in the conditions set out in Nos 147 to 151, 154 to 158 above. For the purpose of registering members of the family of unemployed persons for the award of benefit, a declaration drawn up on form E 119 must be presented (R 574/72 art. 27).

SECTION IV — ENTITLEMENT TO BENEFIT OF PENSION CLAIMANTS AND MEMBERS OF THEIR FAMILIES

Present regulations:	R 1408/71 art. 26 R 574/72 art. 28
Forms used:	E 107, E 108, E 120

206 — Where the persons concerned, while a claim for pension or allowance is being dealt with, cease to be entitled to benefits in kind under the legislation of the last competent Member State, the said benefits may nevertheless still be provided, in accordance with the legislation of the Member State in whose territory they reside (R 1408/71 art. 26 para. 1).

207 — Receipt of benefit is however subject to the condition that the persons concerned may claim it as pension claimants, either under the legislation of the Member State in the territory of which they reside or under the legislation of another Member State if they resided in the territory of that State, bearing in mind the rules on aggregation of periods where necessary (cf. No 139 above) (R 1408/71 art. 26 para. 1).

208 — If the applicable legislation is that of a country where entitlement to benefit is subject to the payment of contributions during the period in which the pension claim is being dealt with, the person concerned must pay these contributions; otherwise he ceases to be entitled to benefits in kind at the end of the second month for which he has not paid the contributions due (R 1408/71, art. 26, para. 2).

209 — With regard to payments to be made to German sickness insurance funds, the obligation to pay the contributions referred to in the above paragraph is suspended until a decision is made on the pension claim (R 1408/71, Annex V C 3, amended by the Treaty of Accession).

210 — Benefits are to the charge of the institution which collected the contributions. If there has been no need to collect contributions, they are the responsibility of the institution to whose charge, after award of the pension or allowance, benefits in kind are provided (R 1408/71, art. 26, para. 3).

C 178 — *The above provisions were introduced to resolve certain difficulties relating to the provision of benefits in kind to pension claimants and to the members of their families and in particular in order to alleviate the distress which could result from the long time necessary for the award of pensions or allowances.*

211 — In order to receive the benefits referred to above, the claimant must have himself and the members of his family registered with the institution of the place of residence by submitting a declaration of his entitlement issued on form E 120 by the institution of the Member State which is responsible for benefits in kind (R 574/72, art. 28, para. 1).

212 — Where appropriate this declaration is requested from the competent institution by the institution of the place of residence or stay, using form E 107.

In case of suspension or withdrawal of entitlement to benefits in kind the competent institution uses form E 108 (R 574/72, art. 28).

213 — The registration of the worker and the members of his family is notified to the institutions which issued the declaration by the institution of the place of residence (R 574/72, art. 28, para. 2).

SECTION V — ENTITLEMENT TO BENEFITS IN KIND OF PENSIONERS AND MEMBERS OF THEIR FAMILIES

Present regulations:	R 1408/71, art. 27 to 34, amended by Treaty of Accession, OJ EC L 76, 27 March 1972, by R 2864/72, OJ EC L 306, 31 December 1972, Annex V, and by R 2595/77, OJ EC L 302, 26 November 1977 R 574/72, art. 29 to 31, amended by R 878/73, OJ EC L 86, 31 March 1973
Corresponding text of abrogated regulations:	R 3, art. 22 and 23 R 4, art. 26 to 27 R 36, art. 13
Forms to be used:	E 107, E 108, E 111, E 113, E 114, E 121, E 122
Court of Justice EC:	Cases 35/73, 103/75
Administrative Commission:	Decision No 92

A — Pensioner (or recipient of an allowance), responsibility for whose benefit is distributed among two or more countries, residing in the territory of a Member State which pays a portion of his pension and where he is entitled to sickness/maternity insurance benefit, based where appropriate on aggregation of insurance, residence or employment periods

214 — Benefits are provided to the pensioner and to mambers of his family by the institution of the country of residence and to its charge, as if the person concerned were in receipt of a pension or allowance under that State's legislation alone (R 1408/71, art. 27 as amended by Treaty of Accession and by regulation 2864/72 and/or regulation 1408/71, article 28 as amended by the Treaty of Accession).

215-1 — A recipient of a retirement pension under Netherlands legislation and of a pension under the legislation of another Member State is deemed, for the application of the above provisions, to be entitled to benefits in kind if, bearing in mind where appropriate the provisions of article 9 of the regulation relating to admission to voluntary or optional continued insurance (c.f. No 51 above), he meets the conditions required for admission to sickness insurance schemes for elderly persons or to voluntary insurance schemes laid down in the Law on sickness fund insurance (Ziekenfondswet) (R 1408/71, Annex V H1, *a)* and *b)* as amended by the Treaty of Accession and by R 2595/77).

215-2 — This provision also applies to a married woman whose husband is receiving an old-age pension for married persons under Netherlands legislation and satisfies the conditions required for admission to sickness insurance schemes for elderly persons or to voluntary insurance schemes laid down in the Law on sickness fund insurance (R 1408/71, Annex V H 1, *a)*, second subparagraph, added by R 2595/77).

215-3 — A person receiving an old-age pension under Netherlands legislation who resides in another Member State shall, if he is insured under the sickness insurance schemes for elderly persons or under the voluntary insurance schemes laid down in the Law on sickness fund insurance, pay for himself and, if appropriate, for members of his family a contribution based on half of the average costs incurred in the Netherlands for medical treatment for an elderly person and members of his family. A reduction of this contribution shall be granted, the costs thereof being borne by the compulsory insurance scheme provided for in the Law on sickness fund insurance, corresponding to the part of the reduction, the costs whereof are borne by the said scheme, that is granted to persons residing in the Netherlands who are covered by the sickness insurance schemes for elderly persons and whose contributions are fixed on the same basis (R 1408/71, Annex V H 1, *b)* as amended by R 2595/77).

215-4 — A person who is not receiving an old-age pension under Netherlands legislation and, if he is married, whose spouse is not receiving an old-age pension for married persons under Netherlands legislation shall, if he resides in another Member State and if he is insured under the voluntary insurance scheme laid down in the Law on sickness fund insurance, pay for himself and, if appropriate, for each member of his family who has reached the age of 16 years, an amount of contribution which corresponds to the average of the contributions fixed by the sickness funds in the Netherlands for voluntarily insured persons residing in the Netherlands. The contribution shall be rounded up to the nearest multiple of one guilder (R 1408/71, Annex V, H, 1 *c)*, added by R 2595/77).

C 179 — The provisions of article 27 of regulation 1408/71 correspond to those of article 22, para. 1 of Regulation No 3. They refer to recipients of pensions or allowances under the legislations of two or more Member States residing in a country whose legislation gives them entitlement to benefits in kind, bearing in mind where appropriate the application of aggregation rules and the implementation procedures of the legislations of certain Member States referred to in Annex V of regulation 1408/71.

C 180 — Since the publication of regulation 1408/71, article 27 has been the subject of two amendments. The first results from the Treaty of Accession and was based on the reasons indicated in C 137 above in order to take account of the special features of the legislations of the new Member States. The second was effected by regulation 2864/72 because of changes which had taken place in Danish legislation. It had the effect of attributing the charge for sickness/maternity insurance benefits to the institution of the country of residence only to the extent that the recipient is in receipt of a pension or allowance under the legislation of that State. In fact in the old wording of article 27 this recipient was entitled to benefit simply on the grounds of his residence in Denmark and benefits provided to him and to the members of his family would thus have been the responsibility in all cases of that State, even if the recipient was not in receipt of a pension or allowance under Danish legislation.

These adaptations also apply to the legislations of the United Kingdom and Ireland which also base entitlement on residence. However, it should be noted that, with regard to the latter State, the legislation makes the scope of benefits in kind depend on means tests (cf. ERER 2864/72).

C 180 a — In case 103/75 (Walter Th. Aulich v. Bundesversicherungsanstalt für Angestellte), the EC Court of Justice gave the following ruling in its judgment of 26 May 1976: "Article 27 of Regulation (EEC) No 1408/71 refers only to sickness or maternity benefits granted by the competent institution of the State in which the retired person is resident after these risks materialize and cannot affect any right of the retired person to receive, under the legislation of another Member State, a benefit of the type of the allowance towards the contribution to a voluntary sickness insurance scheme."

This case concerned a formerly insured person of German nationality who, while receiving a retirement pension from the Netherlands competent authority and an old-age pension from the German competent authority, had left the Federal Republic of Germany and settled in the Netherlands. Following his transfer of residence, he had taken out voluntary sickness insurance with a Netherlands general sickness fund and asked the German competent institution for assistance in paying the voluntary sickness insurance contribution as provided for by the German social security scheme for pensioners who were not covered by free insurance.

The Court of Justice of the European Communities recognized the validity of his request to the German competent institution on the grounds that the provisions of article 27 of EEC Regulation No 1408/71 applies only to benefits provided to pensioners or their families by the institution of the Member State of their place of residence in the case of sickness or maternity and that these could not affect the possible rights of the retired person to obtain benefit under the legislation of another Member State in the form of assistance in paying contributions for voluntary sickness insurance.

B — Recipient of a pension or allowance (under the legislation of one or more States) residing in the territory of a Member State from which he has no entitlement to sickness/maternity insurance benefits

216 — Receipt of benefit is nevertheless assured to the pensioner and to members of his family to the extent that, bearing in mind the rules for the aggregation of periods and Annex V of regulation 1408/71, the person concerned is entitled to benefit under the legislation or one of the legislations under which the pension is due (R 1408/71 art. 28 para. 1, amended by the Treaty of Accession).

217 — Benefit is provided in the following conditions:

217-1 — benefits in kind are provided by the institution of the country of residence in the conditions laid down by the legislation which it applies. These benefits are to the charge of the competent institution of the country under whose legislation the person concerned is entitled to benefit. If this entitlement exists under the legislation of several countries, the charge falls to the competent institution of the Member State to whose legislation the pensioner was subject longest or, if this rule does not determine the case, of the institution with which the person concerned was last insured (R 1408/71 art. 28 para. 1 and 2 *a)*, *b)* amended by the Treaty of Accession and by R 2864/72).

217-2 — cash benefits are paid either by the competent institution or, on its behalf, by the institution of the place of residence in accordance with the provisions of the legislation of the competent State (R 1408/71 art. 28 para. 1 *b)* added by the Treaty of Accession).

C 180 b — On the concept of benefits in kind, see C 139a above.

218 — Where a recipient of a pension or allowance resides in the territory of a Member State which does not pay any portion of the pension and where entitlement to benefits in kind is not subject to insurance or employment conditions, the charge for any benefits in kind which may be provided to this pensioner and to members of his family falls to the institution of one of the Member States responsible for the pension, determined according to the rules explained in No 214-1 above provided that the said pensioner and the members of his family would be entitled to these benefits under the applicable legislation if they resided in the territory of the Member State where that institution is (R 1408/71 art. 28 bis added by R 2864/72).

C 181 — The amendments made to article 28 both by the Treaty of Accession and by regulation 2864/72 and the addition of article 28 bis are based on the special features of the legislations of the new Member States. They are in response to the considerations already mentioned in C 180 above. It is recalled that Danish legislation on pensions does not include the concept of insurance periods (cf. SEC (71) 4376 and 4550 and ERER 2864/72).

219 — Recipients of pensions or allowances referred to above are obliged to register themselves and the members of their families with the institution of the place of residence, producing a declaration drawn up on form E 121 (R 574/72 art. 29 para. 1 amended by R 878/73).

220 — This declaration is issued by the institution or one of the institutions from which the pension is due, at the request of the pensioner or, failing this, at the request of the institution of the place of residence, which uses form E 107 for the purpose. While awaiting the receipt of this declaration, the institution of the place of residence may proceed to register the pensioner and his family on a provisional basis. This registration cannot be opposed by the institution from which benefit is due until the latter has issued the declaration form E 121 (R 574/72 art. 29 para. 2).

221 — Notification is given by the institution of the place of residence to the institution which has issued the declaration, of any registration which has been undertaken (R 574/72 art. 29 para. 3).

222 — It is up to claimants of benefits in kind to prove, where necessary, the continued existence of entitlement to a pension or allowance and to inform the institution of the place of residence of any change of circumstances which may modify entitlement to benefit. The institutions which pay the pension or allowance also inform the institution of the place of residence of the pensioner of any such change of circumstances (R 574/72 art. 29 paras. 4, 5).

223 — The Administrative Commission is entitled to set the procedures for solving cases where difficulties arise in specifying the institution responsible for benefits in kind where the person concerned is entitled to such benefits under several legislations (R 574/72 art. 29 para. 6).

C 182 — *Article 22 of regulation No 3 made the payment of benefits in kind to pensioners residing in the territory of a Member State in which there is no institution responsible for their pension subject to a double condition: firstly entitlement had to exist under the legislation or one of the legislations under which the pension was paid; secondly the legislation of the country of residence had to provide for the award of benefits in kind to pensioners. This double requirement had the effect of depriving a certain number of pensioners of benefits in kind since some legislations did not recognise entitlement to these benefits for recipients of all pensions and allowances.*

In a decision of 11 October 1973 (Case 35/75, Ludwig Kunz v. Bundesversicherungsanstalt für Angestellte Berlin) the Court of Justice had in fact confirmed that "... article 22 of Regulation No 3 was to be interpreted as follows, that a person entitled to income due to him under the legislation of several Member States, and who resides on the territory of one of these States, has no claim to the benefits in kind at the charge of the State in whose territory he resides when the legislation of that State does not provide for such benefits."

Regulation 1408/71 no longer requires the last condition and grants to those entitled to pensions or incomes, as well as to members of their families, the award of cash benefits in the territory of any Member State, in so far as they are eligible to entitlement to these benefits by virtue of legislation under which the pension is paid (ERER 1408/71).

C 183 — *The provisions referred to in Nos 216 to 220 above relating to the formalities of registration and periodic proofs to be supplied correspond to those of article 24 of regulation No 4, except for simplification resulting from the liberalization of the conditions for entitlement: the institution of the country of residence no longer has to check, as was provided under article 24, para. 2 of regulation No 4, whether the recipient would be entitled to benefits in kind if he was in receipt of a pension or allowance of the same type under the legislation of the country of residence.*

In addition, as the institution responsible for paying the pension or allowance does not always have to hand all the elements necessary to determine whether the conditions for entitlement to sickness and maternity insurance benefit have been met, in particular where the insurance is voluntary, it is laid down that the institution qualified to issue the declaration is not necessarily the institution which pays the pension or allowance. It is also laid down that the institution of the place of residence may proceed to effect a provisional registration of the recipient and the members of his family so that they can receive benefit before the declaration has arrived (ERER 574/72).

C 184 — *The provisions of para. 6 of article 24 of regulation No 4 which settled disputes concerning entitlement to benefit on the basis of paid employment on the part of the pensioner under the legislation of a Member State and as accessory to a pension or allowance under the legislation of another Member State have not been adopted in regulation 574/72 since they have been inserted in article 34 of regulation 1408/71 (cf. No 234 below).*

C — Members of his family residing in a State other than that where the pensioner is residing — Transfer of residence to the State where the pensioner is residing

§ 1 — *Where members of his family do not reside in the same country as the pensioner*

224 — As long as the pensioner is entitled to sickness/maternity insurance benefit, under the legislation of a Member State, the members of his family receive benefit under the following conditions:

224-1 — benefits in kind are provided by the institution of the place of residence of the members of the family and in accordance with the legislation which it applies. These benefits remain to the charge of the institution of the place of residence of the pensioner (R 1408/71 art. 29 para. 1 *a)*, amended by the Treaty of Accession);

224-2 — cash benefits are to the charge of the competent institution determined in accordance with the indications given in Nos 214 of 217-2 above. They are paid, in accordance with the provisions of the legislation applied by that institution, either directly or through the intermediary of the institution of the place of residence of the members of the family (R 1408/71 art. 29 para. 1 *b)*, amended by the Treaty of Accession).

§ 2 — *Where members of the family, after residing in another country, transfer their residence to the State where the pensioner is residing*

225 — The persons concerned receive:

225-1 — benefits in kind in accordance with the legislation of that State, even if they had already received benefit for the same case of sickness or maternity before their transfer of residence (R 1408/71 art. 29 para. 2 *a)*, amended by the Treaty of Accession);

225-2 — cash benefits to the charge of the competent institution determined in accordance with the indications given in Nos 214 or 217-2 above according to the provisions of the legislation applied by that institution. The provision of benefit is made either directly by the competent institution or by the institution of the place of residence of the pensioner (R 1408/71 art. 29 para. 2 *b)*, amended by the Treaty of Accession).

C 185 — The provisions described in No 224 correspond to those of article 22 para. 5 of regulation No 3 subject to the amendments brought in by the Treaty of Accession in order to take account of the special features of the legislations of the new Member States. The provisions described in No 225 are new.

It should be noted, too, that under the amendments introduced by the Treaty of Accession, entitlement relates to all sickness/maternity insurance benefits (benefits in kind and cash benefits provided by certain national legislations) (cf. No C 137 above).

§ 3 — *Formalities and procedures*

226 — In order to obtain benefit, the members of the family referred to under No 224 must have themselves registered with the institution of their place of residence, presenting the documentary evidence required by the legislation applied by that institution and a declaration issued on form E 122 by the institution of the place of residence of the pensioner. The validity of this declaration is of indefinite duration except where the declaration has been issued by a French institution, in which case the validity of the declaration, limited to twelve months, must be renewed annually. This declaration must be submitted with any claim for benefit if the applicable legislation requires that such a claim must be accompanied by the pension or allowance certificate (R 574/72 art. 30 paras. 1, 2).

227 — The institution of the place of the pensioner's residence must, by means of form E 108, supply to the institution of the place where the members of his family reside any information concerning maintenance of entitlement to benefit (R 574/72 art. 30 para. 3).

228 — The members of the family must inform the institution of their place of residence of any change of circumstances which may modify entitlement to benefit (R 574/72 art. 30 para. 4).

C 186 — The registration formalities and the documents to be supplied correspond to those in article 25 of regulation No 4, subject to certain simplifications. The provisions of paragraph 6 of article 25 of regulation No 4 have not been taken in regulation 574/72 since they have been inserted in article 34 of regulation 1408/71 (c.f. No 234 below).

D — Substantial benefits in kind

229 — Provisions relating to prostheses, major appliances and other substantial benefits in kind referred to under No 152 above apply by analogy to recipients of pensions or allowances (R 1408/71 art. 30).

C 187 — The corresponding provisions, subject to the amendments brought in by article 17 of regulation 574/72, appeared in article 22 subpara 4 of regulation No 3.

E — Stay by the pensioner or members of his family in a State other than that where they reside

230 — In this contingency, the recipient of a pension or allowance due either under the legislation of a Member State or under the legislation of two or more Member States, who is entitled to benefit under the legislation of one of these Member States, and the members of his family receive (R 1408/71 art. 31 preliminary sentence amended by the Treaty of Accession and by R 2864/72):

230-1 — benefits in kind provided by the institution of the place of stay in accordance with the legislation which it applies; the charge falls to the institution of the place of residence of the pensioner (R 1408-71 art. 31-*a)*, amended by the Treaty of Accession);

230-2 — cash benefits to the charge of the competent institution determined in accordance with the indications given in 214 and 217-2 above. They are paid, in accordance with the provisions of the legislation applied by that institution, either directly or through the intermediary of the institution of the place of stay (R 1408/71 art. 31-*b)*, amended by the Treaty of Accession).

231 — For the purpose of providing benefit, the institution of the place of residence issues a declaration of entitlement on form E 111. This may possibly be requested by the institution of the place of stay on form E 107. For hospitalisation and the supply of substantial benefits in kind, the provisions described above in Nos. 147, 149, 150 and 151 are applied by analogy. In this case the institution of the place of residence of the recipient of a pension or allowance is considered as the competent institution (R 574/72 art. 31).

C 188 — The provisions described in No 231, first sentence, correspond to those appearing previously in article 26 of regulation No 4. It will be noted, however, that in the present eventuality benefits are never to the charge of the institution of the place of stay, even if it is an institution which is responsible for pensions or allowances, contrary to what was laid down in paragraph 6 of article 22 of regulation No 3. The institution of the place of residence must reimburse the institution of the place of stay with its actual expenses.

F — Special provisions concerning acceptance of responsibility for benefits to former frontier workers, members of their families or their survivors

232 — By way of exception to the rules for acceptance of responsibility concerning pensioners and the members of their families described under No 214 above (entitlement in the country of residence) and No 230 above (stay in a country other than the country of residence), the charge for benefits is distributed half to the institution of the place of residence of the pensioner and half to the institution where he was last insured, provided that he had the status of a frontier worker for the three months immediately preceding the date on which the pension or allowance took effect or the date of his death (R 1408/71, art. 32).

C 189 — The preceding provisions take in those appearing in article 13 para. 1 of regulation No 36.

G — Contributions payable by pensioners

233 — If the legislation of the State which bears the charge for benefits provides for the payment of contributions out of pensions or allowances to cover sickness and maternity benefits, the institution of that State which is responsible for the pension or allowance is authorised to deduct these contributions, calculated in accordance with its legislation (R 1408/71 art. 33, amended by Treaty of Accession and by R 2864/72).

C 190 — This provision corresponds to that of paragraph 7 of article 22 of regulation No 3. It has been amended by the Treaty of Accession and by regulation 2864/72 in order to take account of the special features of the legislations of the new Member States.

H — Provisions designed to prevent possible duplication of entitlement to benefit

234 — If, because of the performance of paid employment, the pensioner or the members of his family are entitled to benefit under the legislation of a Member State, the persons concerned are considered as workers or as members of a worker's family, depending on the circumstances. The provisions which apply to them are thus not those of this section but those of section II relating to workers and members of their families (R 1408/71 art. 34, amended by the Treaty of Accession).

C 191 — This provision corresponds to that appearing in para. 6 of article 25 of regulation No 4.

SECTION VI — REIMBURSEMENT BY THE COMPETENT INSTITUTION OF A MEMBER STATE OF COSTS INCURRED DURING A STAY IN ANOTHER MEMBER STATE

Present regulation:	R 574/72 art. 34, amended by R 878/73 OJ EC L 86, 31 March 1973
Administrative Commission:	Decision No 101
Form to be used:	E 126

235 — Workers, recipients of pensions or allowances, and members of their families who have required health treatment during a stay in a Member State other than the competent State and who have been unable to complete the necessary formalities to obtain reimbursement from the institution of the place of stay of the costs incurred, may claim this reimbursement from the competent institution on their return to the competent State. Reimbursement is carried out, using form E 126, on the basis of the tariff applied by the institution of the place of stay which must, where necessary, supply all the necessary information for this purpose (R 574/72, art. 34).

C 191 a — The rate for the conversion of currencies to be taken into account for the refunds referred to above is that applicable on the date on which the competent institution decides to reimburse the expenses incurred by the person concerned (AC Decision No 101 of 29 May 1975, OJ No C 44 of 26 February 1976 replacing Decision No 14 of 20 November 1959, OJ of 27 February 1960 taken within the framework of Regulations Nos 3 and 4) (see Nos 652 and C 432 below).

236 — If the institution of the place of stay and the competent institution have an agreement between them which provides either for renunciation of any reimbursement or lump-sum reimbursement of benefits provided, the institution of the place of stay must transfer to the competent institution the amount to be reimbursed to the person concerned in application of the preceding provisions (R 574/72, art. 34, para. 2 added by R 878/73).

237 — For substantial expenses an appropriate advance may be paid by the competent institution as soon as the claim for reimbursement is submitted (R 574/72, art. 34, para. 3 added by R 878/73).

C 192 — The provisions appearing under No 235 were inserted in order to permit reimbursement of costs incurred by the person concerned for health treatment received during a stay in the territory of a Member State other than the competent State if for any reason the formalities laid down could not, in the particular case, be completed during that stay.

C 193 — *The provision described in No 236 was added in order to take account of the fact that, in relations between the United Kingdom and the other Member States, it is laid down that benefits provided in case of a stay will be reimbursed on a lump-sum basis or will be the subject of mutual renunciation of reimbursement.*

The application of those provisions described under No 230 to workers in receipt of pensions or allowances or members of their families subject to United Kingdom legislation who have had to obtain treatment during a stay in another Member State would have had the effect of making the United Kingdom institutions responsible for charges which, according to the agreements provided, should have been borne by the country of stay.

Under the terms of article 34 para. 2 of Regulation 574/72, as modified by Regulation 878/73 the competent institution of the United Kingdom only reimburses the costs incurred by one of its insured persons during a stay in another Member State after the institution of the place of stay has transferred to it the corresponding amount (ERER 878/73).

SECTION VII — APPLICABLE SCHEME WHERE THERE ARE SEVERAL SCHEMES IN THE COUNTRY OF RESIDENCE OR STAY — PRE-EXISTING CONDITION — MAXIMUM DURATION FOR GRANT OF BENEFIT

Present regulations:	R 1408/71 art. 35 R 574/72 art. 32, 33
Corresponding text of abrogated regulations:	R 3 art. 17 para. 2, art. 19 para. 4, art. 20 para. 4 R 4 art. 23 R 36 art. 6 para. 4, art. 7 para 3

A — Where there are several schemes

238 — Where there are several insurance schemes in the Member State responsible for providing benefit, the applicable scheme for persons staying or residing in that country, whose entitlement rests on the legislation of another State, is that applying to manual workers in the steel industry.

However, if there is a special scheme for mine workers, these workers and members of their families benefit from that scheme whenever the institution of the place of stay or residence to which the persons concerned apply is competent to apply that scheme (R 1408/71, art. 35, para. 1).

239 — In case of equivalence of benefits provided by the mine workers' scheme and by the scheme covering manual workers in the steel industry respectively, the persons concerned may apply to the nearest institution applying this latter scheme, which must then provide benefit (R 574/72, art. 32, para. 1).

240 — Where benefits under the mine workers' scheme are more advantageous the persons concerned retain the right of choice between the institutions referred to above. But the institution applying the steel workers' scheme, if it is applied to, must draw the claimants' attention to the possibility of obtaining more advantageous benefits by applying to the institution for the mine workers' scheme, and must supply the latter's name and address (R 574/72, art. 32, para. 2).

C 194 — The provisions referred to in No 238 are based (with further specifications) on those of article 19, para. 4 of Regulation No 3. The new provisions added to Regulation No 574/72 set out the rules for implementing the principle enshrined in article 35, para. 1 of regulation No 1408/71.

It appeared advisable to allow mine workers to apply, in the case of temporary stay for example, not to an institution for a mining scheme which might be far from their place of temporary stay, but to the nearest institution for the general scheme. The new provisions thus guarantee to miners and their families a choice between the facilities of the general scheme and the perhaps more favourable benefits of the mine workers' scheme (SRMC R No 1408/71, ad art. 35, para. 1).

B — Pre-existing condition

241 — No condition relationg to the origin of the condition which may be laid down in the legislation of a Member State may be put in the way of workers and members of their families to whom the regulation applies, no matter which Member State they reside in (R 1408/71, art. 35, para. 2).

C — Maximum duration for award of benefit

242 — Where a maximum duration is laid down in a legislation for the award of benefit, account may be taken, where appropriate, of the period during which benefit has already been provided under another legislation for the same case of sickness or maternity (R 1408/71, art. 35, para. 3).

243 — The institution of a Member State called upon to provide benefit may ask the institution of another Member State to communicate to it the necessary information fcr the purpose of applying the preceding provisions (R 574/72, art. 33).

D — Common observations

C 195 — The indications contained in this section correspond to the provisions of regulation No 3 (article 17, para. 2, article 19, para. 4 and article 20, para. 4), of regulation No 4 (article 23) and regulation No 36 (article 6, para. 4 and article 7, para. 3).

SECTION VIII — SPECIAL PROVISIONS CONSEQUENT UPON THE PARTICULAR PROCEDURES OF DANISH, GERMAN, BRITISH AND IRISH LEGISLATION

Present regulation: R 1408/71 Annex V, amended by Treaty of Accession OJ EC L 73, 27 March 1972, by R 2864/72 OJ EC L 306 of 31 December 1972, R 1392/74 OJ EC L 152 of 8 June 1974 and R 1209/76 OJ EC L 138 of 26 May 1976

Denmark

244 — In case of residence or stay in Denmark on the part of persons covered by the regulation, the benefits in kind awarded are those provided for persons whose income does not exceed the level indicated in article 3 of Act No 311 of 9 June 1971 on the Public Health Service where the charge for the said benefits falls to the institution of a Member State other than Denmark (R 1408/71, Annex V B 4, amended by the Treaty of Accession and by R 2864/72).

245 — According to Danish law, entitlement to cash benefits only exists, in case of maternity, if during a prescribed period before incapacity for work the woman concerned has been in receipt of a minimum prescribed salary. Women who have not been subject to Danish legislation throughout the reference period may nevertheless receive benefit provided that, during the reference period preceding their employment in Denmark, they have been subject to the legislation of another Member State. For this purpose the woman concerned is deemed to have received during the periods taken into account an average salary equal to the average salary received during the periods completed under Danish legislation during the reference period (R 1408/71, Annex V B 9 added by R 2864/72).

Germany

246 — In the German Federal Republic a system of compensation is laid down for exceptional charges arising for certain sickness insurance institutions out of application of the regulations. The necessary resources for this compensation, organized under the aegis of the Federal Association of Regional Sickness Funds, are supplied by taxes levied on all the sickness insurance institutions in proportion to the average number of persons (including retired persons) each covered during the previous year (R 1408/71, Annex V C 5, amended by the Treaty of Accession).

246 a — The lump-sum contributions towards confinement expenses, granted under German legislation to insured persons and to the members of their families, are considered as a benefit in kind (Regulation No 1408/71, Annex V C 7, as amended by Regulation No 1209/76).

United Kingdom

247 — In calculating the earnings-related cash benefits laid down by the legislation of the United Kingdom in the case of sickness (see 159-1 above) a nominal corresponding salary is taken into consideration with regard to the periods of employment completed in another Member State, so that reference may be made to the appropriate tax scale corresponding to the average weekly rate of the supplement which may vary according to the salary fixed for the whole body of beneficiaries, by the government actuary, for the payment of variable benefits for the current year (R 1408/71 modified by the Treaty of Accession, Annex V-I-II plus R 1392/74).

247 a — For the purpose of granting sickness and maternity insurance benefits in kind to pensioners and members of their families under the conditions provided for at Nos 214 to 231 above, the attendance allowance granted to workers under United Kingdom legislation is considered as an invalidity benefit (para. 15 added to point I. United Kingdom of regulation 1408/71 by regulation 1209/76 of 30 April 1976).

247 b — A new paragraph 17, added to point I. United Kingdom of Annex V to regulation 1408/71 by regulation 1209/76 sets out the conditions under which, on the one hand periods of insurance, employment or residence completed under the legislation of another Member State are taken into consideration when calculating the earnings factor used to determine entitlement to benefits as provided for by United Kingdom legislation and, on the other hand, conditions governing the conversion of the earnings factor into periods of insurance.

Ireland

247 c — Recipients of the benefits referred to in this Chapter are entitled free of charge to all medical treatment provided by Irish legislation, either in the case of residence or for a stay in Ireland, where the charge for these benefits falls to the institution of a Member State other than Ireland (R 1408/71 Annex V E 3, amended by the Treaty of Accession and by R 1392/74).

Members of the family of an employee subject to the legislation of a Member State other than Ireland who reside in the latter country, benefit free of charge from the whole range of medical treatment provided by Irish legislation. The responsibility for these benefits falls in principle on the institution to which the employee is affiliated.

However, when the spouse of the employee or the person having care of the children is pursuing a professional occupation in Ireland and when the employee is himself subject to the legislation of another Member State, the benefits provided for the members of the family remain the responsibility of the Irish institution to the extent that entitlement to such benefits is granted solely under the provisions of Irish legislation (R 1408/71 Annex V, E 3 a amended by R 1392/74).

C 196 — The extent of the entitlement to benefits in kind for sickness/maternity insurance in Ireland varies according to the total of their finances: residents are divided into three categories according to their income:

the first includes residents with low income who are entitled to the free use of the whole range of medical care;

the second includes residents with an average income who are entitled free of charge to medical care within the range of hospital treatment;

the third category includes residents with an income exceeding £1600 per annum and who have only very limited entitlement to specific benefits (in the case of tuberculosis and for their children in case of serious illness of long duration, for example mental illness).

Given that benefits provided by Irish legislation to persons staying or resident in Ireland, and who are entitled to benefits because of the legislation of another Member State, are reimbursed to that institution by the Member State concerned, and having taken account of the fact it would be very difficult to establish the total funds which the interested persons may have available, the most appropriate solution found was to compare them with people who benefit from free treatment within the whole range of medical care according to the terms of Irish legislation (Report of the Commission to the Council, Sec. (71) 4376 and 4550).

The third paragraph headed 247 c *has been inserted to Annex V E 3 of Regulation 1408/71 by Regulation 1392/74 in order to avoid disparities in the range of entitlements to benefits because of the application of Irish legislation in the case of professional occupation in Ireland by the mother or person having care of the children while the employee is subject to the legislation of another Member State.*

In this eventuality, after having put the general principle according to which members of the family of an employee, subject to the legislation of a Member State other than Ireland and who reside in the latter country, are entitled to medical care as wide in range as that of those residents in the first category already mentioned, and recalling that the responsibility for the benefits allowed for the employee rests with the institution with whom he is registered, the new provisions control the special case of the responsibility being shared when the mother or the person who has care of the children is undertaking a professional occupation in Ireland.

In this case the benefits given to the members of a family within the first category remain entirely the responsibility of the Irish institution. On the other hand, responsibility for benefits given to the members of families belonging to the third category rests with the competent institution because entitlement to benefits for this group must be considered as deriving from the employee's subjection to the legislation which this latter institution applies. Finally, with regard to members of the family who come under the second category, the total amount of benefits which would be due to them as a result of Irish legislation alone remains the responsibility of the Irish institution, and the responsibility for benefits which, under this legislation, are only provided for members in the first category, and which are paid to them, are the responsibility of the competent institution (ERER 1392/74).

247 d — Rules similar to those laid down in No 247 above are anticipated from 6 April 1974 with regard to the award of benefit varying according to salary laid down by Irish legislation in the case of an award of benefits for illness or maternity (R 1408/71 amended by the Treaty of Accession, Annex V E 7 added by R 1392/74).

C 196 a — Article 23 § 1 of Regulation 1408/71 (No 159-1 above) has been created for schemes in which benefits are integrally linked with salary and where the rate of short-term benefits is dependent on the recent salary of the interested party. Proportional benefits in British and Irish schemes are supplements to the lump-sum benefits and the total of these supplements does not depend on the salary of his last employment, but on his average salary received over a tax-revenue period before the start of entitlement. It was therefore appropriate to calculate nominal salary for periods of employment completed in another Member State for the tax period considered, and corresponding, to some extent, to that which the employee would have received during the same period had he been at work on British territory or in Ireland (ERER 1392/74).

247 e — Definition of "members of the family" in Denmark, the United Kingdom and Ireland

The term "member of the family" of an employee or of a person entitled to a pension because of the grant for medical care applies (R 1408/71, Annex V amended by R 1392/74):

— In Denmark, for all persons considered as members of the family according to the law of the public health service (Annex 5 amended B 10).

— In Ireland, for all persons considered as being the responsibility of the employee for the implementation of the laws from 1947 to 1970 regarding health (Annex V, amended by E 5).

— In the United Kingdom, for all persons considered as persons for whom responsibility is assumed in accordance with the law covering the National Health or by the legislation in the United Kingdom regarding accidents at work (Annex 5, modified by I 12).

C 196 b — The provisions mentioned under No 247e have been added by Regulation No 1392/74 because the expression "member of the family" has not been made the subject of a general definition in the legislations relating to medical care in the new Member States.

In the United Kingdom a definition of the concept "persons for whom responsibility is assumed" is nevertheless given for the award of benefits in kind under the legislation concerning the National Health and under that regarding accidents at work.

In Ireland, the laws of 1947 to 1970 concerning the health service use only the expressions "adults and persons in their care", the concept of a person for whom responsibility is assumed being solely dependent on the assessment of a health service official, against which appeal may be made before a tribunal.

In Denmark benefits in kind are laid down by three different legislations: the law for hospitals (benefits in hospitals), the law concerning re-training grants (grants for artificial limbs), the law with regard to public health which governs the award of sickness benefits other than those paid by right of the first two laws.

For the application of articles 22 § 1 para. a) and of § 1 of regulation 1408/71 (members of the family of an employee or a pension holder, resident in one of the Member States, who goes for a temporary stay to another Member State where they require benefits in kind), a definition of the expression "member of the family" was necessary, article 1 § f) of regulation 1408/71 referring in this respect to the legislation of the country of residence (ERER 1392/74).

SECTION IX — REIMBURSEMENT BETWEEN INSTITUTIONS

Present regulations:	R 1408/71 art. 36 R 574/72 art. 4, 93 to 95, Annex 9, amended by R 878/73 OJ EC L 86, 31 March 1973 and by R 1392/74 OJ EC L 152 of 8 June 1974 by R 1209/76 OJ EC L 138 of 26 May 1976 *
Corresponding text of abrogated regulations:	R 3 art. 23 R 4 art. 73 to 75 R 36 art. 14
Administrative Commission:	Decision Nos 90, 92, 109
Form to be used:	E 125

* R 2595/77 OJ EC L 302 of 26 November 1977

A — General principle

248 — Benefits in kind are wholly reimbursed by the competent institution to the institutions which have provided them, subject however to the indications appearing in No 232 above (R 1408/71 art. 36 para. 1).

249 — These reimbursements are carried out on proof of actual expenses or on the basis of lump-sums determined in such a way as to ensure a reimbursement as close as possible to the actual expenses (R 1408/71 art. 36 para. 2).

250 — Member States or the competent authorities of those States may, after consulting the Administrative Commission, renounce all reimbursement or set up other procedures for assessing the amounts to be reimbursed (R 1408/71 art. 36 para. 3; R 574/72 art. 93 para. 6, 94 para. 6, 95 para. 6).

C 197 — The provisions appearing in Nos 248, 249 and 250 correspond to those of article 23 of regulation No 3.

C 198 — While regulation No 3 provided for reimbursement limited to three-quarters for expenses relating to benefits in kind provided to members of a worker's or pensioner's family by the institution of the place of their residence on behalf of the competent institution, regulation 1408/71 extends to those benefits the rule of full reimbursement provided by regulation No 3 for the other cases.

The limitation of reimbursement to three-quarters, in support of which had been invoked the need to make the institution of the place of residence of the members of the family participate in the costs incurred, so that such benefits were not awarded too liberally and without methodical control, was no longer regarded as being justified. In fact reimbursement in this case is made in accordance with lump-sum amounts determined on the basis of the average cost in the creditor country of benefits in kind provided to members of the family of all workers or all pensioners; the amount of the benefits awarded to the persons in question is not of great importance to the level of average costs. In addition, the institution of the competent country has received the full amount of contributions which are designed also to cover the expenses of benefits provided to those persons.

The only exception to the rule of full reimbursement thus exists only for former frontier workers and members of their families (cf. No 232 above) (ERER 1408/71).

B — Benefits which, normally, give rise to reimbursement against proof of actual expenses

251 — Reimbursement between institutions is carried out against proof of actual expenses (drawing up of individual statements of expenses on form E 125) with regard to benefits provided (R 574/72 art. 93 para. 1, 5 as amended by Regulation 2595/77):

251-1 — to workers and members of their families residing with them in the territory of a Member State other than the competent State (cf. Nos 144 and 145 above);

251-2 — to workers and members of their families on temporary stay in, returning or transferring their residence or going to obtain treatment to the territory of a Member State other than the competent State (cf. Nos 175 and following above);

251-3 — to unemployed persons and members of their families (cf. Nos 192 and following above);

251-4 — to claimants of pensions or allowances and members of their families (cf. Nos 206 and following above);

251-5 — to members of the families of recipients of pensions or allowances residing in the territory of a Member State other than that where the pensioner is residing (cf. No 224 above);

251-6 — to recipients of pensions or allowances and members of their families staying in the territory of a Member State (cf. No 230 above).

251-7 — to members of the families residing in the territory of a Member State other than the competent State and other than the State in whose territory the worker is residing (cf. No 173a and 178 above).

252 — In the cases referred to under 251-5, 251-6 and 251-7 above, the institution of the place of residence of the member of the family or of the recipient of the pension or allowance is, for the purposes of reimbursement, considered as the competent institution (R 574/72, art. 93, para. 2 as amended by R 2595/77).

253 — In a subsidiary manner, where the actual amount of benefits does not appear in the accounting of the institution which has provided them, the sums to be reimbursed are determined in the light of the directives of the Administrative Commission on the basis of a lump-sum established by means of all the appropriate references drawn from the available data. The amount of the lump-sums is decided by the Administrative Commission (R 574/72 art. 93 para. 3).

254 — For reimbursement purposes account cannot be taken of tariffs higher than those applied by the institution which has provided the benefits (R 574/72 art. 93 para. 4).

C 199 — *Considering that the lump-sum applied for reimbursement of benefits in kind referred to in article 19 para. 2 and article 29 of Regulation 1408/71 is calculated on the basis only of the average cost of certain systems, branches or groups of workers, the Council felt that it would be best, in order to arrive on this basis at a lump-sum representing as closely as possible the real expenses, to provide for corrective measures in order to take account in particular of the average costs for the other economic sectors, of costs differentiated by region, of families all of whose members do not reside in the territory of the same Member State (dispersed families).*

The Council found that, bearing in mind all the elements calling for corrective measures, a lump-sum representing 80% of the average cost referred to abovs constitutes a reimbursement which is as close as possible to the actual expensee (SRMC R 1408/71 ad art. 36).

C — Reimbursement of sickness/maternity benefits in kind provided to members of a worker's family who do not reside in the same Member State as him. And to pensioners and members of their families not residing in a Member State under whose legislation they receive a pension or allowance and are entitled to benefit

255 — The benefits concerned (cf. Nos 145, 216 and 218 above) are reimbursed on the basis of lump-sums as close as possible to the actual expenses established for each calendar year (R 574/72 art. 94 para. 1 and art. 95 para. 1, amended by R 878/73).

256 — The lump-sums are established, depending on the case in question, by multiplying the average annual cost per family by the average annual number of families to be taken into account, or by multiplying the average annual cost per pensioner by the average annual number of pensioners to be taken into consideration, and applying a rebate of 20% to the results (R 574/72 art. 94 para. 2 and 3, art. 95 para. 2 and 3).

257 — The schemes to be taken into account in the different Member States for calculating the annual average cost of benefits in kind are shown in Annex 9 to Regulation No 574/72 (Regulation 574/72, art. 4). This Annex 9 was amended by Regulations Nos 878/73 (OJ No 86 of 31 March 1973), 1392/74 (OJ No L 152 of 8 June 1974) and 1209/76 (OJ No L 138 of 26 May 1976).

258 — The number of families, and the number of pensioners to be taken into consideration are established by means of inventories kept for this purpose by the institution of the place of residence on the basis of documents supplied by the competent institution. Any disputes arising from the keeping of inventories are submitted to the Audit Board (R 574/72 art. 94 para. 4, art. 95 para. 4).

259 — The methods and procedures for determining lump-sums are set by the Administrative Commission (R 574/72 art. 94 para. 5 and 95 para. 5).

C 200 — The provisions of articles 93, 94 and 95 of regulation 574/72 are the same, subject to various clarifications and amendments, as those in articles 73 to 75 of regulation No 4.

C 200 a — The procedures according to which the inventories referred to in No 258 should be established have been finalized by the decision of the Administrative Commission No 90 of 24 May 1973, published in OJ EC No 131 of 25 October 1974.

C 200 b— Administrative Commission Decision No 92 of 22 November 1973 (OJ EC No C 99 of 22 August 1974) as amended by Decision No 109 of 30 November 1977 (OJ EC No C 125 of 30 May 1978) lays down the rules for determining amounts to be refunded pursuant to the provisions mentioned in numbers 251 to 259.

Pursuant to that amended Decision:

— the sickness and maternity benefits in kind to be considered for the determination of refunds, referred to in articles 93, 94 and 95 of regulation 574/72, shall be the benefits considered as benefits in kind under the national legislation administered by the institution which has provided the benefits, in so far as they can be acquired in accordance with the provisions of articles 19, paras. 1 and 2, 22, 25, paras. 3 and 4, 26, 28, para. 1, 28 A, 29 and 31 of regulation 1408/71 (CA No 109);

— for the calculation of the average costs mentioned in articles 94 and 95 of regulation 574/72, the additional benefits specified in the statutes or rules of procedure of the institutions shall be included in total annual expenditure on sickness and maternity benefits in kind.

On the other hand, the following shall not be included in total annual expenditure on sickness and maternity benefits in kind or be taken into consideration for the calculation of the average cost:

— expenditure incurred in respect of the provision of home help and meals on wheels, the supply of milk, maintenance in old people's welfare homes, fluoridation of water supplies, medical research and subsidies to institutions for preventive medicine, granted for a general campaign for health protection not sponsored by social security institutions;

— the amounts refunded to other Member States in accordance with the Regulations or bilateral or multilateral agreements.

C 200 c — The annual average costs of benefits in kind to be referred to for the lump-sum assessment of expenditure pertaining to benefits provided, on the one hand, to the family members referred to in Article 19 (2) of EEC Regulation No 1408/71 and, on the other hand, under Articles 28 (1) and 28 (a) of EEC Regulation No 1408/71 to pensioners and members of their families were published:

— for 1973, in OJ No C 157 of 10 July 1976 and No C 113 of 11 May 1977;

— for 1974, in OJ No C 234 of 20 September 1977 and No C 228 of 26 September 1978;

— for 1975, in OJ No C 228 of 26 September 1978;

— for 1976, in OJ No C 228 of 26 September 1978.

C 201 — Cf. Chapter XVI below for common provisions applicable to reimbursements (frequency, conversion of currencies, transfer of funds...).

CHAPTER IX

INVALIDITY

SECTION I — GENERAL

Present regulations:	R 1408/71, art. 37 and 40 as amended by the Treaty of Accession, OJ EC L 73, 27 March 1972, by R 2864/72, OJ EC L 306, 31 December 1972
Corresponding text of abrogated regulations:	R 3 art. 24

260 — Entitlement to benefit is determined differently depending on whether the insured person has completed insurance periods:

260-1 — exclusively under legislations under which the amount of the benefit is determined irrespective of the duration of the periods completed (Type A legislation) (R *1408/71*, art. 37, para. 1 as amended by the Treaty of Accession and by R 2864/72);

260-2 — either exclusively under legislations the benefits of which depend on the duration of periods completed (Type B legislations) or alternatively or successively under legislations of Type A and Type B (R 1408/71 art. 40).

C 202 — Regulation No 3, in article 24 and Annex F, already made this distinction between the two types (A and B) of national legislations on invalidity. But apart from the maintenance in force of existing bilateral provisions governing relations between countries with Type A legislations, regulation No 3 applied to invalidity the provisions relating to retirement and death (payment of pro rata elements of pension to the charge of each of the States concerned even if certain of those States had Type A legislation).

The wide divergencies between these two types of legislation led to the maintenance, under the new regulations, of the distinction made by regulation No 3. In addition, because of the development of Type A legislations, it appeared useful to set up at Community level a method of awarding benefit which was directly adapted to the concepts upon which these legislations were based and applicable to all workers who had been exclusively insured under such legislations (ERER 1408/71).

C 203 — The new Danish legislation on invalidity pensions provides for the award of a pension in proportion to the duration of residence periods. For this reason R 2864/72 amended the title of Section I, articles 37 para. 1 and 38 para. 1 and Annex III B Denmark, as amended by the Treaty of Accession, so as to delete references to periods of residence, since section I of Chapter II of regulation 1408/71 does not apply to Danish legislation (ERER 2864/72).

261 — The rules laid down in this Chapter leave outside their scope any pension increases or supplements for children which are the subject of special provisions inserted in Chapter XV (R 1408/71, art. 37, para. 1).

C 204 — *In a statement inserted in the Minutes of the Council concerning the provisions relating to invalidity, retirement and death (pensions) the Commission stressed the "compromise" nature of certain provisions in the regulation. It explained however that it could not "accede unreservedly to solutions which could in certain cases be out of line with the principles stated by the Court of Justice on the subject" (SRMC R 1408/71 ad art. 37 to 51).*

SECTION II — DETERMINATION OF ENTITLEMENT

Applicable provisions:	R 1408/71, art. 37 to 40 and Annex III amended by the Treaty of Accession OJ EC L 73, 27 March 1972, by R 2864/72, OJ EC L 306, 31 December 1972, by Decision of the Council, affecting Adaptation of the Acts concerning the Accession of the new Member States to the European Community, OJ EC L 2 of 1 January 1973, by R 1392/74, OJ EC L 152 of 8 June 1974, Annex IV, amended by R 1392/74, OJ EC L 152/74 of 8 June 1974, by R 1209/76, OJ EC L 138, 26 May 1976 and R 2595/77, OJ EC L 302, 26 November 1977
Corresponding text of abrogated regulations:	R 3, art. 24, 25 and 26 R 4, art. 28
Court of Justice EC:	Cases 32/70, 140/73, 35/74, 49/75, 57/75, 108/75, 62/76, 75/76, 109/76, 112/76, 22/77, 32/77, 37/77, 41/77
Administrative Commission:	Decision No 79
Forms to be used:	E 205, E 206, E 207, E 213, E 214

A — Workers subject exclusively to legislations (Type A) under which the amount of invalidity benefit is independent of the duration of insurance periods

§ 1 — *Applicable legislation*

262 — The legislations concerned are (R 1408/71, art. 37-2 and Annex III, amended by Treaty of Accession, by R 2864/72, by decision of the Council Affecting adaptation of the acts concerning the accession of the new Member States and by R 1392/74):

262-1 — in Belgium, the legislations relating to the general invalidity scheme and the special invalidity scheme for mine workers and the special scheme for seafarers in the merchant navy;

262-2 — in France, all legislations on invalidity insurance except the legislation concerning invalidity insurance in the mine workers' scheme;

262-3 — in Ireland, section 6 of the law on social security and the social services of 29 July 1970;

262-4 — in the Netherlands, the law of 18 February 1966 on insurance against incapacity for work; the law of 11 December 1975 establishing a general disablement insurance;

262-5 — in the United Kingdom:

— Great Britain, the Act of 14 July 1971 on invalidity benefits;

— Northern Ireland, the Act of 16 July 1971 on invalidity benefits.

§ 2 — *Aggregation of insurance periods*

263 — Periods of insurance completed under the various legislations to which the worker has been subject are put together. All these periods are taken into account as far as necessary, as if they were periods completed under the legislation applied by the institution from which benefit is due (R 1408/71, art. 38, para. 1 amended by the Treaty of Accession and by R 2864/72).

264 — Where admission to receipt of certain benefits is suject to the condition of having been insured in an occupation subject to a special scheme or in a prescribed employment, account is not taken, for the award of these special benefits, of insurance periods completed under other legislations, unless they have been completed under a similar scheme or, otherwise, in the same occupation or the same employment. If these periods do not give entitlement in respect of the special scheme, they may nevertheless be considered for obtaining benefit from the general scheme (R 1408/71 art. 38, para. 2).

C 205 — *For the aggregation of periods use is made of forms E 205 (declaration concerning the insurance record), E 206 (declaration of periods of employment in the mines and enterprises regarded as such), E 207 (information concerning the workers' career).*

§ 3 — *Award of benefits*

265 — If, at the time when incapacity for work, followed by invalidity, occurs, the person concerned meets the conditions required for entitlement to benefit from the institution of the Member State whose legislation is applicable to him, bearing in mind where necessary any aggregation of insurance periods, benefits are awarded to him exclusively by that institution and according to the legislation which it applies. The person concerned thus obtains a full pension under that legislation but he may not claim benefits from another legislation to which he may previously have been subject (R 1408/71, art. 39, para. 1, 2).

266 — If the worker does not meet the conditions required by the legislation applicable at the time when incapacity for work occurred, but if he is still entitled to benefit under the legislation of another Member State or would be so entitled by virtue of aggregation of insurance periods, he receives the benefits provided for under that legislation (R 1408/71 art. 39 para. 3).

C 206 — The system described above is based on the provisions of the General Social Security Convention of 17 January 1948 between Belgium and France, maintained in force by insertion in Annex D of regulation No 3.

Where all the legislations to which the worker has been subject do not link the amount of benefit to the duration of completed insurance or residence periods, he is awarded a full pension under one of those legislations, the whole charge for which falls to the institution applying that legislation.

The worker's entitlement to a pension is determined exclusively with reference to the legislation to which he was subject at the time the risk insured against materialized.

This system of awarding benefit under a single legislation has the advantage of being a simple method and avoiding the difficulties arising out of the involvement of several legislations in the award of benefit because of the differences existing between one legislation and another with regard in particular to the concept of invalidity and the duration of the waiting period.

In addition it ensures complete protection for the persons concerned since, if they do not meet the conditions set by the legislation applicable at the time when the risk materializes, they still retain their acquired entitlement or that in course of acquisition under another legislation to which they have previously been subject (ERER 1408/71).

267 — If the legislation under which benefit is awarded provides that the amount is established on the basis of members of the family other than children, account is also taken of members of the family residing in the territory of a Member State other than the competent State (R 1408/71 art. 39 para. 4).

C 207 — The preceding provision reproduces, subject to editorial amendments, that in article 26 (4) of regulation No 3.

B — Workers subject either exclusively to legislations (Type B) under which the amount of invalidity benefit depends on the duration of insurance or residence periods or to legislations of that type and of type A

268 — Where a worker, during his working life, has been subject to legislations of which at least one makes the amount of benefit depend on the duration of insurance or residence periods (Type B legislations), all the rules applicable to the calculation of retirement pensions and allowances laid down in Chapter X below apply by analogy (R 1408/71 art. 40 para. 1).

C 208 — It has been seen under C 203 above that the new Danish legislation with regard to invalidity pensions provides for the award of a pension in proportion to the duration of residence periods.

C 208 a — Where a worker had first been subject to a Type A legislation and then to a Type B one, his entitlement shall be determined on a pro-rata basis with regard to the Type A legislation. With regard to Type B legislation, the pension is calculated only on the basis of the rules laid down under that legislation once the right has been acquired, without having to take into consideration periods completed under Type A legislation; conversely, such a pension is calculated on a pro-rata basis.

269 — However, the rules laid down in Nos 265 to 267 above continue to apply if the person concerned:

269-1 — at the time when incapacity for work followed by invalidity occurs is subject to a Type A legislation;

269-2 — possesses entitlement to benefit without needing to resort to insurance periods completed under Type B legislations;

269-3 — does not have entitlement under a Type B legislation (R 1408/71 art. 40 para. 2).

269 a — To determine entitlement to benefits in a Member State under a legislation based on the materialization of the risk insured against (Type A legislation), where the award of invalidity benefits is conditional on the award, for a specified period of cash sickness benefits or on the person concerned having been incapable of work; if a worker had first been subject to a Type A legislation and becomes incapable of work while subject to a Type B legislation, account is taken of:

(a) any period during which he had received, under the legislation of the latter Member State, cash sickness benefits for that incapacity for work, or, alternatively, if he had continued to receive his wage or salary;

(b) any period during which he received, under the legislation of the second Member State, invalidity benefits in respect of invalidity following that incapacity for work.

Those periods are taken into consideration as if they were periods during which cash sickness benefits had been provided pursuant to the legislation of the first Member State or during which the person concerned was unable to work within the meaning of that legislation. These provisions do not preclude the implementation of the provisions mentioned in Sections 265 to 267 (R 1408/71, art 40, para. 3 (a) added by R 2595/77).

269 b — For the purpose of applying the provisions referred to in 269a, the Council of the European Communities stated that "the assessment of incapacity for work under the legislation of a Member State does not require the worker to be present in the territory of that Member State. Accordingly, the right to benefits under the legislation which makes the grant of invalidity benefits depend on the person concerned being incapable of work for a specific period may, if necessary, be determined without invoking article 40, para. 3 (a)". (See 269a above) (Declaration entered in the minutes of the Council).

269 c — For the purpose of applying the abovementioned provisions (*C 269a*) in Belgium, Ireland and the United Kingdom, account is taken only of periods during which the worker was incapable of working, as laid down in Belgian, Irish and United Kingdom legislation respectively. In the case of Irish and United Kingdom legislations, these provisions shall apply from 1 July 1976 (R 1408/71, Annex V A 4, E 8, I 18 as added by R 2595/77).

269 d — In the case outlined above, entitlement to invalidity benefits is, under Type A legislation, acquired either at the end of the period during which sickness benefits had been provided or at the end of the preliminary period of incapacity for work, depending on which of these periods is laid down by the legislation applicable, and not earlier than:

(a) the date on which entitlement to invalidity benefits is acquired under the Type B legislation of the second Member State concerned, or

(b) the day after the last day on which the person concerned was entitled to cash sickness benefits under the legislation of the second Member State (R 1408/71, art. 40, para. 3 (b) as added by R 2596/77).

269 e — For the purpose of applying the provision outlined in 169b in dealings between Italy and Belgium, applications for invalidity pensions lodged in Italy within six months of the entry into force of Regulation No 2595/77 will be investigated in Belgium in accordance with previous ad ministrative procedure (Declaration by the Belgian delegation entered in the Council minutes).

269 f — The provisions referred to in Sections 269a and 269b (Art. 1, para. 4 of regulation 2595/77) enter into force on 1 July 1976 to implement Irish, Netherlands and United Kingdom legislations.

C 208 b — The provisions outlined above in Sections 269a and 269b fill a gap in regulation 1408/71 as regards determining entitlement to an invalidity pension under a Type A legislation if a worker who had initially been subject to such legislation becomes an invalid while subject to a Type B legislation.

These provisions had to be inserted to implement United Kingdom legislation as well as Belgian and Netherlands legislations. Under United Kingdom legislation, invalidity benefits are awarded only after cash sickness benefits have been provided for a period of 168 days. Under Belgian and Netherlands legislations, the right to such a benefit can be acquired only after specified periods of incapacity for work. Under the new provisions, entitlement to these benefits may be acquired by taking account of periods during which the person concerned received cash sickness benefits or invalidity benefits under the legislation of another Member State.

Moreover, the new provisions take account of the fact that in several Member States the wage or salary continues to be paid in lieu of sickness benefits and that under Type B legislations entitlement to an invalidity pension may be acquired on sickness benefits having been provided for a short time or even if no benefits were provided in respect of incapacity for work.

The provisions outlined in Section 269b lay down that pursuant to the legislations concerned, the right to benefits may be acquired only after the end of the preliminary period laid down but not before the right to cash sickness benefits provided under Type B legislation has expired or when the right to invalidity benefits is acquired under such legislation.

C 208 c — See also C 79b (CJ EC Cases 22/77 and 37/77), C 256c (CJ EC Cases 62/76 and 112/76), C 256c (CJ EC Case 32/77) and C 256d (CJ EC Case 75/76) on the calculation of invalidity pensions pursuant to article 40 of regulation 1408/71.

270 — The decision taken by the institution of a Member State on the subject of the condition of invalidity must be accepted by the institution of any other Member State concerned whenever concordance of conditions relating to the condition of invalidity is established by the tables appearing in Annex IV to regulation 1408/71 as amended by R 1209/76 (R 1408/71, art. 40, para. 4 as amended by R 2595/77).

C 209 — This provision is designed to avoid possible difficulties in the verification of invalidity where the institutions of several Member States are involved in the settlement of benefits.

Annex IV of Regulation 1408/71 has been amended by Regulation 1392/74 of 4 June 1974 (OJ EC L 152 of 8 June 1974) because of changes which have come about in Italian legislation following a decision in the constitutional Italian Court with the aim of standardizing the conditions relating to the state of disability with regard to employees and workers (ERER 1392/74).

C 210 — The provisions described in No 268 above correspond to the formula in article 26 para. 1 of regulation No 3.

Given the similarity of the concepts with regard to invalidity insurance on the one hand and retirement/survivor insurance on the other, in countries whose legislation links the amount of invalidity benefit to the duration of insurance periods, an identical method for the award of both categories of benefit appeared preferable, even where the legislation applicable at the time when invalidity occurs may award benefit the amount of which is independent of the duration of insurance periods, so as not to impose an unjustified charge on institutions applying a legislation of that type nor deprive the persons concerned of their entitlement under other legislations (ERER 1408/71).

C 210 a — In Case No 140/73 (Direction régionale de la Sécurité sociale de la région parisienne v. Mme Mancuso Carmela) the Court of Justice of the EC, in a decision on 6 December 1973, gave judgment that "... the application by analogy of articles 27 and 28 of Regulation No 3 (assessment of old age pensions) to the cases referred to in article 26 § 2 (assessment of the total pension payable for disablement insurance when the insurance has come into force, in a Member State, subsequent to old age insurance) implies that the calculation of benefits on a pro rata basis can only be made if it has been necessary, because of the eligibility of entitlement, to total up first of all those periods completed under different legislations".

C 210 b — *In Case 57/75 (Fernand Plaquevent v. Caisse primaire d'Assurance du Havre and Directeur régional de la Sécurité sociale de Rouen), on the other hand, the EC Court of Justice, in a judgment delivered on 9 December 1975, ruled that "in circumstances in which for an insured person who has been successively subject to the legislation of two Member States to acquire a right to an invalidity pension it is necessary to take into account the insurance periods completed in one of these States as such insured person does not fulfil the conditions laid down in the other for entitlement thereto and where, under the legislation of this latter State, the calculation of benefits is based upon an average wage or an average contribution, without regard to length of the period of employment, the pro rata calculation must be made after aggregation of all the insurance periods, as provided for in article 28 (1) (b) of Regulation No 3".*

This decision is clarified by the grounds for judgment concerning article 28 of Regulation No 3:

— a pro rata calculation shall be carried out in every case in which the right to a pension is acquired under subparagraph (a); its purpose is therefore to determine the amount of the benefit, the right to which would not have been acquired without the process of aggregation;

— the sole purpose of subparagraph (c) is to free the relevant institutions of Member States in which a pension must be calculated on the basis of an average wage, an average contribution or an average increase, of the obligation to take into account, in order to determine that average, the wages received, the contributions paid or the increases granted in another Member State;

— as a result, that subparagraph (c) does not depart from the rule laid down in the preceding subparagraphs, according to which the corollary of the aggregation of insurance periods and assimilated periods completed under the legislation of each of the Member States in question is a pro rata calculation by each of the relevant institutions of the amounts of the benefits.

C 210 c — *In case 108/75 (Giovanni Balsamo v. Institut national d'assurance maladie-invalidité, Belgium) the EC Court of Justice on 9 March 1976 ruled that "when a migrant worker has made a claim for invalidity benefit to the institution of the place of his permanent residence and in accordance with the procedure specified by the legislation of the said place, as prescribed by article 30, 1, of Regulation No 4, or specified by the legislation applied by that institution, as is prescribed by article 36, 1, of Regulation No 574/72, there is no need to make a new claim in another Member State even if, at the time of the making of his claim he did not yet satisfy all the fundamental conditions required by the legislation of the second State for a grant of the benefit".*

The Court of Justice of the EC confirmed this judgment in a judgment of 9 November 1977, in Case 41/77 (The Queen v. a national insurance commissioner ex parte Margaret Warry), where it ruled as follows:

"The condition that a claim must be made in a prescribed manner and within a prescribed time shall be regarded as satisfied in so far as such a claim has been duly made in accordance with the legislation of the State of residence."

The former case concerned an Italian worker who had been employed at first in Belgium and then in Italy and had, pursuant to article 30, 1, of Regulation No 4, which was in force at the time, applied to the Italian institution of his place of residence for an invalidity pension even though — this is possible under Italian legislation — he had not yet ceased working. What was concerned here was whether, in order to be entitled to the ratio of the pension he was entitled to because he had worked in Belgium he had to apply to the Belgian institution after ceasing work, because under Belgian legislation an invalidity pension could be awarded only if the person concerned had already ceased working (see No C 268 below).

Case 41/77 concerned a British national who had been insured in Great Britain from 1933 to 1971 and in the Federal Republic of Germany from August 1971 to June 1973, when he fell ill. From August 1973 to June 1974, sickness benefit was paid to him under German legislation and since the latter date he received a partial invalidity pension calculated by reference to the period that he had been insured in Germany. An application for a British invalidity pension was rejected on the grounds — apart from those outlined in C 213 below — that as he had not resided in the United Kingdom during the period concerned the person concerned had not applied for sickness benefits in accordance with the procedures and within the deadlines laid down; even if he were entitled to them, they could not be paid as he resided outside the United Kingdom.

The Court of Justice did not consider this a valid reason on the grounds that:

— article 36 of regulation 574/72 of 21 March 1972 was laid down with the aim of simplifying administration in order to exempt migrant workers, who have rights to assert in different Member States, from the right to lodge with the institutions in each of those States an application for the grant of the benefits which they may claim;

— even if it is true that that provision does not apply to sickness benefit, it would be contrary to the aim of article 51 of the Treaty and to the general scheme of regulation 1408/71 that a worker who has submitted a claim for invalidity benefit in accordance with that provision should have his claim refused on the ground that, at an earlier stage, he had not submitted a claim for sickness benefit to the competent institution of another Member State.

271 — Without prejudice to the other rules described in Chapter X below relating to the calculation of benefits "prorata temporis", the institution of a Member State is only bound to award benefit to the extent that the total duration of insurance or residence periods completed under the legislation of that State is at least one year and that under that legislation those periods alone give entitlement to benefit (R 1408/71 art. 48 para. 1 amended by the Treaty of Accession).

C 210 d — With regard to cases where the granting of benefits in respect of periods of insurance or residence of less than a year is not obligatory, pursuant to article 48, 1, of Regulation No 1408/71, see below C 233a, ruling of the EC Court of Justice in Case 49/75.

272 — However, so that the person concerned does not suffer any disadvantage, the following two safeguarding clauses are laid down:

272-1 — any insurance or residence period of less than a year is not considered for the calculation of a benefit which is determined "prorata temporis", but it may be taken into account for the creation, maintenance or recovery of entitlement to benefit and for the calculation of the theoretical pension on the part of the other Member States (R 1408/71 art. 48 para. 2);

272-2 — where the worker has completed periods of less than a year under each of the legislations to which he has been subject and for this reason all the institutions find that they are free of obligation towards him, the said periods may be aggregated and taken into consideration for the purposes of obtaining benefit from the institution with which he was last insured and under whose rules the conditions for entitlement are met (R 1408/71 art. 48 para. 3, amended by Treaty of Accession).

C 211 — Regulation No 4, in article 28 para. 2, already contained similar provisions. The new regulation raised from six months to a year the minimum duration to be considered and, in order to give better protection to the interests of the beneficiaries, introduced the supplementary safeguarding clause described in 272-2 above.

C 212 — In case 32/70 (Union nationale des Mutualités Socialistes v. Stéphanie La Marca), the Court of Justice of the European Communities ruled on 1 December 1970 that "the provisions of article 28-2 of Regulation No 4 are not applicable to a worker who, subject in a Member State to a Type A legislation obtains in that State, in this case Belgium, his entitlement to sickness/invalidity benefit by the use of insurance periods completed in another Member State in accordance with the provisions of articles 16 and 17 of Regulation No 3 and then becomes the victim of invalidity before having completed a total of six months' work in the State where he is subject to a Type A legislation where no benefit can be awarded by the other Member State, in this case the Federal Republic of Germany, because of insufficient insurance periods".

C 213 — Where insurance periods completed in a Member State do not reach a total of twelve months but are sufficient to give entitlement to benefit under the applicable legislation, the said periods are to be taken into account by the Member States where the person concerned has been insured, for the purpose where appropriate of acquiring, maintaining and recovering entitlement to benefit and for the calculation of the amount of the theoretical pension and of the prorata temporis (AC Decision No 79 of 22 February 1973; OJ EC C 75 of 19 September 1973 replacing Decision No 34 OJ EC 17 February 1961).

C 213 a — In case 35/74 (Alliance nationale des Mutualités chrétiennes et Institut national d'assurance maladie-invalidité v. Thomas Rzepa) the Court of Justice of the European Communities has, in consideration of a decision of 12 November 1974, specified that the provisions of article 34 § 3 of regulation No 4 concerning the award of recoverable advances on pension (see C 291 below) cannot be implemented in the case of an award for a disablement benefit in a Member State having a system of invalidity pension of Type A, irrespective of the duration of periods completed. The provisions concerned (see also article 45 § 5 of regulation 574/72) in fact refer exclusively to the supposition that an initial totalling up would be necessary with a view to assessing eligibility to the entitlement.

C 213 b — Case 109/76, Mrs M. Blottner v. the Board of the Nieuwe Algemene Bedrijfsvereniging, Amsterdam. Court of Justice EC, judgment of 9 June 1977.

This case arose out of an action on the refusal by a Netherlands institution to pay an invalidity pension to a German national who had been employed in the Netherlands from 1928 to 1940, had then returned to Germany, where she had worked until 1946, and where, after having ceased all professional or trade activities, she suffered an accident in 1973 as a result of which she became disabled. In the framework of this case, the following questions had been asked as to whether:

1. *when examining the entitlement of the person concerned it was possible to take account of the legislation of a Member State (B-type invalidity insurance legislation) by which the applicant had formerly been covered, but which was no longer in force at the time invalidity was certified, as the scheme was now an A-type one.*

   On the grounds for judgment outlined in C 33c above, the answer by the Court of Justice to this question was affirmative;

2. *the fact that the invalidity insurance legislation of a Member State had been amended (change from a B-type to an A-type legislation) was likely to deprive the person concerned of entitlement to benefits by preventing the application of article 45, para. 3 of regulation 1408/71 to his case.*

In its reply to this question, the Court of Justice stated that the structure of the system of harmonization of national legislation established by the regulation was based upon the principle that a worker must not be deprived of the right to benefits merely because of an alteration in the type of legislation in force in a Member State. See also C 243a.

C 213 c — *Case 41/77 (on the position of J.P. Kelly with regard to an invalidity pension; the Queen v. a National insurance commissioner ex parte Christine Margaret Warry), Court of Justice EC, 9 November 1977.*

The problem, on the interpretation of article 51 of the Treaty and articles 40, 45 and 46 of regulation 1408/71 of 14 June 1971, had arisen in the framework of a case concerning entitlement to an invalidity pension under British legislation for a British national who had been insured in the United Kingdom from 1933 to July 1971 and in the Federal Republic of Germany from July 1971 to June 1973, when he fell ill. From August 1973 to June 1974 sickness benefit was paid to him under German legislation and since the latter date he received a partial invalidity pension calculated by reference to the period that he had been insured in Germany.

An application for a British invalidity pension was rejected by the competent investigating authority (the insurance officer), on the grounds that the person concerned had not been deemed to be entitled to sickness benefits during the 168-day period laid down by British legislation. That period was, under British legislation, a pre-condition for the award of an invalidity pension.

Considering that:

— where a worker has been successively subject to the legislations of two Member States, of which at least one is of Type B, the provisions of article 45 of the regulation are applicable by analogy to invalidity benefits;

— by virtue of regulation 1408/71 insurance periods completed in the Federal Republic of Germany should be taken into account, to the extent necessary, for the acquisition of the right to sickness benefits provided under British legislation and to invalidity benefits, as though the periods had been completed under British legislation.

In a judgment of 9 November 1977, the Court of Justice ruled as follows:

"Article 45 of regulation 1408/71 must be understood to mean that where the legislation of a Member State makes the acquisition of a right to invalidity benefit conditional upon the person concerned having been entitled to sickness benefit under that legislation for a given period in the immediately preceding period — that condition being subject to so far as material a) the completion of insurance periods b) the making of a claim therefor in a prescribed manner and within a prescribed time —

(i) the competent institution of the said Member State shall take into account insurance periods completed under the legislation of any Member State as though they had been completed under the legislation which it administers;

(ii) the condition that a claim must be made in a prescribed manner and within a prescribed time shall be regarded as satisfied in so far as such a claim has been duly made in accordance with the legislation of the State of residence".

C — Invalidity pensions acquired, on the one hand, under the legislation of Member States of the EEC concurrently with pensions acquired, on the other, under the legislation of a third country

The EEC Regulations on social security apply only to periods completed under the legislation of the Member States and consequently disregard periods completed in a third country, whether or not such country has entered into a social security convention with one or more of the relevant Member States.

The Court of Justice of the European Communities has, however, been asked to rule on the problem posed by an overlapping of invalidity pensions acquired, on the one hand, under the legislation of Member States of the EEC concurrently with pensions acquired, on the other, under the legislation of a third country.

C 213 d — Case 75/76, Silvana Kaucic and Anna Maria Kaucic v. Belgian Institut National d'Assurance Maladie-Invalidité. Court of Justice EC, judgment of 10 March 1977.

This case, which was held in the framework of the scope of Regulations (EEC) Nos 3 and 4, concerned the amount of invalidity pension due to the dependants of an Italian worker who had died in Italy after working in Italy and in Belgium as well as in Austria, a non-Member country, and who had been awarded an Austrian invalidity pension calculated in accordance with the bilateral agreement on social security between Italy and Austria.

The Belgian competent institution had calculated the proportion of the Belgian pension in accordance with articles 27 and 28 of Regulation No 3 taking into account, for the purpose of aggregation only insurance periods completed in Italy and in Belgium. In accordance with article 70, para. 2 of the Belgian Law of 9 August 1963, which provides that Belgian insurance benefits may not overlap with benefits provided under another legislation in respect of the same damages, the Belgian institution had, from 1 January 1964, deducted the amount of the Austrian pension from the Belgian allowance calculated "for accounting purposes", that is to say, the allowance to which the person concerned would have been entitled if all the insurance periods or assimilated periods aggregated in accordance with the procedures referred to in article 27 of Regulation No 3 had been completed exclusively under Belgian legislation.

Considering, in particular,

— that the last part of article 11, para. 2 of Regulation No 3 which prohibited the application to beneficiaries of provisions in the legislation of a Member State for the reduction of benefit referred only to cases where benefits of the same kind were acquired in accordance with the provisions of articles 27 and 28 of the regulation and accordingly did not prohibit the application of provisions for reduction where one of the benefits was acquired pursuant to the legislation of a third country;

— that it followed that the case in which a benefit had been acquired pursuant to the legislation of a third country fell outside the scope of article 9, para. 2 of Regulation No 4 which stated that in calculating the amount for accounting purposes according to article 28 of Regulation No 3 the benefit giving rise to the reduction should not be taken into account;

— that it must thus be concluded that when article 28 provided for the calculation for accounting purposes of the amount of benefit to which the person concerned would be entitled if all insurance periods or assimilated periods had been completed exclusively under the legislation of the relevant Member State, it permitted account to be taken of national rules providing for the reduction of the benefit on the basis of a benefit received by the person concerned from a source outside the Community;

the Court of Justice ruled as follows:

"The provisions of Regulation No 3 of the Council of 25 September 1958, concerning social security for migrant workers, and in particular article 28, para. 1 thereof, and of Regulation No 4 of the Council of 3 December 1958 do not preclude the application by the institution of a Member State, when calculating "for accounting purposes" the amount of the benefit to which the person concerned would be entitled if all the insurance periods had been completed exclusively under the legislation of that Member State, of a rule laid down under its own legislation in order to reduce the theoretical amount by the amount of a benefit received by the person concerned from a source outside the Community".

See also C 79c and 256d.

SECTION III — AGGRAVATION OF INVALIDITY

Present regulations:	R 1408/71 art. 41
Corresponding text of abrogated regulations:	R 3 art. 31 and 31*bis*

A — Aggravation of invalidity for which the worker is in receipt of benefit under the legislation of one Member State only

273 — If the person concerned, since receiving benefit, has not been subject to the legislation of another Member State, the institution of the first State assumes the charge of benefit, based on the aggravation, in accordance with the legislation which it applies (R 1408/71 art. 41 para. 1 *a)*).

274 — If the person concerned, since receiving benefit, has been subject to the legislation of one or more other Member States, a new award of benefit is undertaken in accordance with the indications given, depending on the case concerned, in Nos 265 to 267 and 268 and 269 above as if no invalidity pension had previously been awarded. This new award cannot, however, be disadvantageous to the person concerned: a differential supplement to the charge of the previous debtor institution is paid if the benefit which he received prior to the aggravation of his condition was higher (R 1408/71 art. 41 para. 1 letters *b), c)*).

C 214 — *The provisions of article 49 of regulation 1408/71 are also applicable where the person concerned, although not subject after the award of the pension on the part of a Member State to the legislation of another Member State, meets the conditions required by a legislation to which he had previously been subject on the grounds of aggravation of his invalidity (SRMC R 1408/71 ad Art. 41).*

275 — Where in the contingency referred to in No 274 above the competent institution for the initial incapacity is a Netherlands institution, the latter continues to pay the initial benefit after aggravation, and this is then deducted from the benefit due from the State to whose legislation the person concerned was last subject whenever the following conditions are met (R 1408/71 art. 41 para. 1 *d)*):

275-1 — when the condition which has provoked the aggravation is identical to that which gave rise to the award of the Netherlands benefit;

275-2 — when this condition is an occupational disease in the sense of the legislation to which the person concerned was last subject and gives entitlement to the supplement for aggravation referred to in article 60-1 *b)* of the regulation (cf. No 428 below);

275-3 — when the legislation or legislations to which the person concerned has been subject since he has been receiving a Netherlands pension is or are Type A legislation(s).

C 215 — These provisions had to be introduced because Netherlands legislation on incapacity for work does not make any distinction between whether or not the diseases which have provoked the invalidity are of occupational origin.

276 — If the person concerned is not entitled, after aggravation, to benefit to the charge of the institution of another Member State, that of the first State must assume the charge for benefit in accordance with the legislation which it applies, on the basis of that aggravation (R 1408/71 art. 41 para. 1 *e)*).

B — Aggravation of invalidity for which the worker is in receipt of benefit under the legislations of two or more Member States

277 — In this case arrangements are made for a new award of benefit in application of the rules laid down in No 268 above (R 1408/71 art. 41 para. 2).

C 216 — The provisions described above are based on those laid down in articles 31 and 31bis of regulation No 3 in case of aggravation of an occupational disease.

C 217 — In the contingency referred to in No 277 above, benefit corresponding to the new degree of invalidity is paid by the same institutions and in the same proportions if the worker has not been subject to the legislation of other Member States. If, on the other hand, after being awarded benefit under two or more legislations the person concerned has been subject to the legislation of other Member States, the award of benefit corresponding to the new degree of invalidity is made by the institutions of all the States to whose legislation the worker has been subject in proportion to the periods completed under each of those legislations (ERER 1408/71).

SECTION IV — RESUMPTION OF BENEFIT AFTER SUSPENSION OR WITHDRAWAL — CONVERSION OF INVALIDITY BENEFIT INTO RETIREMENT BENEFIT

Present regulations:	R 1408/71 art. 42 and 43
Corresponding text of abrogated regulations:	R 3 art. 26

A — Determination of the debtor institution where invalidity benefit is resumed

278 — Where benefits have been suspended and have to be resumed, the institution or institutions from which they were due must resume payment, provided that there is no case for conversion of the invalidity pension into retirement pension (R 1408/71 art. 42 para. 1).

279 — Where benefit has been withdrawn but the condition of the worker justifies the award of new invalidity benefit, this is awarded in accordance with the indications given, depending on the case concerned, in Nos 265 to 267 or 268 and 269 above (R 1408/71 art. 42 para. 2).

C 218 — The above provisions correspond to those in paragraph 3 of art. 26 of regulation No 3, subject to editorial amendments.

B — Conversion of invalidity benefit into retirement benefit

280 — Invalidity benefit is, where appropriate, converted into retirement benefit in the conditions laid down by the legislation or legislations applicable, in accordance with the rules laid down in Chapter X below (R 1408/71 art. 43 para. 1).

C 219 — These provisions take in the principle stated in para. 5 of article 26 of regulation No 3.

281 — If the recipient of invalidity benefit under several legislations does not simultaneously meet the conditions required by all these legislations for entitlement to retirement benefit, invalidity benefits due under the legislations whose conditions he does not meet continue to be paid to him until they in turn are converted into retirement benefit (R 1408/71 art. 43 para. 2).

282 — However, in order to avoid the overlap of an invalidity benefit, the amount of which is not in proportion to the duration of insurance, with an element of retirement pension, the institution from which the invalidity benefit is due may reduce this as if it were a retirement benefit in proportion to the periods of insurance completed under the legislation which it applies (cf. No 309-2 below) (R 1408/71 art. 43 para. 3).

C 220 — *The provisions described in No 281 are new. They are designed to avoid certain disadvantages met with in the application of regulation No 3 because the age of retirement is not the same for all schemes. As a result of this provision, for example, a worker in receipt of an invalidity pension under the Belgian general scheme, who has been insured under that scheme and under the French general scheme, continues to receive that pension up to age 65, notwithstanding the fact that from age 60 he receives a retirement benefit from the French scheme. Only from age 65, the normal age of retirement under the Belgian scheme, will the invalidity pension be converted in accordance with the provisions of that scheme into a retirement benefit calculated in accordance with the provisions of Chapter X (ERER 1408/71).*

SECTION V — INVESTIGATION OF CLAIMS AND PAYMENT OF BENEFIT

Present regulations:	R 1408/71 art. 94-5 R 574/72 art. 25 para. 2, 35, 36 para. 1, 38, 39, 40, 44, 51 to 59* Annex 10 modified by R 878/73 OJ EC No 186 of 31 March 1973 and R 1392/74 - OJ EC L 152 of 8 June 1974
Corresponding text of abrogated regulations:	R 4 art. 28 to 47
Court of Justice EC:	Case 110/73
Administrative Commiss'n:	Decision No 75
Forms to be used:	E 105, E 213, E 214

* and by R 2595/77 OJ EC L 302 of 26 November 1977

A — Invalidity benefit the amount of which is independent of the duration of insurance and which is awarded by one institution only

§ 1 — *Submission of claims for benefit*

283 — The following provisions deal with cases where invalidity benefit, the amount of which is independent of the duration of insurance, has been awarded by one institution only under articles 37 to 39 and 40 para. 2 of the regulation (c.f. Section II-A above and No 269 above) (R 574/72 art. 35 para. 1).

284 — The claim for benefit must be submitted by the worker either to the institution of the Member State to whose legislation he was subject at the time when incapacity for work followed by invalidity, or the aggravation of that invalidity, occurred, or to the institution of the place of residence which forwards the claim to the former institution (R 574/72 art. 35 para. 1).

285 — The date of submission of the claim to the institution of the place of residence, in the second contingency referred to above, is considered as the date of submission of the claim to the first institution. However, where appropriate the date of expiry of the period for the award of sickness insurance cash benefits should be considered as the date of submission of the pension claim (R 574/72 art. 35 para. 1).

286 — In case of aggravation of invalidity, while the person concerned, after the award of benefit, has been subject to the legislation of one or more other Member States, the institution with which the insured person was last insured informs the institution from which the pension was initially due of the amount and the effective date of benefit due under the legislation which it applies. With effect from that date, benefit due before the aggravation is withdrawn or reduced by the amount of the supplement referred to in No 274 above (R 574/72 art. 35 para. 2).

287 — The preceding provisions are not applicable in the contingency referred to in No 275 above. In this case, the institution with which the person concerned was last insured applies to the Netherlands institution to find out the amount of the pension due from that institution (R 574/72 art. 35 para. 3).

C 221 — *In fact the provisions described in No 274 above are not applicable where the competent institution for the initial incapacity is a Netherlands institution and where the conditions described in No 275 above are met.*

§ 2 — *Declaration concerning members of the family to be taken into consideration when establishing the amount of benefit*

288 — In order to benefit from the provisions described in No 267 above, the claimant must submit a declaration drawn up on form E 105 by the health insurance institution of the place of residence of the members of his family or by another institution assigned for this purpose in Annex 10 of regulation 574/72. The validity of this declaration is twelve months; this is renewable (R 574/72 art. 38 para. 1). Annex 10 of this regulation has been modified by regulation 878/73 and by regulation 1392/74, 1209/76 and 3595/77

289 — Any change in the composition of the family must be notified without delay by the worker (R 574/72 art. 25 para. 2 and art. 38 para. 1).

290 — In place of this declaration the competent institution may require the production of recent civil status documents with regard to the members of the family, except for children residing in the territory of another Member State (R 574/72 art. 38 para. 1 third subpara.).

291 — The fact that the members of the family are dependent upon the recipient of the pension should where appropriate be established by documents proving the regular forwarding of part of his earnings (R 574/72 art. 38 para. 2).

C 222 — *Regulation 574/72 takes in, subject to editorial amendments only, the provisions of subparas d) and e) of paragraph 1 of article 31 of regulation No 4, with regard to the provisions described in this paragraph. The simplified procedure described in article 25 of the implementation regulation for sickness/maternity insurance is also applicable by extension to invalidity insurance.*

C 223 — *In accordance with what is stipulated in subpara. c) of article 1 of the implementation regulation, the term "member of the family" retains the meaning laid down in subpara. f) of article 1 of the regulation. In consequence this term also means persons who do not live under the same roof as the person concerned where they are chiefly dependent upon him. The proof of this situation is established by the production of the documents referred to above (ERER 547/72).*

§ 3 — *Investigation of claims for invalidity benefit*

292 — For investigation of claims for invalidity benefit, a procedure similar to that laid down in article 16 of the implementation regulation is applied (c.f. No 141 above), with the difference that the declaration of completed insurance periods is issued at the request not of the person concerned himself but of the investigating institution (R 574/72 art. 39 paras 1, 2).

293 — In the case referred to in No 266 above, the institution which has dealt with the worker's case sends the papers to the institution with which he was last insured (R 574/72 art. 39 para. 3).

§ 4 — *Determination of the degree of invalidity*

294 — In order to determine the degree of invalidity, the competent institution uses forms E 213 and E 214 together with medical reports or documents and information of an administrative nature gathered by the institution of any other Member State.

Each institution may arrange for a medical examination except where the decision of another institution relating to invalidity must be accepted by it in the conditions described in No 270 above (R 574/72 art. 40).

C 224 — *Article 40 of regulation 574/72 corresponds to para. 2 of art. 31 of regulation No 4.*

C 225 — *In case of review of an invalidity pension awarded prior to the entry into force of regulation 1408/71 in the conditions laid down in No 40 above on the basis of the provisions of article 94 para. 5 of regulation 1408/71, there is no need for a further medical examination or the completion of a form E 213 and, where appropriate, form E 214, to the extent that the documents already on the record can be considered sufficient. If such is not the case, the institutions concerned may ask for the preparation of a further medical report on the above-mentioned forms (AC Decision No 75 of 22 February 1973, OJ EC C 75 of 19 September 1973, replacing decision No 2 OJ EC No 64 of 17 December 1959).*

B — Invalidity benefit the amount of which depends on the duration of insurance or residence periods

§ 1 — *Submission and investigation of claims for benefit*

295 — The award of these invalidity benefits is made in accordance with the same procedure as that for retirement and survivor pensions (c.f. Chapter X, Nos 349 and following, below) (R 574/72 art. 36 para. 1).

C 226 — This common procedure was already laid down in articles 30 and 31 of regulation No 4.

C 226a — In case 110/73 (decision of 10 October 1973 Fiege v. Caisse Régionale d'Assurance Maladie de Strasbourg) (see C 71a above) the Court of Justice of the EC ruled that the provisions of article 30 of regulation No 4 providing for benefit claims are not applicable for transfers of disablement pensions.

§ 2 — *Determination of the degree of invalidity*

296 — The applicable rules are described in No 294 above.

§ 3 — *Institution qualified to take the decision concerning existence of invalidity*

297 — The investigating institution alone is qualified to take a decision concerning the existence of invalidity, having authority over the other institutions provided that the claimant meets the other conditions required by the legislation which it applies. If not, the decision will be taken by the institution of the State to whose legislation the worker was last subject and where he meets the conditions for entitlement (R 574/72 art. 44).

C 227 — The institution qualified to make the decision is thus determined in a similar manner to that laid down in No 458 below with regard to occupational diseases for the determination of the debtor institution.

C — Administrative checks and medical examinations — Payment of benefit

C 228 — The provisions concerning retirement and survivor benefits are applied by analogy (c.f. Chapter X Section III B para. 9 and Section IV below).

C 223 — *In accordance with what is stipulated in subpara. c) of article 1 of the implementation regulation, the term "member of the family" retains the meaning laid down in subpara. f) of article 1 of the regulation. In consequence this term also means persons who do not live under the same roof as the person concerned where they are chiefly dependent upon him. The proof of this situation is established by the production of the documents referred to above (ERER 547/72).*

§ 3 — *Investigation of claims for invalidity benefit*

292 — For investigation of claims for invalidity benefit, a procedure similar to that laid down in article 16 of the implementation regulation is applied (c.f. No 141 above), with the difference that the declaration of completed insurance periods is issued at the request not of the person concerned himself but of the investigating institution (R 574/72 art. 39 paras 1, 2).

293 — In the case referred to in No 266 above, the institution which has dealt with the worker's case sends the papers to the institution with which he was last insured (R 574/72 art. 39 para. 3).

§ 4 — *Determination of the degree of invalidity*

294 — In order to determine the degree of invalidity, the competent institution uses forms E 213 and E 214 together with medical reports or documents and information of an administrative nature gathered by the institution of any other Member State.

Each institution may arrange for a medical examination except where the decision of another institution relating to invalidity must be accepted by it in the conditions described in No 270 above (R 574/72 art. 40).

C 224 — *Article 40 of regulation 574/72 corresponds to para. 2 of art. 31 of regulation No 4.*

C 225 — *In case of review of an invalidity pension awarded prior to the entry into force of regulation 1408/71 in the conditions laid down in No 40 above on the basis of the provisions of article 94 para. 5 of regulation 1408/71, there is no need for a further medical examination or the completion of a form E 213 and, where appropriate, form E 214, to the extent that the documents already on the record can be considered sufficient. If such is not the case, the institutions concerned may ask for the preparation of a further medical report on the above-mentioned forms (AC Decision No 75 of 22 February 1973, OJ EC C 75 of 19 September 1973, replacing decision No 2 OJ EC No 64 of 17 December 1959).*

B — Invalidity benefit the amount of which depends on the duration of insurance or residence periods

§ 1 — *Submission and investigation of claims for benefit*

295 — The award of these invalidity benefits is made in accordance with the same procedure as that for retirement and survivor pensions (c.f. Chapter X, Nos 349 and following, below) (R 574/72 art. 36 para. 1).

C 226 — This common procedure was already laid down in articles 30 and 31 of regulation No 4.

§ 2 — *Determination of the degree of invalidity*

296 — The applicable rules are described in No 294 above.

§ 3 — *Institution qualified to take the decision concerning existence of invalidity*

297 — The investigating institution alone is qualified to take a decision concerning the existence of invalidity, having authority over the other institutions provided that the claimant meets the other conditions required by the legislation which it applies. If not, the decision will be taken by the institution of the State to whose legislation the worker was last subject and where he meets the conditions for entitlement (R 574/72 art. 44).

C 227 — The institution qualified to make the decision is thus determined in a similar manner to that laid down in No 458 below with regard to occupational diseases for the determination of the debtor institution.

C — Administrative checks and medical examinations — Payment of benefit

C 228 — The provisions concerning retirement and survivor benefits are applied by analogy (c.f. Chapter X Section III B para. 9 and Section IV below).

CHAPTER X

RETIREMENT AND DEATH (PENSIONS)

SECTION I — DETERMINATION OF ENTITLEMENT

Present regulations:	R 1408/71, art. 12, para. 1, 44 to 51, as amended by the Treaty of Accession, OJ EC L 73, 27 March 1972, R 2864/72, OJ EC L 306, 31 December 1972 and R 2595/77, OJ EC L 302, 26 November 1977 R 574/72, art. 7 and 46 as amended by R 1392/74, art. 2, OJ EC L 152, 8 June 1974
Corresponding text of abrogated regulations:	R 3, art. 27 and 28 R 4, art. 28 and 29
Court of Justice EC:	Case 100/63, 1/67, 2/67, 9/67, 11/67, 12/67, 18/67, 22/67, 28/68, 26/71, 27/71, 28/71, 2/72, 191/73, 20/75, 24/75, 33/75, 49/75, 50/75, 62/76, 75/76, 109/76, 112/76, 32/77, 64/77
Administrative Commission:	Decisions Nos 78, 79, 80, 81, 91, 95, 96 and 105

298 — The provisions described in this section concern workers and their survivors who have been subject to the legislation of two or more Member States. They apply, for the determination of entitlement, to invalidity, retirement and death (pensions) benefits, excluding increases or supplements to pension for children and orphans' pensions awarded in the specific conditions described in Chapter XV below (R 1408/71, art. 44, paras. 1 and 3.

C 229 — *See statement inserted in the Minutes of the Council concerning the provisions relating to invalidity, retirement and death (pensions) (cf. C 204 above).*

A — Periods valid for retirement benefit

§ 1 — *Applicable legislations*

299 — By way of exception to the principles set out with regard to accidents at work and sickness/maternity insurance, entitlement resulting from several legislations may overlap with regard to retirement and death (pensions) insurance on the one hand and invalidity insurance where it gives rise to distribution of the charge between two or more Member States on the other (R 1408/71, art. 12, para. 1 and art. 44, para. 2.

In these cases, all the national legislations under which the worker has been employed are applicable (R 1408/71, art. 44, para. 2).

300 — However, the worker may suspend the award of retirement benefit acquired under the legislation of one or more Member States as long as the periods completed under that legislation or those legislations are not taken into account for entitlement to benefit in another Member State (R 1408/71, art. 44, para. 2 as amended by R 2595/77).

C 230 — This provision excludes any obligation on the part of the person concerned to accept the award of a pension or allowance for early retirement to which he might be entitled (SRMC R 1408/71 ad art. 44 para. 2).

C 231 — In para. 4 of art. 28 of Regulation No 3 but in more precise terms in order to avoid any future ambiguity with regard to the provisions applicable for the award of benefit where a worker has been subject successively or alternately to the legislations of two or more Member Statrs.

The benefit to which this worker or his survivors may lay claim must be awarded in accordance with the provisions of this Chapter even where he could make use of entitlement to benefit solely by virtue of the provisions of the legislation of one or several Member States (ERER 1408/71).

The amendments made to article 44, para. 2 of regulation 1408/71 by regulation 2595/77 — see Section 300 above — are intended to entitle, without restriction, a worker to receive a pension acquired under the legislation of a Member State and to have the pension awarded in another Member State postponed in order to have the amount of the former pension increased by such postponement. The original provisions of regulation 1408/71 and article 44, para. 2 made the postponement of the award of benefits subject to the condition that periods completed under the legislations concerned were not taken into account for the acquisition of entitlement to benefits in another Member State. The last restriction on postponing the award of a pension in one Member State while receiving a pension acquired in another Member State is thus removed. The persons primarily concerned are Italian workers employed in France who can henceforth receive their Italian pension acquired at the age of 60 while continuing to improve their entitlement to a French pension, which, while it may also be acquired at age 60, is increased on the basis of the number of insure years completed after that age, even when taking into account insurance periods completed in France to acquire entitlement to the Italian pension.

C 232 — *The preceding provisions include the interpretations given by the Court of Justice of the European Communities under Regulations Nos 3 and 4.*

In cases 11/67 (Office national belge des pensions pour ouvriers v. Couture) and 12/67 (Guissart Jules v. Belgian Government), the Court of Justice of the European Communities decided that, firstly, "the application to a migrant worker of the system in articles 27 and 28 of Regulation No 3 (aggregation of insurance periods and prorata apportionment of elements of pension) does not depend on the free choice of the person concerned but on the objective situation in which he finds himself"; secondly, "at least under those systems where the retirement pension varies only on the basis of completed insurance periods, articles 27 and 28 of Regulation No 3 do not apply to a migrant worker who, in order to obtain entitlement to benefit, has no need to aggregate in any Member State where he has completed insurance periods".

In case 11/67, the Court of Justice explained that the rules for the calculation of pensions laid down in articles 27 and 28 of Regulation No 3 "do not imply the obligation to award simultaneously, on the basis of the same reference date, a retirement pension to which a claimant is entitled in a Member State by the use of article 27 and another retirement pension which, in another Member State, is not yet due or which is due in another Member State whose legislation permits the award to be postponed, at the request of the claimant".

The submission of a pension claim to an institution of a Member State does not imply renunciation of the options which the legislations of other Member States allow to the workers concerned. The determination of the point in time when this choice must be made is up to the national authorities.

301 — Where a worker does not simultaneously meet the conditions required by the various applicable legislations and where, because of this, the award of benefit cannot be made simultaneously under these legislations, the special rules described in Nos 327 and following above are applied (R 1408/71, art. 49 para. 1).

§ 2 — *Aggregation of insurance or residence periods*

a) Minimum insurance or residence period for which benefit is payable

302 — Where the total duration of insurance or residence periods completed under the legislation of a State does not come to one year and where under that legislation these periods alone give no entitlement to benefit, the institution of that State is not obliged to award benefit on the basis of these periods (R 1408/71 art. 48 para. 1, amended by Treaty of Accession).

303 — However, the two following safeguarding clauses may be applied:

303-1 — An insurance or residence period of less than one year is not considered for the calculation of a prorata temporis benefit, but it may be taken into account for the creation, maintenance or recovery of entitlement to benefit and for the calculation of the theoretical amount of a benefit on the part of other Member States (R 1408/71 art. 48 para. 2).

303-2 — Where the worker has completed periods of less than one year under each of the legislations to which he has been subject and, because of this, all the institutions find themselves free of obligations towards him, the said periods may be aggregated and taken into consideration for the award of benefit on the part of the institution with which he was last insured and for which he meets the conditions of entitlement (R 1408/71 art. 48 para. 3, amended by Treaty of Accession).

C 233 — Where the completed insurance periods in a Member State do not together come to twelve months but are sufficient to give entitlement to benefit under the applicable legislation, the said periods are to be taken into consideration by the other Member States concerned for the purpose, as appropriate, of acquiring, maintaining or recovering entitlement to benefit and for the calculation both of the amount of the theoretical pension and of the prorata temporis (AC Decision No 79 of 22 February 1973; OJ EC C 75 of 19 September 1973) replacing decision No 34 OJ EC 17 February 1961).

C 233 a — On the subject of the absence of the obligation to provide benefits in the case of insurance or residence periods of less than one year (cf. 302 above), the Court of Justice of the EC gave the following ruling in case 49/75 (Borella v. Landesversicherungsanstalt Schwaben) on 20 November 1975: 'Since article 48(1) only applies where two conditions are fulfilled, that is:

1. *that "the total length of the insurance periods... does not amount to one year" and*

2. *that under the legislation of that Member State "no right to benefits is acquired by virtue only of those periods",*

it follows that this article cannot be applied where the right to benefits of a migrant worker or his survivors already arises solely from the provisions of the legislation of the Member State in question.'

This particular case concerned an Italian national resident in Italy who had approached a German institution (LVA Schwaben) to claim a partial survivor's pension under her husband's German pension insurance (for workers) following his death on 20 September 1973. The German institution had granted him a pension for occupational incapacity with effect from 1 April 1964 which was later converted into an invalidity pension on the basis of 10 months of insurance in Germany. However, the defendant rejected a survivor's pension on the grounds that the insurance periods completed under German legislation were less than the 12 months required in article 48(2) of regulation No 1408/71.

Having regard to the fact that article 1263(2) of the Reichsversicherungsordnung requires the institution to grant a survivor's pension if the deceased person at the time of his death was receiving a pension by virtue of the insurance period he had completed, the Court of Justice of the EC ruled that the provisions of article 48(1) should not have the effect of reducing rights arising from the application of a national legislation.

C 234 — Regulation No 4, article 28 para. 2 already contained similar provisions to those indicated in Nos 302 and 303 above. The new regulation raised from six months to a year the minimum period to be required and, in order to protect better the interest of the beneficiaries, introduced the supplementary safeguarding clause described in No 303-2.

b) Periods which may be aggregated

304 — Insurance or residence periods completed under the various legislations to which the worker has been subject must be deemed to be periods completed under the legislation of the Member State responsible for awarding the pension and account must be taken of them to the extent necessary (R 1408/71 art. 45 para. 1 amended by the Treaty of Accession and by R 2864/72).

C 235 — It will be noted that, in certain Member States (Denmark), the amount of pensions varies in proportion to the number of years' residence. The new Danish legislation with regard to pensions takes account only of years of residence completed after age 15.

C 236 — The provisions described in No 304 are based on the principle laid down in regulation No 3, article 27 para. 1.

The aggregation rule applies both where the periods completed under one or more legislations are insufficient, taken by themselves, to obtain entitlement to benefit and where benefits can be awarded under a legislation by proving a longer insurance career.

C 236 a — For details of the conditions under which insurance periods completed in Algeria prior to 19 January 1965 are counted towards entitlement to invalidity, old-age or survivors' pensions, see C 276a and C 276b below.

C 236 b — See C 113a above, Court of Justice EC Case 33/75 Benito Galati v. Landesversicherungsanstalt Schwaben — Judgment of 30 October 1975 on the taking into account, under article 45(1) of regulation No 1408/71, of insurance periods of less than one month.

305 — Where admission to receipt of certain benefits is subject to the condition that the insurance periods have been completed in an occupation with a special scheme or in a prescribed employment, aggregation is only performed, for the award of these special benefits, with insurance or credited periods completed in corresponding schemes of other States or, failing that, in the same occupation or, where appropriate, the same employment. If these periods do not give entitlement under the special scheme, they can nevertheless be taken into account for the purpose of obtaining benefit under the general scheme (R 1408/71 art. 45 para. 2).

C 237 — Article 45 para. 2 of regulation 1408/71 brings together the provisions which appeared in para. 2 of article 27 of regulation No 3 and in para. 3 of article 13 and para. 1 of article 28 of regulation No 4.

C 238 — In cases 26/72 (Heinrich Gross v. Caisse régionale d'assurance vieillesse des travailleurs salariés de Strasbourg) and 28/71 (Eugène Hohn v. Caisse régionale d'assurance vieillesse des travailleurs salariés de Strasbourg), the Court of Justice of the European Communities decided on 10 November 1971 that:

— "Where the legislation of a Member State provides for retirement benefits which differ on the basis of the duration of insurance of the worker concerned, there should be aggregation of insurance periods completed successively or alternately under the legislation of two or more Member States as long as the said worker does not have the number of periods necessary under the legislation of the first State for entitlement to the qualitatively superior benefit.

— Where such aggregation is required, account must be taken, for the calculation of the fraction of benefit due from the debtor institution, of the periods actually completed by the worker concerned and not merely those which make up the required total in that State for entitlement to full benefit".

C 239 — The Administrative Commission has taken two decisions for the interpretation of the terms "corresponding schemes" and "prescribed employment". According to these decisions (Nos 80 and 81 of 22 February 1973 OJ EC C 75 of 19 September 1973, replacing decisions Nos 50 and 51 adopted previously within the framework of Regulation Nos 3 and 4 OJ EC of 28 March 1964):

C 239-1 — The special schemes for mine workers which exist in Germany, Belgium, France, Italy and Luxembourg are corresponding schemes in the sense of article 45, para. 2 of regulation 1408/71.

Thus insurance periods completed under these special schemes for mine workers have to be taken into account for aggregation purposes in the manner in which they are determined by that scheme, without regard to its own scope and without checking the identity of the occupation in which the said periods have been completed.

C 239-2 — For the purpose of admission to receipt of benefits, the award of which is subject under the legislation of a Member State to the condition that the insurance periods have been completed in a prescribed employment, insurance periods completed in the same employment under the legislation of another Member State must be aggregated as they are determined in accordance with the legislation of that State. Investigations may only be conducted where the said employment is not defined by that legislation.

C 240 — In case 2/72 (Salvatore Murru v. Caisse régionale d'assurance maladie de Paris), the Court of Justice EC, in a judgment issued on 6 June 1972, ruled: In order to determine whether and to what extent a period of unemployment may be credited as a period of work for the purpose of determining the entitlement of a migrant worker to an invalidity pension, reference should be made to the legislation under which this period was completed.

C 241 — *In Case 20/75 (Gaetano d'Amico v. Landesversicherungsanstalt Rheinland-Pfalz), the Court of Justice gave the following ruling in its Judgment of 9 July 1975: "The provisions of article 27, para. 1 of Regulation No 3 and of article 45, para. 1 of regulation 1408/71, do not prohibit a rule of national law (in this particular case of German law) which requires for the acquisition of the right to early retirement pension that the person concerned shall have been unemployed for a certain time and thus available to the Employment Bureau of the Member State in question".*

This judgment is in particular based on the following arguments:

— Community Law does not provide for the right of an unemployed person to claim unemployment benefits under the legislation of a Member State other than the State in which the person concerned became unemployed;

— when national legislation makes the early acquisition of the right to retirement benefit conditional upon the person concerned having been unemployed for a certain time, as well as upon the completion of a period of membership of a social insurance scheme, and when therefore the length of this period of unemployment is not intended to be included in the period of membership required or to be used in the calculation of the benefit, but constitutes a separate additional condition, it does not follow from the provision of the Regulations that Community Law requires the fact that the person concerned is registered as unemployed in another Member State to be taken into consideration in such a case. (See also 274 a).

306 — With regard to legislations which make the award of benefit subject only to the condition of being insured at the time when the risk materialises and under which entitlement is cancelled when insurance ends, a worker who has ceased to be subject to a legislation of this type is deemed still to be so if, at the time when the risk materialises, he is subject to the legislation of another Member State or, failing that, if he can validate his entitlement to benefit under the legislation of another Member State. This latter condition is deemed to be met in the case referred to in No 302 above (R 1408/71, art. 45, para. 3).

C 242 — *This latter rule was adopted in order to take account exclusively of certain aspects of Netherlands legislation based on the single risk concept. Legislations which, although based on the risk, differ from Netherlands legislation in requiring a condition of completing a waiting period, are not affected by this provision and are covered by article 45, para. 1 of regulation 1408/71 (c.f. No 304 above), which also applies to workers who, having ceased to be subject to the said legislations, can make use of insurance periods completed under the legislations of other Member States (SRMC R 1408/71 ad art. 45, para. 1).*

C 243 — In so-called "risk" systems which make the award of benefit subject only to the condition of being insured at the time when the risk materializes, entitlement the acquisition of which is not subject to the completion of a previous insurance period is withdrawn when insurance ends.

A worker who has ceased to be subject to a legislation of this type will nevertheless be deemed to be so still if he is subject to the legislation of another Member State at the time when the risk materializes or, failing that, if he can make use of his entitlement to benefit under the legislation of one of these States or would have been able to do so for insurance periods of less than one year, which do not quality for benefit in application of article 48 (c.f. No 271 and 302 above). The so-called risk systems will then participate in the prorata apportionment rules described below in accordance with the procedures explained in Annex V of regulation 1408/71 (c.f. Section II below) (ERER 1408/71).

C 243 a — Case 109/76: Mrs M. Blottner v. the Board of the Nieuwe Algemene Bedrijfsvereniging, Amsterdam — Court of Justice EC, judgment of 9 June 1977.

In this Case, which has already been recalled in C 33c and C 213b above and which concerns an action following the refusal by a Netherlands institution to pay an invalidity pension to a German national who had been employed in the Netherlands from 1928 to 1940, had then returned to Germany, where she had worked until 1946, and where, after having ceased all professional or trade activities, she suffered an accident in 1973 as a result of which she became an invalid, the Court of Justice, observing that:

— at the time when the appellant in the main action became an invalid the Netherlands legislation was of Type A, that is to say, legislation according to which the amount of invalidity benefits was independent of the duration of insurance periods, whilst at the time when she worked in the Netherlands the legislation had been of Type B, that is to say legislation according to which the amount of benefits depended on the duration of insurance periods;

— article 40, para. 1 of regulation 1408/71 provided that "a worker who has been successively or alternately subject to the legislation of two or more Member States, of which at least one is not of the type referred to in article 37, para. 1, shall receive benefits under the provisions of Chapter 3, which shall apply by analogy ...";

— according to the provisions of article 1-j) of that Regulation, "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 4, para. 1 and 2";

— it followed that the words "present or future" must not be interpreted in such a way as to exclude measures which were previously in force but had ceased to be so when the said Community Regulations were adopted;

— the structure of the system of harmonization of national legislation established by the regulations was based upon the principle that a worker must not be deprived of the right to benefits merely because of an alteration in the type of legislation in force in a Member State;

— this consideration infers that the concept of "legislation" contained in article 45, para. 3 must be widely interpreted so as to refer both to measures in force at the time when the risk materialized and to measures in force at the time when the worker was subject to the legislation,

ruled as follows in a judgment of 9 June 1977:

"For the acquisition of a right to benefits on the basis of article 40 of Regulation (EEC) No 1408/71 payable by an institution of a Member State referred to at the beginning of article 45, para. 3 it is in principle sufficient that a worker who is subject to the legislation of another Member State at the time when risk insured against materializes or, if this is not the case, who has a right to benefits under the legislation of another Member State, can establish insurance periods or, at least, periods of employment and/or periods treated as such completed under a legislation which, although in force at the time when the worker was employed, had ceased to be in force before the adoption of regulation 1408/71, even if that legislation was of a different type from that which is in force at the time when the risk materializes".

c) Order of consideration of periods completed in the various Member States in case of coincidence or overlapping

C 244 — The rules described in Nos 107 to 112 above are applied.

d) Conversion of periods where these are expressed in differing units of time

C 245 — The rules in Nos 113 and 114 above are applied.

e) Consideration of insurance, residence or employment periods completed before the entry into force of the regulations

C 246 — Cf. No 39 and following above.

B — General rules for the calculation of pensions

§ 1 — *Calculation mechanism*

307 — Two situations should be considered, depending on whether the worker does or does not, with respect to the legislation of the Member State, meet the conditions required by it for entitlement to benefit without making use of insurance or residence periods completed under the legislation of other Member States (R 1408/71 para. 1).

a) Where the worker in the view of an institution meets the conditions required for entitlement to benefit without resorting to insurance or residence periods completed under the legislation of other Member States

308 — In this contingency the following rules are applied (R 1408/71 art. 46, amended by the Treaty of Accession and by R 2864/72):

308-1 — The institution concerned, in accordance with its legislation, determines:

308-1-1 — the pension corresponding only to insurance or residence periods completed by the person concerned under the legislation which it applies;

308-1-2 — the theoretical pension to which the person concerned could lay claim if all the insurance or residence periods had been completed under its legislation;

308-1-3 — the pro-rata of that theoretical pension corresponding only to the insurance or residence periods completed under its legislation.

308-2 — It compares the pensions calculated pursuant to each of these subparagraphs (1-1 to 1-3) and adopts the highest amount.

C 247 — *The above rules are to be applied by each Member State regardless of benefits of the same kind, in the framework of provisions against overlapping which may be laid down under its national legislation, to be awarded, pursuant to the regulation, by one or several other Member States, in order to ensure that a part of the costs normally borne by it is not transferred to one or more other Member States. Reductions in accordance with the provisions against overlapping are to be made only when the benefits payable by each of the Member States has been definitely fixed. Detailed rules on reductions are laid down in Nos 320 f below (SRMC R 1408/71, at art. 46 (1)).*

C 248 — As in the Netherlands the amount of the widow's pension and the benefit for incapacity for work are determined without reference to the length of the insurance period, the results of the two calculating procedures referred to above are identical in the case of the institutions of those countries. The amount calculated pursuant to 308-1-1 is the theoretical amount to be taken into account when applying article 46 (3) (cf No 311 below) (SRMC R 1408/71 at art. 46 (1), second subpara.).

C 249 — In Denmark legislation on widow's pensions awards widows a personal entitlement and not derived entitlement. It should also be noted that under this legislation the widow's pension is calculated on the basis of the widow's residence periods or on the basis of the husband's residence periods if the latter are longer (ERER 2864/72).

C 250 — *The preceding provisions constitute an important innovation by comparison with regulation No 3. This regulation, in articles 27 and 28, had adopted a single system for calculating retirement, widow's or survivor's benefit. In accordance with these provisions, each institution had to check under its own legislation whether the person concerned, after aggregation of periods in the various countries, met the conditions required for entitlement to benefit. Once entitlement existed, the institution calculated the amount of the benefit which would have been awarded if all the insurance or credited periods had been completed exclusively under its own legislation. On the basis of this amount, the benefit actually awarded was established in proportion to the duration of periods completed under the legislation applied by the institution, by comparison with the total duration of insurance and credited periods in the various States concerned.*

However, with experience it appeared that the application of these rules could, in certain cases, entail the award of partial retirement benefit lower than that which the person concerned would have been entitled under the internal legislation of each of the Member States in whose territory the insurance periods had been completed.

These difficulties gave rise to important decisions by the Court of Justice of the European Communities (case 100/63 of 15 July 1964 Van Der Veen v. Bestuur der Sociale Verzekeringsbank; case 1/67 of 5 July 1965 Ciechelski v. Caisse Régionale de Sécurité Sociale du Centre; case 2/67 of 5 July 1967 De Moor v. Caisse belge de pension des employés privés; case 9/67 of 5 July 1967 Colditz v. Caisse d'assurance vieillesse des travailleurs salariés de Paris).

In the Ciechelski judgment, the Court of Justice of the European Communities deduced from article 51 of the Treaty of Rome that the provisions of articles 27 and 28 of regulation No 3, laying down firstly the aggregation of all the insurance periods completed under the various national legislations and, secondly, the prorata apportionment of partial pensions, should not be applied where, in a Member State, entitlement to benefit existed without the need to resort to this aggregation.

This point of view was confirmed in a decision of 28 May 1974 (case 191/73 Rudolf Niemann v. Bundesversicherungsanstalt für Angestellte, Berlin); the Court of Justice of the European Communities in fact laid down that "... article 28, para. 3 of Regulation No 3, in so far as it implied a totalling of periods and consequential calculation on a pro rata basis leading to the award of several benefits given by different Member States, but of which the overall total is less than that of the benefit to which the worker is already entitled purely because of the legislation of one Member State, is incompatible with article 51 of the Treaty and therefore not valid".

The new provisions of regulation 1408/71 permitting the direct calculation of pensions whenever this would be more advantageous than the aggregation of insurance periods and the prorata apportionment of benefits thus corresponds to the jurisprudence recalled above.

C 250 a — *In case 27/71 (August Keller v. Caisse régionale d'assurance vieillesse des travailleurs salariés de Strasbourg), the Court of Justice of the European Communities decided on 10 November 1971 that "where, in a Member State, entitlement to a retirement pension exists on the sole basis of insurance periods completed under the legislation of that State, without there being any need to make use of periods completed under the legislation of other Member States, the competent institution of the first State is not allowed to apply the prorata apportionment rules (set out at that time in articles 27 and 28 of Regulation No 3) for the purpose of reducing the benefit for which it is responsible under its own legislation, at least to the extent that this benefit does not relate to periods which have already served for the calculation of the amount of benefit paid by the competent institution of another State".*

C 250 b — *Similarly, in case 50/75 (Caisse de pension des employés privés v. Helga Massonet, widow of Weber), the Court of Justice of the European Communities confirmed on 25 November 1975 that "article 51 of the EEC Treaty and Regulation No 3 of the Council of 25 September 1958 concerning social security for migrant workers, especially articles 12, 27 and 28, must be interpreted as meaning that they do not authorize a national insurance institution to reduce the benefits which are due to a worker or to those entitled under him by virtue of national legislation alone and without recourse to the procedure of aggregation".*

In this Court Case a worker's widow was claiming special pension increases on the grounds of the premature death of her husband as provided for by the legislation of two Member States, while in the first State entitlement was acquired solely under national legislation without the need for having recourse to the aggregation procedure and in the other Member State where the deceased worker had subsequently been insured entitlement was acquired only by having recourse to aggregation.

The Court of Justice of the EC considered that the fact that the interpretation given above might lead in certain cases other than the overlap of insurance periods to a duplication of pensions was not due to the interpretation of Community Law but to the system currently in force which, in the absence of a common social security scheme, was based simply on the coordination of national legislation not yet harmonized.

b) Where the worker, in the view of the institution concerned, does not meet the conditions required for entitlement to benefit except by resorting to insurance or residence periods completed under other legislations or by having periods completed under Type A and Type B legislations assimilated to acquire effective entitlement to invalidity pensions (R 1408/71, art. 46, para. 2 as amended by R 2595/77)

309 — In this case, the competent institution undertakes the following operations:

309-1 — It determines the theoretical amount of the benefit which the person concerned could be entitled to if all the residence or insurance periods had been completed only under the legislation which it applies. If under that legislation the amount of the benefit does depend on the duration of completed periods, this amount constitutes the theoretical amount for the application of the preceding rule (R 1408/71 art. 46 para. 2, *a)*, amended by the Treaty of Accession and by R 2864/72).

309-2 — It establishes the prorata apportionment of this theoretical amount corresponding to only those insurance or residence periods completed by the person concerned under the legislation which it applies (R 1408/71 art. 46, para. 2 *b)*, amended by the Treaty of Accession and by R 2864/72).

309-3 — If the total duration of the insurance or residence periods referred to in 309-1 is greater than the maximum duration required by the legislation of one of the States for the award of full benefit, only that maximum duration is taken into consideration for the calculation of the prorata apportionment, without it being possible as a result that the institution concerned should bear a charge higher than that represented by the payment of the full benefit as provided under the legislation which it applies (R 1408/71 art. 46, para. 2 *c)*, amended by the Treaty of Accession and by R 2864/72).

309-4 — For the application of the rules for calculation given above, the procedures for taking into account any superimposed periods are given in Nos 315 to 319 below (R 1408/71 art. 46, para. 2 *d)*).

C 251 — *The provisions described in No 309-1 do not affect the consideration of periods spent outside the Member State concerned but recognized as periods equivalent to insurance periods (SRMC R 1408/71 ad art. 46, para. 2 sub-para. a)).*

C 251 a — *The competent institution of a Member State in which the legislation makes provision that the total of the benefits is established by taking account of nominal periods subsequent to the realization of the risk takes these periods into consideration solely in order to calculate the theoretical total mentioned in No 309-1 above and not to calculate the effective total mentioned in No 309-2 (AC decision No 95 of 24 January 1974 published in OJ EC No C 99 of 23 August 1974).*

C 252 — *The rule referred to in 309-3, which is new, is intended to avoid the situation where a benefit due under a legislation is reduced because of the consideration, in setting its amount, of insurance or residence periods completed under other legislations in excess of the maximum duration (EREC 1408/71).*

§ 2 — *Determination of the pension to be awarded to the claimant*

310 — The pension awarded to the person concerned represents the sum of the various partial benefits calculated, in application of the rules referred to above, by each of the institutions to which the person concerned has been attached during his working life, but subject to the following limits (R 1408/71 art. 46 para. 3).

a) Possible reductions

311 — The sum of the partial benefits of the same kind acquired in the various Member States cannot exceed the highest theoretical amount referred to in No 309-1, i.e. the highest pension which the person concerned would be entitled to if he had spent the whole of his working life under the legislation of each of the Member States in the territory of which he has been employed or has resided (R 1408/71 art. 46 para. 3 subpara. *1*).

312 — If this sum exceeds the above limit, the total of all the benefits resulting from the preliminary calculations is brought to the level of this theoretical amount. In order to do this, each institution which has calculated its benefit on the basis only of insurance periods completed under the legislation which it applies corrects this by an amount corresponding to the ratio between the amount of the said benefit and the sum of the benefits determined by all the institutions which have not had to make use of periods completed under the legislation of other Member States (R 1408/71 art. 46 para. 3 subpara. *2*).

C 253 — The preceding rules will, after a certain period of application, be re-examined by the Council so as to make any adjustments which may be necessary (SRMC R 1408/71 ad art. 46 para. 3 subpara. 2).

C 254 — The reduction provided for in article 46 § 3, second subsection, of regulation No 1408/71 must in each Member State only be brought to bear upon pensions calculated solely on the basis of periods of insurance or of residence completed under the legislation of that State and in so far as the total of the aforesaid benefits is greater than that which would result from the application of the rules on calculation on a prorata basis (AC Decision No 91 of 12 July 1973, OJ EC No C 86 of 20 July 1974).

C 255 — Several Member States have drawn attention to the fact that the application of the reduction of the sum of benefits calculated to the highest theoretical amount could entail administrative costs greater than the reduction itself and considerably delay the award of benefit. These States have reserved the right to dispense with this reduction, it being understood that such renunciation may not have the effect of obliging the institution of another Member State to undertake a supplementary correction (SRMC R 1408/71 ad art. 46 para. 3 subpara. 2).

C 256 — *In case 18/67 (Argia Cossuta widow of Giuseppe Pagotto v. Office National Belge des Pensions pour Ouvriers) the Court of Justice of the European Communities decided on 30 November 1967 that "where periods credited as insurance periods under the legislation of a Member State overlap with actual insurance periods completed in another State and give entitlement to pension there, and where the units of time used by the legislation of these States are different, both the denominator and the numerator of the fraction used for calculating the prorata should be converted into the smallest unit of time used by the States concerned where this constitutes a fraction of the other or, failing that, into a common multiple".*

313 — In cases of application of a multilateral social security convention (i.e. where non-Member States are involved), the sum of the benefits due from two or more Member States may not be less than that which would result from the application of the rules explained above (R 1408/71 art. 46 para. 4).

C 256 a — *In case 24/75 (Teresa and Silvana Petroni v. Office national des pensions pour travailleurs salariés, Brussels) the Court of Justice of the EC was asked for a preliminary ruling in an action on the possible reduction, pursuant to article 46, para. 3 of regulation 1408/71, of an old-age pension, and on 21 October 1975 it ruled as follows:*

"Article 46, para. 3 of regulation 1408/71 of the Council is incompatible with article 51 of the Treaty to the extent to which it imposes a limitation on the overlapping of two benefits acquired in different Member States by a reduction in the amount of a benefit acquired under national legislation alone."

The aggregation and apportionment provided for in article 46, para. 3 of regulation 1408/71 cannot therefore be carried out if their effect is to diminish the benefits which the person concerned may claim by virtue of the laws of a single Member State on the basis solely of the insurance periods completed under those laws, always provided that this method cannot lead to a duplication of benefits for one and the same period (cf. the 16th ground for judgment).

This ruling was delivered in an action between a Belgian institution and the heirs of an Italian migrant worker about the calculation of an old-age pension. The worker, who had completed insurance periods in Belgium and in Italy, had fulfilled the conditions for entitlement to benefit laid down under the legislation of the former country, but in order to be entitled to the Italian pension he had had to avail himself of article 45 of regulation 1408/71; the latter benefit therefore had been apportioned after all periods actually completed in the two Member States had been aggregated.

On the basis of the rules limiting the overlapping of benefits, the Belgian institution had reduced the pension in accordance with article 46, para. 3 of regulation 1408/71.

The Court of Justice ruling quoted above invalidated, in this case, article 46, para. 3 of regulation 1408/71. It was based on the observation that:

— the regulations in the field of social security for migrant workers had as their basis, their framework and their bounds articles 48 to 51 of the Treaty;

— article 51 of the Treaty, on the aggregation, as regards social benefits, of all periods taken into account under the laws of the several countries, dealt essentially with the case in which the laws of one Member State did not by themselves allow the person concerned the right to benefits by reason of the insufficient number of periods completed under its laws, or only allowed him benefits which are less than the maximum;

— the aim of articles 48 to 51 would not be attained if, as a consequence of the exercise of their right to freedom of movement, workers were to lose advantages in the field of social security guaranteed to them in any event by the laws of a single Member State;

— aggregation was not applied even in cases where insurance periods completed in the State concerned coincided with insurance periods completed in another Member State;

— that interpretation was expressly confirmed by article 45 of regulation 1408/71 according to which an institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of periods of insurance or of residence shall take into account periods of insurance or of residence completed in other Member States only "to the extent necessary".

C 256 b — *The ruling in case 24/75 (C 256a) was extended, with similar observations, in the following rulings on the award of invalidity pensions acquired in more than one Member State.*

(a) Case 62/76: Jozef Strehl v. Nationaal Pensioenfonds voor Mijnwerkers.

The action concerned the calculation by a Belgian institution of an an invalidity pension for a Belgian national who had worked underground as a miner in Belgium, and outside the mining sector in the Federal Republic of Germany. In Belgium he had fulfilled all the conditions laid down by national legislation for entitlements to an (A-type) invalidity pension, while the (B-type) German pension was apportioned on the basis of the aggregation of periods actually completed in the two Member States.

As the Belgian institution had reduced the benefit it was liable to pay by applying article 46, para. 3 of regulation 1408/71 and Decision No 91 (on the interpretation of that article), the Court of Justice of the EC ruled as follows on 3 February 1977:

"Article 46, para. 3 of Regulation (EEC) No 1408/71 and Decision No 91 of the Administrative Commission are incompatible with article 51 of the Treaty to the extent to which they impose a limitation on the overlapping of two benefits acquired in different Member States by a reduction of the amount of the benefit acquired under national legislation alone".

(b) *Case 112/76, Renato Manzoni v. Belgian Fonds National de retraite des ouvriers mineurs, judgment of 13 October 1977.*

The circumstances of this case, which concerned the calculation of an invalidity pension, were similar to the preceding case with the sole exception that the applicant was an Italian national and that he had worked underground in the mines, at first in Italy and then in Belgium.

When the Italian institution granted him the right to a proportionate pension on the basis of his employment in Italy, the Belgian institution, availing of the limitation of benefits laid down by article 46, para. 3 of regulation 1408/71, believed it could reduce the amount of the invalidity pension awarded by it by the amount of the Italian proportionate pension.

In its grounds for judgment, the Court resumed the arguments of case 24/75 (Petroni) (cf. C 256a) when it ruled as follows:

"Article 46, para. 3 of regulation 1408/71 is incompatible with article 51 of the Treaty to the extent to which it imposes a limitation on benefits acquired in different Member States by a reduction in the amount of benefit acquired under the national legislation of a Member State alone."

C 256 c — *Case 32/77, Antonio Giuliani v. Landesversicherungsanstalt Schwaben, judgment of 20 October 1977.*

This case concerned a problem similar to those already examined by the Court of Justice of the EC in cases 24/75 (Petroni), 62/76 (Strehl) and 112/76 (Manzoni). It concerned an Italian national who resided in Italy and who had, during his working life, 156 months of insurance which counted for the award of a pension in Italy, and 89 months in the Federal Republic of Germany. Owing to his reduced earning capacity, he was awarded a proportional pension by the competent Italian institution at the same time as applying for a German pension.

The German institution first of all calculated his pension in accordance with German legislation. It then determined the amount of the pension by aggregating the German and Italian insurance periods and working out the pro-rata. Regardless of the judgment of the Court in case 24/75, it then applied the provisions on reduction laid down in article 46, para. 3 of regulation 1408/71, with the effect that the benefit was reduced to an amount less than that of the two pensions calculated previously.

Under German legislation, entitlement to a pension is as a rule suspended if a non-German beneficiary of his own free will resides outside the Federal Republic of Germany. In this case the right acquired under national legislation could be implemented only by applying Community law.

In view of these factors, the German court which referred the matter to the Court of Justice of the EC wondered whether Court of Justice case-law as expressed in the judgments in cases 24/75 and 62/76 discriminated against the workers subject to the legislation of a single Member State. The German court had therefore asked the Court of Justice (1) whether the latter upheld its findings "relating to the principle of equality" in the case-law concerned; (2) if article 46, para. 3 of regulation 1408/71 was valid in so far as rights to payment which would not exist were it not for Community law being limited; and (3) did rights to payment exist which, outside Community law, could only be realized by waiving residence clauses under article 10 of regulation 1408/71. The court also asked how the last question was to be answered if bilateral or multilateral conventions between the Member States concerned had already provided rules which corresponded to those in article 10 of regulation 1408/71.

Considering

— that the plaintiff in the main action satisfied the conditions for entitlement to a pension under German legislation alone but that, failing the application of article 10 of regulation 1408/71 payment of the pension would have had to have been held in abeyance by virtue of a residence clause contained in that legislation;

— article 51 of the Treaty referred to two objectives which, although connected, were different, namely (a) *aggregation, for the purpose of acquiring the right to benefit, of all periods taken into account under the laws of the several countries, and* (b) *payments of benefits to persons resident in the territories of Member States;*

— that, however, the Decision referred to by the Sozialgericht related specifically to a benefit acquired by virtue of the national legislation of a Member State alone without its being necessary to have recourse to the arrangements for aggregation and apportionment as provided for under subparagraph (a) *of article 51,*

the Court of Justice, finding that the answers to the first three questions rendered the last question irrelevant, ruled as follows:

"Article 46, para. 3 of regulation 1408/71 is applicable only in cases where, for the purpose of acquiring the right to benefit within the meaning of article 51-a) of the Treaty, it is necessary to have recourse to the arrangements for aggregation of the periods of insurance.

Since the waiving of residence clauses pursuant to article 10 of regulation 1408/71 has no effect on the acquisition of the right to benefit, it cannot involve the application of article 46, para. 3 of that regulation".

C 256 d — Case 75/76, Silvana Kaucic and Anna Maria Kaucic v. Institut National d'Assurance Maladie-Invalidité; Court of Justice EC; judgment of 10 March 1977.

In this case, which concerned invalidity pensions acquired on the one hand, under the legislation of Member States of the EEC concurrently with pensions acquired, on the other, under the legislation of a third country, the Court of Justice had, in the framework of Regulations (EEC) Nos 3 and 4, ruled as follows after finding that article 11, para. 2 of Regulation No 3 and article 9, para. 2 of Regulation No 4, which prohibited the application of provisions for the reduction of benefits, applied only to benefits acquired in accordance with those two regulations:

"The provisions of Regulation No 3 of the Council of 25 September 1958, concerning social security for migrant workers, and in particular article 28, para. 1 thereof, and of Regulation No 4 of the Council of 3 December 1958 do not preclude the application by the institution of a Member State, when calculating "for accounting purposes" the amount of the benefit to which the person concerned would be entitled if all the insurance periods had been completed exclusively under the legislation of that Member State, of a rule laid down under its own legislation in order to reduce the theoretical amount by the amount of a benefit received by the person concerned from a source outside the Community."

See also C 79-6 and C 213 b.

b) Award of a supplement

314 — Where the sum of benefits due under the legislations of the various Member States does not come to the minimum laid down by the legislation of the State in whose territory the person concerned resides and under which he receives a pension element, the competent institution of that State pays, during the whole period of his residence in its territory, a supplement equal to the difference between the sum of benefits due and the amount of the minimum benefit (R 1408/71 art. 50, amended by the Treaty of Accession).

C 257 — Where the worker's career has been fairly short and he has not obtained entitlement to invalidity, retirement or survivor benefits under the legislations of the States to which he has been subject except by taking account of all his insurance periods, the total amount of benefits due from these States may not reach the minimum level laid down by the legislation of one or more of them.

The supplement would have the effect of bringing the amount of benefit paid to the person concerned up to the minimum amount provided for under the legislation of the State in whose territory he resides, where the conditions for the award of this minimum are met by taking account of all the insurance periods (ERER 1408/71).

C 257 a — With a view to simplifying procedures, the Administrative Commission has decided that, save where an agreement has been concluded between the competent authorities of two Member States with a view to operating adjustments more frequently, the institution paying a supplement in pursuance of Article 50 of Regulation No 1408/71 shall only be bound to recalculate this supplement, to bring it in line with the adjustment of benefits to changes in the cost of living, once a year only. For this purpose, the institution responsible for paying a benefit supplement has to inform the institution of any other Member State thereof in accordance with the legislation under which an entitlement to benefit has been acquired, pursuant to Article 46 of EEC Regulation No 1408/71. The competent institutions of the other Member States should communicate once a year, in the course of January, the amount of the benefit they have to pay on 1 January (AC Decision No 105 of 19 December 1975, OJ No C 117 of 26 May 1976).

C 257 b — Case 64/77 (Mario Torri v. Office national des pensions pour travailleurs salariés), Judgment of the Court of Justice EC of 30 November 1977.

The case concerned what was to be understood by "minimum benefit" within the meaning of article 50 of regulation (EEC) 1408/71 of the Council where, in the legislation of a Member State no minimum pension of a fixed amount was known because the calculation of benefits rested on the amount of wage or salary and on the duration of the insurance periods completed.

The question was asked by an Italian worker who was resident in Belgium, who had worked in Italy from 1926 to 1942 and from 1946 to 1947, and in Belgium from 1949 to 1973, and who received a Belgian and an Italian retirement pension.

Whereas, in particular,

— *article 50 covered cases where the periods of employment of the worker under the legislation of the States to which he was subject were relatively short with the result that the total amount of the benefits payable by those States did not provide a reasonable standard of living;*

— *article 5 of the regulation provided that the Member States should specify in the declarations made in accordance with article 46 of the regulation (cf Nos 26 and 27 above) "the minimum benefits referred to in article 50"; that provision accorded with the hypothesis that not all the systems of legislation necessarily included minimum benefits of the type in question;*

— *according to the declaration made by the Kingdom of Belgium a minimum benefit existed only in the context of the laws relating to invalidity pensions for mineworkers;*

— *the interpretation the plaintiff had proposed (that the minimum benefit corresponds to the theoretical pension of the country of residence calculated in accordance with art. 46 (2) of the regulation) would result in giving article 50 an effect which, going beyond its limited object, would bring it into conflict with the general objective of Chapter III of not influencing the free choice of the place of residence which article 48 (3) (d) of the*

Treaty guaranteed to a former worker.

The Court of Justice, in a Judgment of 30 November 1977, ruled as follows: "Article 50 of regulation (EEC) 1408/71 of the Council is applicable only in cases in which provision is made in the legislation of the Member State in whose territory the worker resides for a minimum pension."

C — Special features

§ 1 — *Calculation of benefit in case of overlapping periods* (heading modified by R 878/73)

315 — For the calculation of the theoretical amount and the actual amount of the benefit, in accordance with the provisions referred to in Nos 309-1 and 309-2 above, the rules explained in Nos 107 and 108 above, concerning the consideration, in case of coincidence or overlapping, of periods completed in the various Member States, are applied (R 574/72 art. 46 para. 1 subpara. 1).

316 — The actual amount of the benefit is increased by the amount corresponding to periods of voluntary or optional continued insurance according to the applicable legislation (R 574/72 art. 46 para. 1 subpara. 2).

317 — For the application of the provisions set out in Nos 311 and 312 above, the amounts of benefit corresponding to periods of voluntary or optional continued insurance are not taken into account (R 574/72 art. 46 para. 2).

318 — **Regulation No 1392/74 has cancelled, as from 19 October 1972 in dealings between Member States of the EEC in its original composition, and from 1 April 1973 for the new Member States, as serving no further purpose (see Nos 80, C 95, 101, C 101a above), the provisions of article 46 § 3 of regulation 574/72, which ultimately rendered applicable, by analogy, the provisions which precede these in the case of supplementary optional insurance under German legislation (R 574/72 art. 46 amended by R 1392/74).**

319 — For the application of German legislation, contributions not taken into account, under the provisions referred to in No 107-1 above, are taken into consideration for the calculation of supplementary amounts under optional supplementary insurance. The provisions referred to in Nos 315, 316 and 317 are applied by analogy (R 574/72 art. 46 para. 3 subpara. 2).

§ 2 — *Special provisions for the avoidance of overlapping benefits under the legislation of several Member States* (application of the non-overlap principle set out in article 12-1 of regulation 1408/71 — See Nos 61 and following above)

320 — If the application of the non-overlap principle (c.f. Nos 61 and 62 above) entails the concomitant reduction or suspension of several benefits awarded under the legislations of various Member States, none may be reduced or suspended for an amount higher than that obtained by dividing the amount to which the reduction or suspension applies by the number of benefits to which the beneficiary is entitled (R 574/72 art. 7 para. 1 *a)*).

C 258 — The words "amount to which the reduction or suspension applies" should be interpreted as representing the amount which will not be paid if strict application were made of the provisions of article 12 para. 2 and 3 of regulation 1408/71 (AC Decision No 78 of 22 February 1973; OJ EC C 75 of 19 September 1973 replacing Decision No 31 — OJ EC 17 February 1961).

321 — Where the pension has been calculated in accordance with the prorata temporis method, each institution should calculate its prorata without taking account of reduction or suspension clauses. These then only come into play, for the reduction of that prorata, in proportion to the duration of periods completed under that legislation (R 574/72 art. 7 para. 1 *b)*).

C 259 — The provisions appearing in Nos 320 and 321 correspond, in a simplified form, to paras. 1 and 2 of article 9 of regulation No 4.

C 260 — If the application of the non-overlap principle entails the concomitant reduction or suspension of several pension proratas, there will be no need to apply the rule described in No 320 above since the amount to which the reduction or suspension applies has already itself been reduced. Of course this only concerns cases of overlapping pension proratas with other income, with remuneration or with benefits of another type, since the clauses for reduction, suspension or withdrawal of pensions in the event of cumulation of the same type which may be laid down in the legislation of a Member State do not apply, under the last sentence of paras. 2 of article 12 of regulation 1408/71 to prorata benefits of the same type due under the legislation of several Member States: in fact, when pensions are reduced prorata temporis, their overlap is not unjustified but is expressly provided for in article 46 of regulation 1408/71 (ERER 574/72).

322 — Where the pension has been awarded by an institution only on the basis of insurance or residence periods completed under the legislation which it applies (c.f. No 308-1 above), the reduction or suspension applies only to the amount of the pension resulting from the application of article 46 para. 3 of regulation 1408/71 (c.f. Nos 311, 312). However, benefits, income or remuneration the receipt of which brings about the reduction or suspension of the pension concerned should not be taken into consideration as to their actual amount but as to a fraction of their amount obtained by applying to this amount a coefficient equal to the ratio between the amounts of the two pensions in question (pensions referred to under No 311 and No 308-1 respectively) (R 574/72 art. 7 para. 1 *c)*).

C 261 — The preceding provisions are new and have no corresponding text in regulation No 4.

C 262 — Any difficulties which might arise with regard to the preceding provisions when applying German legislation or the legislation of another Member State will be examined by the Administrative Commission (SRMC R 574/72 ad art. 7 para. 1 subpara. b), c)).

323 — For the purpose of applying the preceding provisions, the competent institutions concerned must supply each other on request with all appropriate information (R 574/72 art. 7 para. 2).

C 263 — This provision, which corresponds to para. 3 of ***art.*** *9 of regulation No 4, constitutes an application of the general principle of administrative cooperation set out in article 84 of regulation 1408/71.*

C 264 — For the application of reduction or suspension clauses, a systematic investigation will be undertaken, at least once a year, into any changes which may have taken place in the situation of the person concerned, by means of a questionnaire to be drawn up by each institution.

In the cases mentioned in article 12 para. 2 of regulation 1408/71, where a pension calculated according to the prorata temporis method is concerned, income acquired in the territory of a Member State other than that awarding the prorata pension no longer, after the determination of the said prorata, gives rise to the application of reduction or suspension clauses.

However, the prorata and any supplement awarded by the institution of a particular country should be recalculated where appropriate in order to take account, in accordance with the provisions laid down in article 7 para. 2 of regulation 574/72, of a new income or of a change in an income.

§ 3 — *Calculation of benefit taking account of the special features of national legislation concerning in particular the consideration of salaries or the family situation in the determination of entitlement*

C 265 — The following provisions correspond to subparas. c) and d) of para. 1 of article 28 of regulation No 3. Modifications have been made in the new wording to take account of the extension of the field of application of the new regulation with regard both to the persons covered (seafarers, for example) and to the applicable national legislations (new Member Countries...)

For purposes of form it appeared preferable to devote a special article to these provisions in order to make the presentation less cumbersome (ERER 1408/71).

324 — The following rules are applicable for the calculation ot the theoretical amount of the benefit (c.f. Nos 308-1-2 and 309-1 above) where the legislation concerned makes the determination of benefit dependent on:

324-1 — An average salary, an average contribution, an average increase or the relationship which existed between the worker's salary and the average salary for all insured persons, except apprentices;

Rule for calculation: The average or proportional figures are determined on the basis only of insurance periods completed under the legislation of that State or of the gross salary received by the person concerned during these periods only (R 1408/71 art. 47 para. 1 *a)*).

324-2 — The amount of salaries received, or contributions or increases paid;

Rule for calculation: The elements to be taken into account are determined on the basis of the average of the salaries, contributions or increases for insurance or residence periods completed under the applicable legislation (R 1408/71 art. 47 para. 1 *b)* amended by the Treaty of Accession).

324-3 — A salary or lump-sum amount;

Rule for calculation: The salary or amount to be taken into consideration is equal to the salary or lump-sum amount or, where appropriate, to the average of the salaries or lump-sum amounts corresponding to insurance periods completed under the applicable legislation (R 1408/71 art. 47 para. 1 *c)*, amended by Treaty of Accession).

324-4 — The amount of the salaries received for certain periods and a salary or lump-sum amount for other periods;

Rule for calculation: account is taken of the salaries or amounts or the average of these salaries or amounts (R 1408/71 art. 47 para. 1 *d)*, amended by Treaty of Accession).

325 — The elements used under insurance or residence periods completed under other legislations for the calculation of the theoretical amount are reassessed, where appropriate, according to the rules laid down by the legislation under which this theoretical amount is calculated, where these elements relate to periods referred to by the reassessment rules (R 1408/71 art. 47 para. 2).

326 — If the legislation under which benefits are awarded lays down that the amount of such benefits is established by taking account of the existence of membres of the family other than children, account is taken of members residing in the territory of another Member State of the Community (R 1408/71 art. 47 para. 3).

C 266 — The preceding provision is identical to that which appears in No 267 above (invalidity pensions).

§ 4 — *Calculation of benefit where the claimant does not simultaneously meet the conditions required by all the legislations under which insurance or residence periods have been completed* (heading amended by Treaty of Accession)

327 — The competent institution applying a legislation whose conditions are met calculates the amount of the benefit in accordance with the rules indicated under B para. 1 and para. 2 above (R 1408/71 art. 49 para. 1 *a)*).

328 — However, if the person concerned meets the conditions of at least two legislations, without needing to resort to insurance or residence periods completed under the legislations of which the conditions are not met, account is not taken of these periods for the calculation of benefit (R 1408/71 art. 49 para. 1 *b) i)*, amended by the Treaty of Accession).

329 — If the person concerned meets the conditions of one legislation only, without needing to resort to periods completed under legislations whose conditions are not met, the benefit due is calculated in accordance with the provisions of that legislation alone, on the basis only of insurance or residence periods completed under that legislation (R 1408/71 art. 49 para. 1 *a) ii)*, amended by the Treaty of Accession).

330 — A recalculation of benefits awarded is carried out as the conditions required by one or more of the other legislations to which the worker has been subject are met (R 1408/71 art. 49 para. 2).

331 — The same applies where the conditions required by one or more of the legislations concerned cease to be met (R 1408/71 art. 49 para. 3).

C 267 — The provisions described above correspond to subparas. e), f) and g) of para. 1 of article 28 of regulation No 3, subject to editorial amendments.

C 268 — The conditions according to which revision of entitlements to benefits in relation to article 49 § 2 of Regulation 1408/71 should proceed have been the subject of an explanatory decision of the Administrative Commission, No 96 of 15 March 1974 published in OJ EC No C 126 of 17 October 1974. This decision has been substituted for decision No 41 of 15 November 1962 (OJ EC No 32 of 4 March 1963) introduced into the framework of Regulations Nos 3 and 4.

C 268 a — *In case 108/75 (Giovanni Balsamo v. Institut national d'assurance maladie-invalidité, Belgium) (cf. C 210d above), the EC Court of Justice ruled on 9 March 1976:*

1. Article 28, (1) f and g of Regulation No 3, subject to the compatibility of subparagraph g with article 51 of the Treaty, as well as article 49 of Regulation No 1408/71, refer exclusively to a possible alteration of a benefit granted in one Member State on the basis of national legislation alone, in a case where the conditions for the grant of benefits obtained through the legislation of another Member State in which the person concerned has completed periods are satisfied later. These provisions do not therefore concern the calculation or the conditions for the grant of these later benefits.

2. When a migrant worker has made a claim for invalidity benefit to the institution of the place of his permanent residence and in accordance with the procedure specified by the legislation of the said place, as prescribed by article 30, para. 1 of Regulation No 4, or specified by the legislation applied by that institution, as is prescribed by article 36, para. 1 of regulation 574/72, there is no need to make a new claim in another Member State, even if, at the time of the making of his claim he did not yet satisfy all the fundamental conditions required by the legislation of the second State for a grant of the benefit.

Point 2 of the decision was confirmed by the Court of Justice of the EC in a judgment of 9 November 1977 on case 41/77 (The Queen v. a national insurance commissioner ex parte Christine Margaret Warry).

C 269 — *In case 22/67 (Caisse régionale de sécurité sociale v. Robert Goffart), the Court of Justice of the Communities decided on 30 November 1967 "that a migrant worker whose entitlement to a retirement pension has been awarded in accordance with the legislation of two Member States, in line with the prorata apportionment rules laid down in article 28 of regulation No 3 (now art. 46 of regulation No 1408/71), but who has had the payment of the portion of the pension due from one of those States suspended, is entitled to obtain from the welfare institution of the other State a pension amount calculated in accordance with its legislation alone on the basis of insurance periods completed under its legislation".*

A — Revalorization and recalculation of benefit

332 — Benefits or elements of benefit determined under the legislation of each Member State are subject to variations which affect pensions paid at national level only, because of increases in the cost of living, the variation in the level of wages or other so-called causes for adjustment without a recalculation of benefit taking place (R 1408/71 art. 51 para. 1).

C 269 a — *However, as regards the supplement provided for in article 50 of Regulation No 1408/71 (see No 314 above), the Administrative Commission, wishing to simplify procedures, has decided that, save where an agreement has been concluded between the competent authorities of two Member States with a view to operating the adjustments more frequently, the said supplement need only be recalculated once a year. This recalculation takes place under the conditions set out at No C 257a above.*

333 — On the other hand, a recalculation of benefit has to be undertaken, in accordance with the rules which governed their original determination, whenever a change takes place in the method of establishing or in the rules for the calculation of benefit (R 1408/71 art. 51 para. 2).

SECTION II — SPECIAL IMPLEMENTATION PROCEDURES IN THE LEGISLATION OF CERTAIN MEMBER STATES

Present regulations:	R 1408/71 Annex V, amended by the Treaty of Accession OJ EC L 73, 27 March 1972, by R 2864/72 OJ EC L 306 of 31 December 1972 and by R 1392/74 OJ EC L 152 of 8 June 1974
Corresponding text of abrogated regulations:	R 3 Annex G
Court of Justice EC:	Case 4/66, 14/67, 68/69, 80/71, 17/75, 20/75, 6/75, 112/75, 9/78

A — Belgium

334 — For the application of the provisions of article 46 para. 2 of the regulation (cf. Nos 308-1-2, 308-1-3 and 309 above) account may be taken of retirement insurance periods completed under Belgian legislation before 1 January 1945 as if they were insurance periods under the general invalidity scheme or the seamen's scheme (R 1408/71 Annex V A-3).

C 269 b — *On the subject of the invalidity allowance provided for in article 53 of the Belgian Law of 9 August 1963 concerning sickness and invalidity insurance, the EC Court of Justice, in its Judgment of 25 June 1975 (case 17/75, Antonio Anselmetti v. Caisse de compensation des Allocations familiales de l'Industrie charbonnière), gave the following ruling: "Under a combined sickness/invalidity insurance scheme cash benefits paid as invalidity benefits, howsoever designated, must be regarded as pensions within the meaning of article 42 of Regulation No 3." (See also C 71e and C 392a.)*

B — Denmark

335 — The provisions of the Danish pension laws which prescribe permanent residence in Denmark as a condition for entitlement to pension do not apply to workers or their survivors residing in the territory of a Member State other than Denmark (R 1408/71 Annex V B para. 5 inserted by the Treaty of Accession and amended by R 2864/72).

336 — The widow of a worker who has been subject to Danish legislation benefits from that legislation with regard to widow's and retirement benefit, even if she has not resided in Denmark (R 1408/71 Annex V B, amended by Treaty of Accession and para. 6 inserted by R 2864/72).

C 270 — *This provision is explained by the fact that, according to Danish legislation, entitlement to a widow's pension is a personal entitlement of the widow and not a derived entitlement (ERER 2864/72).*

337 — Nationals of the Community may benefit from the transitional Danish laws of 7 June 1972 concerning entitlement to an invalidity, survivor's or retirement pension (R 1408/71 Annex V B 7, amended by Treaty of Accession and by R 2864/72).

C 271 — *The new Danish legislation contains transitional provisions the aim of which is to arrange for a transition for Danish nationals between the application of previous legislation which laid down very generous conditions for benefit and the new legislation which is more strict on this point (ERER 2864/72).*

338 — Nationals of Member States of the Community who have actually resided in Denmark during the year immediately preceding the date of their claim for retirement pension benefit from the transitional residence conditions for Danish nationals (R 1408/71 Annex V B 7 amended by the Treaty of Accession and by R 2864/72).

C 272 — *In fact Danish legislation lays down less strict residence conditions for Danish nationals born before 1918 (ERER 2864/72).*

339 — Employment periods completed in Denmark by frontier and seasonal workers are, as required, credited as residence periods under Danish legislation. The same goes for periods during which such a worker is posted to the territory of a Member State other than Denmark (R 1408/71 Annex V B para. 8, amended by the Treaty of Accession and by R 2864/72).

C — German Federal Republic

340 — Special procedures are laid down for the consideration under German legislation of: "periods of interruption" (Ausfallzeiten), "supplementary periods" (Zurechnungszeiten), "credited periods" under the legislation of another Member State, "supplementary periods" (Zurechnungszeiten) under German legislation on pension insurance for mine workers, German replacement periods (Ersatzzeiten) (R 1408/71 Annex V C 2 and SRMC R 1408/71 ad Annex V).

340 a — The entitlement to voluntary insurance amended by the federal law of 16 November 1972 is extended under certain procedures to nationals of the other Member States when these persons have had connections with German insurance (R 1408/71 Annex V C 9 added to R 1392/74).

C 273 — *In case 14/67 (Joseph Welchner v. Landsversicherungsanstalt Rheinland-Pfalz) the Court of Justice of the Communities decided on 5 December 1967 that article 38 and Annex G of regulation No 3 (corresponding with art. 46 and Annex V of regulation 1408/71) do not oblige the institutions of the German Federal Republic to take account of a period completed in accordance with the legislation of another Member State to determine whether "replacement periods", in the sense of German legislation, have to be taken into account.*

C 274 — *In case 68/69 (Elisabeth Brock v. Bundesknappschaft), the Court of Justice of the Communities decided on 14 April 1970 that the scheme instituted by Annex G I B para. 1 of regulation No 3 amended by article 6 of regulation No 130/63 with regard to "periods of interruption" or "supplementary periods" is applicable to pensions and pension arrears due with effect from 1 January 1964, even if these pensions are paid on the basis of risks materializing before that date.*

C 274 a — *On the subject of the refusal of an anticipatory retirement pension, the question raised was whether a period of unemployment in a Member State may be taken into consideration as a period of unemployment within the meaning of German legislation in so far as this fact was a condition for the acquisition of pension entitlement. In this particular case, the person concerned was not staying in Germany during the period in which she acquired her pension entitlement but was staying in another Member State of the EEC (she was unemployed in France).*

Having regard to the fact that under German legislation the word "unemployment" implies that the unemployed person remains available to the German employment office, the EC Court of Justice, in a judgment of 9 July 1975 (Case 20/75 Gaetano d'Amico v. Landesversicherungsanstalt Rheinland-Pfalz), gave a negative reply to this question and ruled that "the provisions of article 27, 1, of Regulation No 3 and of article 45, 1, of Regulation No 1408/71 do not prohibit a rule of national law which requires, for the acquisition of the right to early retirement pension, that the person concerned shall have been unemployed for a certain time and thus available to the employment bureau of the Member State in question". (See also No 243a.)

D — France

341 — In order to obtain the allowance for elderly employed persons, only periods of paid employment or periods credited as such in the territories of the European Departments and the Overseas Departments of the French Republic are taken into consideration. In addition, the claimant must, when the claim is submitted, be resident in French territory (R 1408/71 Annex V D 1).

342 — Only workers employed in the mines in France can receive the special grant and the overlappable compensation provided for in the special social security legislation for the mines (R 1408/71 Annex V D 2).

343 — Law No 65-555 of 10 July 1965 which awards to French persons who are or have been in paid employment abroad the right to join the voluntary retirement insurance scheme, applies to nationals of other Member States who, at the time of their claim, have either resided in France for at least ten years, consecutive or not, or have during the same period of time been subject to one of the French schemes listed in article 4 para. 1 and 2 of regulation 1408/71. The paid employment concerned must not be or have been carried out either in French territory or in the territory of the Member State of which the worker is a national (R 1408/71 Annex V D 3).

C 275 — The above provisions in Nos 341, 342 and 343 already appeared in Annex G IV of regulation No 3.

C 276 — The application to nationals of Member States of the Community of the French law of 10 July 1965 has been dealt with in a judgment by the Court of Justice of the Communities on 22 March 1972 (case 80/71 Adalgisea Meriuzzi v. Caisse primaire centrale d'Assurance Maladie de la Région parisienne). In this judgment the Court of Justice considered that the condition laid down in annex G IV of regulation No 3 (condition contained word for word in Annex V D 3 of regulation 1408/71 "of having been subject to French legislation either compulsorily or optionally" must be interpreted as placing an obligation on the persons concerned of having been subject for at least ten years to one of the French schemes listed in article 2 para. 1 and 2 of regulation No 3. In the new regulations the schemes concerned are now listed in article 4 para. 1 and 2 of regulation 1408/71.

C 276 a — In the case of a German worker who, in addition to insurance periods in the Federal Republic of Germany, has completed a period of insurance in Algeria from 1 July 1960 to 30 July 1962 (Case 6/75 Ulrich Horst v. Bundesknappschaft, Bochum), the EC Court of Justice gave the following ruling on 26 June 1975: "In so far as is necessary for the acquisition, the maintenance of the recovery of the right to benefits, insurance periods completed in Algeria before 19 January 1965 must be taken into consideration in calculating the pensions referred to in chapters 2 and 3 of Regulation No 3 even if the risk materializes and the claim for a pension is made after that date".

This decision was mainly based on the consideration that even though Algeria became independent on 1 July 1962, its territory continued to be treated as French territory for the purposes of Regulation No 3 until 19 January 1965, when the reference to Regulation No 109/65 was deleted in the Annexes to Regulations Nos 3 and 4. The Court of Justice, on the other hand, noted that article 16(2) of Regulation No 109/65 explicity stated that the deletion of this reference to Algeria was without prejudice to rights already acquired.

This decision should be considered in conjunction with the Court's Judgment of 10 October 1975 in case 110/73 Fiege v. Caisse régionale d'assurance maladie de Strasbourg (C 71 c above).

C 276 b — The position expounded above was confirmed on 8 April 1976 by the EC Court of Justice in a similar case (Case 112/75 Directeur régional de la Sécurité sociale de Nancy v. Auguste Hirardin and Caisse régionale d'assurance maladie du Nord-Est, Nancy) concerning a worker of Belgian nationality who had worked as an employed person in France from 1 July 1930 to 30 September 1939, from 1 January 1940 to May 1940, from 1954 to 1956, and subsequently in Algeria from 16 January 1957 to 31 March 1961 and, again, in France from 1961 until reaching pension age.

In this case, the EC Court of Justice, however, did not base its decision on article 16(2) of Regulation No 109/65 to which it had had recourse in the similar cases 110/73 (Fiege, see C 71c above) and 6/75 (Horst, see C 276a above), but on the principle of equality of treatment enshrined in articles 48 to 51 of the EEC Treaty. The EC Court of Justice ruled as follows: "The principle of equal treatment of workers laid down by articles 48 to 51 of the EEC Treaty implies that provisions of national law cannot be applied as against a worker who, while residing in France, is a national of another Member State, where their effect is to deprive such a worker of a benefit awarded to French workers as regards the taking into account, in calculating the old-age pension, of insurance periods completed in Algeria".

C 276 c — In a dispute arising from an application by a Belgian worker, at the age of 60, for a retirement pension at the rate usually payable at the age of 65 (50%) on the grounds of a period of captivity in Germany during the war as a member of the Belgian armed forces, it was asked whether the old-age insurance benefits laid down by French Law No 73-1051 of 21 November 1973 (art. L 382 (2) of the Code de la Sécurité sociale (Social Security Code)) fell within the scope of matters covered by regulation 1408/71.

In reply to that question, and contrary to the opinion expressed in the Commission's observations, the Court of Justice EC, considering that article 4 of regulation 1408/71 provided that that regulation did not apply to "benefit schemes for victims of war or its consequences", ruled, in a Judgment of 16 July 1978 (Case 9/78, Directeur régional de la Sécurité sociale de Nancy v. Paulin Gillard), that:

"Article 4 (4) of regulation 1408/71 must be interpreted as meaning that the regulation does not apply to social benefits for former prisoners of war such as the benefit provided under the French Law of 21 November 1973, article L 332 (2) of the Code de la Sécurité sociale."

E — Ireland

343 a — For the purposes of the provisions outlined in Section 300 above (implementation of art. 44, para. 2 of R 1408/71 as amended by R 2595/77), a worker shall be deemed to have expressly asked for postponement of the award of an old-age pension to which he would be entitled under the legislation of Ireland if, where retirement is a condition for receiving the old-age pension, he has not retired (R 1408/71, Annex V E (9) as added by R 2595/77).

F — Italy

None.

G — Luxembourg

344 — Special procedures according to which account is taken of insurance or credited periods completed before 1 January 1946 under Luxembourg invalidity, retirement or death pension insurance legislation (R 1408/71 Annex V G).

344 a — The periods of insurance completed under Luxembourg legislation by workers not resident on Luxembourg territory are taken into consideration in order to assess the part fixed as the responsibility of the State for pensions in Luxembourg. These periods are treated as periods of residence with effect from 1 October 1972 (R 1408/71 Annex V G (2) added by R 1392/74).

C 276 c — *The provisions stated under No 344a have been added by Regulation 1392/74 to take account of the Act of 3 September 1972 which has amended various provisions of legislations concerning the schemes for contributory pension in Luxembourg. Because of this Act, the assessment of the part fixed as the responsibility of the State and of the communes has been subordinated, in addition to the short-stay condition of five years of insurance, to a condition of residence in Luxembourg for 180 months.*

If the condition of residence is not fulfilled, while the condition of short stay is met (account having been taken, should the case arise, of the applications of international conventions and regulations), the insured has the right to the part specified according to the number of actual months of residence requisite for the award of the whole amount specified. These new provisions, brought into force on 1 October 1972, would deprive of all entitlement to their specified share those who work in the Grand Duchy who are not living there, that is to say in particular those workers who live just over the borders and seasonal workers. The supplementary provision set out in No 344a is intended to rectify this situation by assimilating the periods of insurance, for the categories of persons quoted, under Luxembourg legislation, with periods of residence in Luxembourg for the assessment of the part to be agreed (ERER 1392/74).

H — Netherlands

345 — Procedures in accordance with which Netherlands legislation on general retirement insurance takes account of insurance periods completed prior to 1 January 1957 and periods valid for retirement benefit with regard to married women (R 1408/71 Annex V H 2).

346 — Procedures in accordance with which, for the application of the provisions appearing in No 309, account is taken of insurance periods completed under Netherlands legislation relating to:

346-1 — general insurance for widows and orphans prior to 1 October 1959 (R 1408/71 Annex V H 3);

346-2 — insurance against incapacity for work prior to 1 July 1967 (R 1408/71 Annex V H 4).

346-3 — general insurance against incapacity for work (R 1408/71, Annex V, H 5-*a)* and -*b)* as added by R 2595/77).

346 a — The provisions outlined in Section 304 (R 1408/71, art. 45, para. 1) shall not apply to the assessment of entitlement to benefits under the transitional provisions of the legislations on general old-age insurance (art. 46), on general insurance for widows and orphans and on general insurance against incapacity for work (R 1408/71, Annex V, H (6) as added by R 2595/77).

C 277 — The provisions referred to in Nos 345 and 346 correspond in essence to those in Annex G part III b) of regulation No 3.

C 278 — The Court of Justice of the European Communities, in a decision on 13 July 1966 (Case 4/66 Mrs. J.E. Hagenbeek widow of W. Labots v. Raad van Arbeid in Arnhem) considered that the provision of Annex G part III, subpara b) of regulation No 3 was not only applicable where it was a case of determining the amount of benefit due under Netherlands legislation on general insurance for widows and orphans but was also applicable where there was a need to know whether under article 27 of regulation No 3 (now art. 46 of regulation 1408/71) there existed entitlement to benefit under that Netherlands legislation.

G — United Kingdom

347 — Periods of employment in another Member State are credited as employment periods in the territory of the United Kingdom for the purposes of exemption from contributions because of incapacity for work, maternity leave or involuntary unemployment (R 1408/71 Annex V I 2, amended by Treaty of Accession).

C 279 — Under United Kingdom legislation, fictive contributions are credited to the account of insured persons who, in case of incapacity for work, maternity leave or involuntary unemployment, are exempted from the payment of contributions.

In order to be credited with these fictive contributions, actual contributions must have been paid for a period of ten weeks prior to the interruption of work. These fictive contributions are valid when establishing entitlement to pension. The insertion in Annex V referred to above enables periods of employment in another Member State to be taken into account if the person concerned has not been employed for ten weeks in the United Kingdom at the time when he claims exemption from the payment of contributions (Doc. sec. (71) 4376 and 4550).

348 — Procedures in accordance with which the annual average of contributions paid by the husband or credited to his account is established, in the contingency where a woman claims retirement pension based on her husband's insurance or in her own right, while the husband's contributions are taken into account for the determination of pension entitlement. In this contingency any reference to an insurance period completed by the woman concerned is considered, in order to establish the annual average of contributions paid by the husband or credited to his account, as including reference to an insurance period completed by the husband (R 1408/71 Annex V I 3, amended by the Treaty of Accession).

C 280 — Under United Kingdom legislation, married women may choose between: either paying contributions in order to acquire entitlement to benefit by virtue of their own insurance, or not paying contributions; in the latter case they have entitlement derived from that of their husband but benefit is lower than in the former case.

Where the marriage has ended in divorce or annulment, the woman no longer has the choice between these two possibilities and must pay contributions. Where the marriage has ended in the husband's death, the widow may pay only proportional contributions.

The purpose of the provision inserted in Annex V I 3 of regulation 1408/71 is to permit the consideration of insurance periods completed in another Member State by the husband in order to determine his wife's entitlement to benefit (ERER Sec (71) 4376 and 4550).

348 a — The provisions shown under Nos 309, 310, 311 and 312 (art. 46 § 2 and 3 of regulation 1408/71) are not applicable to graduated retirement pensions in the U.K. (R 1408/71 amended by the Treaty of Accession Annex V I 10 plus R 1392/74).

C 280 a — The total of graduated pensions in the UK. is relatively low and is directly linked to the total contributions referred to, but is not dependent upon the periods of insurance which constitute the basis for the calculation of pension under article 46 of regulation 1408/71. Furthermore, the payment of graduated contributions does not always coincide with the payment of contributions for the normal flat-rate pension. In fact, on the one hand, workers receiving a modest salary do not pay graduated contributions and, on the other hand, certain widows and many married women only pay contributions at flat-rates, though they are obliged to pay graduated contributions.

The provisions in article 46 §§ 2 and 3 of regulation 1408/71 could not apply to graduated benefits in the UK. In fact, it is to all intents and purposes impossible to calculate a theoretical total for these aspects of pension provision by referring to article 46 § 2 (No 309 above) and to determine the periods to which these paid contributions refer. On the other hand, since entitlement to the graduated pension is always valid without totalling up periods, this graduated pension would always be likely to involve a reduction being made conforming with the rule explained above under No 312, even in cases where the entitlement to a flat-rate pension would only be applicable by taking into consideration the periods of insurance completed in another Member State. In this case the reduction could only be brought to bear upon the graduated element of the benefit due because of British legislation. In fact, the total of this benefit is not high.

Moreover, the scheme of graduated benefits is due to disappear in 1975 (ERER 1392/74).

348 b — In order to calculate temporary benefits for widows under the legislation of the UK., a nominal salary must be taken into account for periods of employment completed in another Member State, for tax purposes, considered as corresponding to the average weekly rate of the variable allowance fixed by the Government Actuary for the whole of beneficiaries as the standard payment of variable benefits for the current year (R 1408/71 modified by the Treaty of Accession Annex V 1 (II) plus R 1392/74).

C 280 b — This new provision is explained by the factors detailed in No C 196a above.

SECTION III — INVESTIGATION OF PENSION CLAIMS

Present regulations:	R 574/72 art. 36 to 38, 41 to 52, art. 105, amended by R 878/73 OJ EC L 86 of 31 March 1973* Annex 2 and 10 amended by R 878/73 and by R 1392/74 OJ EC No L 152 of 8 June 1974
Corresponding text of abrogated regulations:	R 4 art. 30 to 40, art. 82
Court of Justice EC:	Case 35/74
Administrative Commission:	Decision Nos 103, 104
Forms to be used:	E 105, E 202, E 203, E 204, E 205, E 206, E 207, E 208, E 209, E 210, E 211, E 212, E 213, E 214, E 501, E 502, E 503

* and by R 2595/77 OJ EC L302 of 26 November 1977

A — Submission of claims for pensions, the amount of which depends on the duration of insurance or residence periods

§ 1 — *Institution to which the claim must be sent (R 574/72 art. 36 para 1, 2, 3 amended by R 878/73 OJ EC L 86 31 March 1973)*

349 — Three cases may be considered:

349-1 — Where the worker resides in the territory of a Member State to the legislation of which he has been subject: the claim should be sent to the institution of the place of residence;

349-2 — Where the worker resides in a Member State to the legislation of which he has not been subject: the pension claim is sent to the competent institution to which he was last attached, either directly or through the intermediary of the institution of the place of residence;

349-3 — Where the claimant resides in the territory of a non-Member State: the person concerned must send his claim direct to the competent institution to which he was last attached.

350 — Apart from the application of the provisions referred to in No 300 above, any claim for benefit sent to the institution of a Member State automatically involves the concomitant award of pensions under the legislations of all the Member States concerned the conditions of which he meets (R 574/72 art. 36 para. 4).

C 281 — The preceding provisions take in, with some improvements, the provisions of article 30 paras. 1 to 3 of regulation No 4. It is explicitly laid down, so as to avoid divergent interpretations, that the submission of the claim to the institution of a Member State automatically involves the concomitant award of benefits due under all the legislations of the Member States in which entitlement to benefit exists, except if, in accordance with the provisions of article 44 para. 2 of regulation 1408/71, the claimant wishes to defer the award of retirement benefit acquired under the legislation of one or more other Member States.

§ 2 — *Documents and information to be attached to the claim for benefit*

351 — The claim must be drawn up on the form prescribed for the purpose by the legislation of the Member State in the territory of which the claimant resides (case referred to in No 349-1) or of the Member State to which the worker was last subject (case referred to in Nos 349-2 and 349-3). This claim must be accompanied by the documentary evidence required and by any necessary information concerning in particular the insuring institutions and the employment periods (R 574/72 art. 37 *a) b) c)*).

352 — A claimant wishing to make use of the option set out in No 300 above should state under which legislation he is claiming benefit (R 574/72 art. 37 *d)*).

C 282 — The provisions referred to in No 351 correspond, subject to editorial amendments, to the provisions of subparas. a) and c) of para. 1 of article 31 of regulation No 4.

C 283 — The provision contained in No 352 is new and is consequent upon the provision described in No 300.

C 284 — The expression "competent organs" appearing in subpara. b) of article 37 of regulation No 574/72 covers not only social security institutions but also other organs such as town halls, police departments, etc. (ERER 574/72).

§ 3 — *Declaration concerning members of the family to be taken into consideration for establishing the amount of the benefit*

353 — In order to benefit from the provisions described in No 326 above, the claimant must submit a declaration drawn up on form E 105 by the institution of the place of residence of the members of his family. The validity of this declaration is twelve months renewable (R 574/72 art. 38 para. 1).

354 — This declaration is issued by the institution of sickness insurance in the place of residence of members of the family or by another institution designated for this purpose in Annex 10, mentioned in article 4 of regulation 574/72. This Annex has been amended by Regulations Nos 878/73, 1392/74 ~~and~~ 1209/76, and 2595/77

355 — Any change in the composition of the family must be notified without delay by the worker (R 574/72 art. 25 para. 2 and 38 para. 1).

356 — Instead of this declaration, the competent institution may require the production of recent civil status documents with regard to members of the family, except for children, residing in the territory of another Member State (R 574/72 art. 38 para. 1 subpara. 3).

357 — The fact that the members of the family are dependent upon the recipient of the pension must, where appropriate, be established by documents proving the regular transmission of a part of earnings (R 574/72 art. 38 para. 2).

C 285 — Regulation 574/72, in its provisions described above, subject to editorial amendments only, takes in the provisions of subparas. d) and e) of para. 1 of article 31 of regulation No 4. It also makes applicable the simplified procedure set out in article 25 of the implementation regulation with regard to sickness/maternity insurance.

C 286 — In accordance with what is stipulated in subpara. c) of article 1 of the implementation regulation, the term "member of the family" retains the meaning defined in subpara. f) of article 1 of the regulation. As a result, this term also means persons who do not live under the same roof as the person concerned, as long as they are chiefly dependent upon him. The proof of this situation is established by the production of the documents referred to above (ERER 574/72).

B — Investigation of claims for invalidity, retirement and survivor benefits

§ 1 — *Determination of the investigating institution*

358 — The investigating institution is the competent institution to which the claim has been sent or forwarded in accordance with the provisions referred to in No 349 above (R 574/72 art. 41 para. 1).

359 — Claims for benefit are immediately notified by the investigating institution to all the institutions concerned so that simultaneous investigation can take place without delay.

For the purpose of these notifications, use is made of form E 202 (retirement pension), E 203 (survivor's pension) and E 204 (invalidity pension) as appropriate (R 574/72 art. 41 para. 2).

C 287 — The preceding provisions correspond, subject to editorial amendment only, to the provisions of article 32 of regulation No 4. It is also stated that, in order to speed up the award of benefit, the investigating institution must immediately advise all the competent institutions that a claim for benefit has been submitted.

§ 2 — *Forms to be used for the investigation of pension claims*

360 — The investigating institution attaches to the form referred to in No 359 above, where necessary, any relevant declarations concerning the career of the person concerned. These declarations, which take the place of documentary evidence, are drawn up on forms E 205 (insurance or residence record), E 206 (statement of periods of employment in the mines and undertakings considered as such), E 207 (information concerning the worker's career) as appropriate (R 574/72 art. 42 para. 1 and 43 para. 1, amended by R 878/73).

C 288 — These provisions take in, subject to editorial amendments, the provisions of article 33 and article 34 para. 1 of regulation No 4.

A — Submission of claims for pensions, the amount of which depends on the duration of insurance or residence periods

§ 1 — *Institution to which the claim must be sent (R 574/72 art. 36 para. 1, 2, 3 amended by R 878/73 OJ EC L 86 31 March 1973)*

349 — Three cases may be considered:

349-1 — Where the worker resides in the territory of a Member State to the legislation of which he has been subject: the claim should be sent to the institution of the place of residence;

349-2 — Where the worker resides in a Member State to the legislation of which he has not been subject: the pension claim is sent to the competent institution to which he was last attached, either directly or through the intermediary of the institution of the place of residence;

349-3 — Where the claimant resides in the territory of a non-Member State: the person concerned must send his claim direct to the competent institution to which he was last attached.

350 — Apart from the application of the provisions referred to in No 300 above, any claim for benefit sent to the institution of a Member State automatically involves the concomitant award of pensions under the legislations of all the Member States concerned the conditions of which he meets (R 574/72 art. 36 para. 4).

C 281 — *The preceding provisions take in, with some improvements, the provisions of article 30 paras. 1 to 3 of regulation No 4. It is explicitly laid down, so as to avoid divergent interpretations, that the submission of the claim to the institution of a Member State automatically involves the concomitant award of benefits due under all the legislations of the Member States in which entitlement to benefit exists, except if, in accordance with the provisions of article 44 para. 2 of regulation 1408/71, the claimant wishes to defer the award of retirement benefit acquired under the legislation of one or more other Member States.*

§ 2 — *Documents and information to be attached to the claim for benefit*

351 — The claim must be drawn up on the form prescribed for the purpose by the legislation of the Member State in the territory of which the claimant resides (case referred to in No 349-1) or of the Member State to which the worker was last subject (case referred to in Nos 349-2 and 349-3). This claim must be accompanied by the documentary evidence required and by any necessary information concerning in particular the insuring institutions and the employment periods (R 574/72 art. 37 *a) b) c)*).

352 — A claimant wishing to make use of the option set out in No 300 above should state under which legislation he is claiming benefit (R 574/72 art. 37 *d)*).

C 282 — The provisions referred to in No 351 correspond, subject to editorial amendments, to the provisions of subparas. a) and c) of para. 1 of article 31 of regulation No 4.

C 283 — The provision contained in No 352 is new and is consequent upon the provision described in No 300.

C 284 — The expression "competent organs" appearing in subpara. b) of article 37 of regulation No 574/72 covers not only social security institutions but also other organs such as town halls, police departments, etc. (ERER 574/72).

§ 3 — *Declaration concerning members of the family to be taken into consideration for establishing the amount of the benefit*

353 — In order to benefit from the provisions described in No 326 above, the claimant must submit a declaration drawn up on form E 105 by the institution of the place of residence of the members of his family. The validity of this declaration is twelve months renewable (R 574/72 art. 38 para. 1).

354 — This declaration is issued by the institution of sickness insurance in the place of residence of members of the family or by another institution designated for this purpose in Annex 10, mentioned in article 4 of regulation 574/72. This Annex has been amended by regulation 1392/74.

355 — Any change in the composition of the family must be notified without delay by the worker (R 574/72 art. 25 para. 2 and 38 para. 1).

356 — Instead of this declaration, the competent institution may require the production of recent civil status documents with regard to members of the family, except for children, residing in the territory of another Member State (R 574/72 art. 38 para. 1 subpara. 3).

357 — The fact that the members of the family are dependent upon the recipient of the pension must, where appropriate, be established by documents proving the regular transmission of a part of earnings (R 574/72 art. 38 para. 2).

C 285 — Regulation 574/72, in its provisions described above, subject to editorial amendments only, takes in the provisions of subparas. d) and e) of para. 1 of article 31 of regulation No 4. It also makes applicable the simplified procedure set out in article 25 of the implementation regulation with regard to sickness/maternity insurance.

C 286 — In accordance with what is stipulated in subpara. c) of article 1 of the implementation regulation, the term "member of the family" retains the meaning defined in subpara. f) of article 1 of the regulation. As a result, this term also means persons who do not live under the same roof as the person concerned, as long as they are chiefly dependent upon him. The proof of this situation is established by the production of the documents referred to above (ERER 574/72).

B — Investigation of claims for invalidity, retirement and survivor benefits

§ 1 — *Determination of the investigating institution*

358 — The investigating institution is the competent institution to which the claim has been sent or forwarded in accordance with the provisions referred to in No 349 above (R 574/72 art. 41 para. 1).

359 — Claims for benefit are immediately notified by the investigating institution to all the institutions concerned so that simultaneous investigation can take place without delay.

For the purpose of these notifications, use is made of form E 202 (retirement pension), E 203 (survivor's pension) and E 204 (invalidity pension) as appropriate (R 574/72 art. 41 para. 2).

C 287 — The preceding provisions correspond, subject to editorial amendment only, to the provisions of article 32 of regulation No 4. It is also stated that, in order to speed up the award of benefit, the investigating institution must immediately advise all the competent institutions that a claim for benefit has been submitted.

§ 2 — *Forms to be used for the investigation of pension claims*

360 — The investigating institution attaches to the form referred to in No 359 above, where necessary, any relevant declarations concerning the career of the person concerned. These declarations, which take the place of documentary evidence, are drawn up on forms E 205 (insurance or residence record), E 206 (statement of periods of employment in the mines and undertakings considered as such), E 207 (information concerning the worker's career) as appropriate (R 574/72 art. 42 para. 1 and 43 para. 1, amended by R 878/73).

C 288 — These provisions take in, subject to editorial amendments, the provisions of article 33 and article 34 para. 1 of regulation No 4.

§ 3 — *Procedure to be followed by the institutions concerned in investigating the claim*

a) Case where, apart from the investigating institution, there is only one other institution concerned

361 — In this contingency the institution concerned indicates:

— on forms E 205, the insurance or residence periods completed under the legislation which it applies;

— where appropriate, on form E 206, the periods of employment in the mines and undertakings considered as such;

— on a form E 208, the amount of benefit to which the person concerned may lay claim, either on the basis only of insurance or residence periods in the Member State under consideration, or on the basis of prorata apportionment of the elements of pension.

These forms are returned to the investigating institution (R 574/72 art. 43 para. 2).

362 — Form E 208 may be returned to the investigating institution with only the indications concerning the benefit relating only to insurance or residence periods completed under the legislation applied by the institution concerned, where the operations of prorata apportionment require a delay longer than that needed for the determination of the said benefit (R 574/72 art. 43 para. 2, subpara. 2, amended by R 878/73).

b) Case where, apart from the investigating institution, two or more institutions concerned have to intervene

363 — Each of the institutions concerned goes ahead on its own account with the operations described above in Nos 360, 361 and 362 (R 574/72 art. 43 para. 3, subparas. 1 and 2, amended by R 878/73).

364 — Upon receipt of all the forms referred to in Nos 360, 361 and 362 the investigating institution sends a copy of the forms thus completed to each of the institutions concerned; the latter inserts the theoretical amount and the actual amount of benefit due from it. These forms are then returned to the investigating institution (R 574/72 art. 43 para. 3, subpara. 3, amended by R 878/73).

365 — The investigating institution, where appropriate, advises the other institutions concerned as soon as possible that the person concerned is able to benefit either from the application of the safeguarding clauses referred to in No 303 above in case of insurance or residence periods of less than one year, or from an invalidity pension the amount of which is independent of the duration of insurance or residence periods (c.f. No 269 and following above) (R 574/72 art. 43 para. 4, amended by R 878/73).

366 — In the contingency where the person concerned has requested deferment of the award of retirement benefit acquired under the legislation of one or more Member States, the institutions of those States indicate on form E 205 only the insurance or residence periods completed under the legislation which they apply (R 574/72 art. 43 para. 5 amended by regulation 878/73).

C 289 — The preceding provisions correspond, without prejudice, in particular, to the various explanations designed to facilite the investigation procedure, to the provisions of paras. 1 and 2 of article 34 of regulation No 4. Simplified provisions have been laid down for the case where the worker has been subject only to the legislation of two Member States.

§ 4 — *Payment of benefit on a provisional basis and advance payments of benefit*

C 290 — The following provisions are designed to hasten the payment of benefit which may be awarded without waiting for the investigation form to have been completed by all the institutions concerned.

367 — If the person concerned is entitled to benefit from the investigating institution, without resorting to insurance or residence periods completed in the other Member States, the investigating institution will immediately pay such benefit on a provisional basis (R 574/72 art. 45 para. 1, amended by R 878/73).

368 — If the person concerned is not entitled to benefit in the conditions set out in No 367 but has entitlement to benefit under the legislation of another Member State, on the basis of insurance or residence periods completed under the legislation of that State only, the institution which applies that legislation pays benefit on a provisional basis as soon as the investigating institution advises it that this obligation exists (R 574/72 art. 45 para. 2, amended by R 878/73).

369 — If the person concerned is entitled to benefit from the institutions of several Member States, on the basis only of insurance or residence periods completed under each of the legislations concerned, the provisional payment of benefit falls to the institution which first informed the investigating institution of the existence of such entitlement (R 574/72 art. 45 para. 3, amended by R 878/73).

370 — The institution responsible for paying benefit on a provisional basis must so inform the claimant immediatly, explicitly drawing to his attention the provisional nature of the measures taken for this purpose and the fact they are not subject to appeal (R 574/72 art. 45 para. 4).

371 — An appropriate recoverable advance is awarded to the claimant by the investigating institution if, although no provisional benefit may be payable, it nevertheless appears from the indications received that entitlement to a pension exists. This advance is set at an amount as close as possible to the benefit which will probably fall to the charge of the investigating institution (R 574/72 art. 45 para. 5).

C 291 — The indications contained in No 371 correspond to the provisions of para. 3 of article 34 of regulation No 4.

C 291a — With regard to the application of article 34 § 3 of regulation No 4 (in which provisions have been redrafted and specified by article 45 § 5 of regulation 574/72) the Court of Justice of the European Communities, in a decision of 12 November 1974 (Case 35/74, Alliance Nationale des Mutualités Chrétiennes et Institut national d'assurance maladie, invalidité, v. Thomas Rzepa :

— considering in particular that the provisions in question in relation to the award of recoverable advances "can only apply in the supposition that a preliminary totalling-up would be necessary to establish eligibility to entitlement" (while this case involved a disability benefit in a Member State which had a disability insurance system of a kind which was not dependent on the length of periods completed),

— gave judgement that : "... As Article 34 (3) is integrated with the provisions of national social security laws and supplements them, payments made on this dual basis do not arise only by virtue of Community law, from which it follows that any limitation or time limit which may apply must, in the present state of the law, be dictated by national social security law".

372 — It is possible for Member States to agree other procedures between themselves for the payment of provisional benefit where the institutions of those States alone are concerned. These agreements should be notified to the Administrative Commission (R 574/72 art. 45 para. 6).

§ 5 — *Definitive calculation of amounts of prorata benefits*

373 — In the case of a prorata apportioned pension, the investigating institution calculates and notifies, by the use of form E 209, each of the institutions concerned the definitive amount of the benefit for which each is responsible (R 574/72 art. 47).

§ 6 — *Communication of the decisions of the institutions to the claimant*

374 — The definitive decisions taken by each of the institutions concerned are forwarded to the investigating institution, using form E 210. All decisions must set out the procedures and time limits for appeals laid down in the applicable legislation (form E 212) (R 574/72 art. 48 para. 1).

375 — On receipt of all these decisions, the investigating institution informs the claimant of them, in his own language, by means of a summary notification (form E 211) to which are annexed the decisions of the institutions concerned. The time limits for appeal are counted from the date of receipt of the summary notification by the claimant (R 574/72 art. 48 para 1).

C 292 — Member States have undertaken to look into the possibility of introducing a procedure, in relations between their institutions, which will enable the worker as far as possible to take note of the decisions taken by these institutions in his case in his own language (SRMC R 574/72 ad art. 48 para. 1).

376 — The investigating institution should send each of the institutions concerned a copy of the summary notification and attach copies of the decisions of the other institutions (R 574/72 art. 48 para. 2).

C 293 — The preceding provisions take in and improve the provisions of article 36 of regulation No 4.

§ 7 — *Recalculation of benefit*

377 — The provisions set out in Nos 367 to 373 are applicable in case of review or withdrawal of benefit due from one of the institutions concerned (c.f. Nos 330, 331 and 333 above). The decisions concerning review or withdrawal are notified to the person concerned either directly or through the intermediary of the investigating institution, and the other institutions concerned must be informed without delay (R 574/72 art. 49).

§ 8 — *Measures designed to accelerate the award of benefit*

378 — Without prejudice to any application procedures which may be adopted by the Administrative Commission, the following rules have been agreed for pre-preparation of documentation in order to speed up award procedures (R 574/72 art. 50 para. 2).

379 — After any change in legislation applicable to a worker, the competent institution of the new country of employment should send to the organisation appointed by the competent authority of that country all information relating to the identification of the worker, the date when employment commenced, the name of the competent institution, the insurance number issued by the latter and, as far as possible, any other information which may facilitate and accelerate the later award of pensions (R 574/72 art. 50 para. 1 *a), i)* and *ii)*).

380 — The information referred to above is communicated, in the conditions laid down by the Administrative Commission, to the organization appointed by the competent authority of the Member State concerned (R 574/72 art. 50 para. 1 *a), ii)* and *iii)*).

381 — For the purposes of the rules set out in Nos 379 and 380, stateless persons and refugees are considered as nationals of the Member State to whose legislation they have first been subject (R 574/72 art. 50 para 1 *a), iv)*).

C 294 — The conditions for implementing the above rules with particular regard to the information to be received from and sent to the bodies designated for this purpose have been specified in Administrative Commission Decision No 103 of 29 May 1975 (OJ No C 294 of 22 December 1975). For the transmission of this information, Forms E 501 (notification on taking up employment) and E 502 (reply to the notification of the beginning of employment) should be used. However, the institutions of Denmark and the Netherlands will not be forwarding Form E 501 to the other Member States. The designated bodies of Denmark and the Netherlands should, however, receive Form E 501 but they do not respond by sending back Form E 502.

382 — Reconstruction of a person's insurance record is undertaken not later than one year before pension age (R 574/72 art. 50 para. 1 *b)*).

C 294 a — Insurance histories are drawn up by the institutions concerned either at the initiative of one of these institutions or at the request of the worker made to one of the said institutions. For this purpose, Form E 503 is used (Administrative Commission Decision No 104 of 29 May 1975 published in OJ No C 294 of 22 December 1975).

§ 9 — *Administrative checks and medical examinations*

383 — The initiative for checks falls to the institution from which the pension is due. Checks are carried out by the institution of the place of stay or residence of the beneficiary, in accordance with the procedures laid down in the legislation applied by the latter institution. The debtor institution nevertheless reserves the right to arrange for an examination of the beneficiary by a doctor of its own choosing. For this purpose use is made of forms E 213 and E 214 (R 574/72 art. 51 para. 1).

384 — Checks on means and employment are, where appropriate, carried out by the institution of the place of stay or residence, and give rise to an accurate and detailed report for the institution from which benefit is due (R 574/72 art. 51 para. 2).

C 295 — The above indications correspond, subject to editorial amendment only, to the provisions of articles 38 and 39 of regulation No 4.

385 — The institutions concerned exchange any relevant information for the purpose of resuming payment of a benefit which had been suspended (R 574/72 art. 52).

C 296 — These provisions, subject to editorial amendments, correspond to those of article 40 of regulation No 4.

386 — Costs of administrative checks and medical examinations are advanced by the institution carrying them out. They are later refunded by the institution which requested them, on the basis of the tariff which it operates. However, other methods of settlement may be laid down under agreements concluded between two or more Member States: these may be lump-sum refunds or plain renunciation of all reimbursement. These agreements are referred to in Annex 5 of regulation 574/72 (R 574/72 art. 105).

C 297 — This provision, subject to more precise wording, corresponds to the text of article 82 of regulation No 4.

SECTION IV — PAYMENT OF BENEFIT

Provisions applicable: Reg. 574/72, Art. 53 to 59, Annexes 5 and 6 amended by R 878/73 OJ EC L 86 of 31 March 1973, by R 1392/74, OJ EC L 152 of 8 June 1974 and by R 1209/76 OJ EC L 138 of 26 May 1976 *

Corresponding text of abrogated regulations: R 4 art. 41 to 46

*and by R 2595/77 OJ EC L302 of 26 November 1977

A — Payment procedures

387 — The payment of pensions is carried out either directly by the competent institution or through the intermediary of a liaison organization or of the institution of the place of residence (R 574/72 art. 53 para. 1).

388 — Annex 6 to Regulation No 574/72, as amended by Regulations Nos 878/73, 1392/74, 1209/76, sets out the payment procedure implemented by the institutions of the different Member States; at the same time the provisions of agreements relating to the payment of benefits which were applicable prior to the entry into force of the Regulation remain in force to the extent that they are mentioned in Annex 5 to Regulation No 574/72 (R 574/72, art. 53, 1 and 3.

389 — Payments of arrears and other once-for-all payments of pensions are carried out through the intermediary of the liaison organizations (R 574/72 annex 6, General Observation).

390 — However, other payment procedures may be adopted. Agreements made for this purpose between two or more Member States should be communicated to the Administrative Commission (R 574/72 art. 53 para. 2).

391 — The procedure for paying benefit through the intermediary of the liaison organization or of the institution of the place of residence of the beneficiaries is based on the following rules:

391-1 — the pension payments schedule is sent by the competent institution to the paying body not later than 20 days before the due date; this schedule should be drawn up in duplicate (R 574/72 art. 54);

391-2 — the sums necessary for the payment of the pensions must be transferred by the competent institution to the account of the paying body ten days before the due date. This payment discharges all liability. However, a notification of payment is simultaneously sent to the paying body. The names and registered offices of the bank involved in these payments are given in Annex 7 of regulation 574/72 (art. 4 and 55). This Annex 7 has been amended by regulation 1392/74 (OJ EC No L 152 of 8 June 1974) and by Regulation No. 2595/77 (OJ EC L 302 of 26 November 1977)

391-3 — payments are made on behalf of the competent institution in accordance with the procedures used by the paying body in the currency of the country of residence (R 574/72 art. 56 para. 1);

391-4 — as soon as it knows of any occurrence giving rise to such action, the paying body proceeds to suspend or withdraw benefit and so notifies the competent institution (R 574/72 art. 56, para. 2 and 3).

B — Periodic settlement of payment accounts

392 — Pension payment accounts are settled at the end of each payment period. The paying body guarantees that payments so determined have been properly made. Any differences between the sums transferred and payments actually made are set against sums to be transferred later (R 574/72 art. 57).

393 — Costs relating to the payment of pensions may be recovered from the competent body (R 574/72 art. 58).

C 298 — *The procedure described above corresponds, subject to editorial amendments, to articles 41 to 46 of regulation No 4.*

C — Waiver of residence conditions

394 — Pensions may not be reduced or altered because the pensioner resides in the territory of a Member State other than that of the competent institution (R 1408/71 art. 10 para. 1) (cf. No 55 above).

395 — However, any pensioner who transfers his residence to the territory of another Member State must notify this transfer to the institutions from which his benefit is due and to the paying body (R 574/72 art. 59).

C 299 — The provisions described in No 395 correspond, subject to editorial amendments, to those of article 47 of regulation No 4.

D — Recuperation of excess payments

396 — Excess pension payments, where the pension has been the subject of coordinated award (pension awarded in application of chapter 3 of Title III of regulation 1408/71) may, at the request of the institution concerned, be recovered by deduction from arrears due from the institutions of any other Member States which are themselves responsible for corresponding benefits. This recuperation is carried out by the paying body which transfers the amount deducted to the creditor institution (R 574/72 art. 111 para. 1).

397 — Where deduction from arrears as referred to above cannot be carried out, or in the case of a pension awarded under a single national legislation, the overpayment may, subject to the limits and conditions laid down in the applicable legislation, be recovered from current payments to which the pensioner is entitled through the intermediary of any institution of another Member State paying such benefit. This recuperation is, however, only possible to the extent that such compensation is authorized by the legislation to which that institution is subject (R 574/72 art. 111 para. 2).

C 300 — The provisions of regulation 574/72 described above under Nos 396 and 397 correspond to article 84 para. 1 of regulation No 4. They provide, with greater precision than regulation No 4, for the recovery of overpayments of benefit by a body of a Member State from benefits awarded by the institution of another Member State.

C 301 — See below (Chapter XVI Common Provisions No 637 and following) for the rules on recuperation of assistance allowances paid by the body of a Member State from benefit awarded by the institution of another Member State and responsibility for overpayments the recovery of which has become impossible.

CHAPTER XI

ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES

GENERAL OBSERVATIONS

C 302 — In Chapter 3 of Title III, regulation 1408/71 takes in the basic principles set out in regulations Nos 3 and 36/63. The procedures for applying these principles have however been made more explicit on certain points. Improvements have also been made with regard to compensation for travelling accidents occurring abroad and the acceptance of responsibility for transport costs. In addition new provisions adopted for sickness and maternity insurance have been made applicable to compensation for accidents at work and occupational diseases (award of prostheses and other substantial benefits in kind in case of stay or residence in the territory of a Member State other than the competent State, ability to transfer residence...).

SECTION I — DETERMINATION OF ENTITLEMENT

Present regulations:	R 1408/71 art. 12, 13, 14, 52, 53, 54, 55, 56, 58, 59, 62, 65, 94, Annex V amended by Treaty of Accession OJ EC L 73, 27 March 1972 and by R 2864/72 OJ EC L 306, 31 December 1972 R 574/72 art. 70, 73, 74, 118, amended by R 878/73 OJ EC L 86, 31 March 1973 *
Corresponding text of abrogated regulations:	R 3 art. 11, 12, 13, 29, 30, 32 para. 4 R 36 art. 15 to 18
Form to be used:	E 105

* and by R 2595/77 OJ EC L 302 of 26 November 1977

A — Common provisions

§ 1 — *Applicable legislation*

398 — The determination of entitlement is based on the two following principles:

398-1 — entitlement resulting from several legislations may not overlap (R 1408/71 art. 12 para. 1) (c.f. No 61 above);

398-2 — the applicable legislation is that of the Member State in the territory of which the worker is employed when the risk materialises (R 1408/71 art. 13 para. 1-2) (c.f. No 67 and 68-1 above).

399 — However, there are exceptions to these principles:

399-1 — the first concerns compensation for occupational diseases (see Nos 425 and following below);

399-2 — the second relates to certain categories of workers to whom the legislation of the country of employment is not necessarily applied.

400 — The persons concerned are:

400-1 — workers employed in the territory of a State other than that of the establishment to which they are attached and who meet the conditions described in Nos 71 to 74 above (R 1408/71 art. 14 para. 1 *a), i), ii)*);

400-2 — workers in international transport (c.f. Nos 75 to 78 above);

400-3 — workers other than those in international transport working in the territory of several Member States (c.f. Nos 79 and 80 above;

400-4 — workers in frontier undertakings (No 81 above);

400-5 — workers posted or employed on board ship (Nos 68-2, 82 to 85 above);

400-6 — service personnel of diplomatic missions and auxiliary staff of the European Communities (Nos 87 to 95 above);

400-7 — civil servants and persons treated as such subject to the provisions of the European social security regulations (No 68-3 above).

*C 303 — The Annex to the Treaty of Accession (OJ EC L 73 of 27 March 1972) added to regulation 1408/71 an article 51*bis *laying down that the "competent institution of a Member State whose legislation makes the acquisition, maintenance or recovery of entitlement to benefit subject to the completion of employment periods should take account, as far as necessary, of insurance or employment periods completed under the legislation of any other Member State as if it were a case of periods completed under the legislation which it applies".*

This provision was originally formulated because of the application of Danish legislation which then made entitlement to certain cash benefits for accidents at work subject to the completion of a prescribed period of employment. It was deleted by regulation 2864/72 of 19 December 1972 after the changes adopted in Danish legislation. In fact this provision is no longer necessary, since entitlement to daily cash benefits for accidents at work now arises from legislation on daily cash benefits for sickness or maternity, which no longer makes entitlement to benefit depend upon employment conditions (Sec 71 4376 and 4550 and EMPR R 2864/72).

§ 2 — *Travelling accidents*

401 — An accident while travelling in the territory of a Member State other than the competent State is treated as an accident occurring in the territory of the latter State (R 1408/71 art. 56).

C 304 — In article 56, regulation 1408/71 gives general application to a provision which was previously expressly laid down only for frontier workers (c.f. R 36/63 art. 17 para. 1).

402 — Where a worker subject either to United Kingdom or Irish legislation, during the course of his employment, suffers a travelling accident while going from the territory of one Member State to the territory of another Member State, this accident is, for the purpose of entitlement to benefit, treated as an accident at work occurring in the United Kingdom or in Ireland respectively (R 1408/71 Annex V E 4 and J 7 amended by Annex to the Treaty of Accession).

C 305 — This provision, with regard to workers subject to Irish or United Kingdom legislation, treating a travelling accident as an accident at work occurring in Ireland or in the United Kingdom, is of particular interest to posted workers and commercial travellers and ensures that they are entitled to benefit for accidents occurring on the high seas or in the territory of a non-member State (c.f. sec (71) 4376 and 4550).

§ 3 — *Application in time*

403 — Accidents at work and occupational diseases occurring or diagnosed prior to the date of entry into force of the regulation or to the date of its application in the territory of the Member State concerned may be taken into consideration when assessing the degree of invalidity (R 1408/71 art. 94 para. 3 amended by the Treaty of Accession).

404 — Claims for allowances submitted prior to the date of entry into force of the regulation but which have not at that date given rise to an award of benefit are subject to a double award under the conditions described in No 44 above (R 574/72 art. 118 para. 1 amended by R 878/73).

405 — To the extent that German legislation does not already so prescribe, the German institutions will pay compensation in accordance with this legislation as long as the victim resides in the territory of a Member State, for accidents at work and occupational diseases occurring or diagnosed before 1 January 1919 for which responsibility for payment has not been assumed by French institutions under the decision of the Council of the League of Nations of 20 June 1921 (R 1408/71 Annex V *C 1 a)*).

B — Provision of benefit

§ 1 — *Benefits in kind*

a) Residence in a Member State other than the competent State

406 — Benefits in kind are due from the competent institution but are provided by the institution of the place of residence according to the provisions of its legislation (R 1408/71 art. 52 *a)*).

407 — In the case of stay in or transfer of residence to the territory of the competent State, the following rules are applied:

407-1 — in case of stay in the territory of the competent State, a worker residing in the territory of another Member State receives benefit according to the provisions of the legislation of the competent State, even if he had already been in receipt of benefit before the commencement of his stay. Note that this provision does not apply to frontier workers (see No 417 below) (R 1408/71 art. 54 para. 1);

407-2 — in case of transfer of residence to the territory of the competent State, the same rules apply, but exclusion from benefit does not apply to frontier workers (R 1408/71 art. 54 para. 2).

b) Stay outside the competent State — Return or transfer of residence to another Member State after occurrence of the accident or occupational disease — Need to go to another Member State to receive appropriate treatment

408 — Entitlement to benefits in kind is maintained for persons who, after the accident or the occupational disease has occurred, stay in or return or transfer their residence to another Member State or who go to another Member State in order to receive appropriate treatment. However, this maintenance of entitlement is subject, except for a simple stay, to authorisation by the competent institution. This authorisation must be obtained prior to departure (R 1408/71 art. 55 para. 1 *a), b), c)*).

409 — The authorisation referred to above cannot be refused:

409-1 — in case of return or transfer of residence, unless it is established that the movement of the person concerned is such as to compromise his state of health or the application of medical treatment (R 1408/71 art. 55 para. 2, 1st subpara.);

409-2 — in the second case, unless the treatment concerned can be provided to the person concerned in the territory of the Member State where he resides (R 1408/71 art. 55 para. 2, 2nd subpara.).

410 — In these contingencies, the provision of benefits in kind is carried out by the institution of the place of stay or residence on behalf of the competent institution (R 1408/71 art. 55 para. 1 *i)*).

411 — The legislation of the country of residence is applied with regard to the extent and procedures for the provision of benefits in kind. On the other hand, the duration of provision of benefit is determined in accordance with the legislation of the competent Member State (R 1408/71 art. 55 para. 1 *i)*).

C 306 — The provision of benefits in kind in the country of residence or stay is carried out according to the same rules as those laid down for sickness and maternity insurance (see Nos 147 and following and 179 and following above).

C 307 — The provisions concerning the award of benefit to workers residing or staying in the territory of a Member State other than the competent State (Nos 406 to 411 above) correspond to those in paras. 1 and 2 of article 29 of regulation No 3 for non-frontier workers and those in article 16 para. 1 of regulation No 36 for frontier workers.

However, as against what was laid down in regulation No 36, the duration of provision of benefits in kind to frontier workers in the country of residence is now that laid down by the legislation of the competent State, as was already the case for non-frontier workers. This amendment is intended to standardize the provisions applicable to all workers and achieves harmonization with the rules set out for sickness and maternity insurance.

C 307 a — On the subject of workers residing in a Member State who occasionally pursue their activity in another Member State (see C 94-3 above), the Court of Justice of the European Communities ruled as follows on 24 June 1975 in case 8/75 Caisse Primaire d'Assurance Maladie de Sélestat v. Association du Football Club d'Andlau:

"In the case of an accident at work, including an accident on the way to or from work, which happens to a wage earner or assimilated worker subject to the legislation of the State of his permanent residence, who is occasionally employed in the territory of another Member State, the social security institution of the latter State, as the institution of the place where the worker is, is only obliged, under article 29, 1, of regulation No 3, should the occasion arise, to issue the benefits in kind provided for by its own legislation at the expense of the institution of the competent State."

This interpretation given with respect to the application of regulation No 3 would also seem valid in the framework of regulation No 1408/71 because of the similarity between the provisions of article 29, 1, of Regulation No 3 and those of article 52 of regulation No 1408/71.

C 308 — As for sickness and maternity insurance, and for the same reasons, the award of prostheses and other substantial benefits in kind in the country of stay or new residence is no longer subject to prior agreement by the insuring institution (cf. Nos 149, 150, 181; C 144, C 145 and C 170 above).

C 309 — It is understood that workers insured under Netherlands legislation for health care, residing or staying in the territory of a Member State other than the Netherlands, who require benefits in kind as a result of an accident which has occurred after 30 June 1967 while they were subject to Netherlands legislation, and which would have been considered as an accident at work by the legislation of the country of residence or stay, are treated as victims of an accident at work covered by the latter legislation. For this purpose the Netherlands will conclude bilateral agreements with all Member States (SRMC R 1408/71 ad art. 52 and 55).

§ 2 — *Cash benefits*

412 — These are due from the competent institution and awarded in accordance with the legislation which it applies. They may, however, according to that legislation, be paid on behalf of the competent institution by the institution of the place of stay or residence (R 1408/71 art. 52 *b)* and 55 para. 1 *ii)*).

C 309 a — Under the Administrative Commission's Decision No 100 of 23 January 1975 (OJ No C 150 of 5 July 1975), the cash benefits referred to above that are paid by the institution of the place of residence or of stay on behalf of the competent institution should be refunded in full by the latter institution in the currency of the country of residence or stay.

C 310 — Articles 52 b) and 55 para. 1) of regulation 1408/71 correspond to article 29 para. 7 of regulation No 3 and article 15 of regulation No 36. They provide for the payment of cash benefits in accordance with rules similar to those set out for the award of these benefits under sickness and maternity insurance.

413 — If an accident at work or an occupational sickness involves the death of a worker, the charge for the death grant falls to the competent institution, whatever the place of death or the place of residence of the beneficiaries (R 1408/71 art. 65 paras. 1, 2, 3).

C 311 — Regulation No 3, article 32, paras. 2, 3 and 4, contained similar provisions.

§ 3 — *Applicable scheme where there are several schemes in the country of residence or stay*

414 — Where there are several insurance schemes in the Member State responsible for providing benefit, the applicable scheme is that covering manual workers in the steel industry. However, if there is a special scheme for mine workers, these workers benefit from that scheme, provided that, in accordance with rules similar to those laid down (Nos 238 and 240 above) in the case of sickness and maternity insurance, they do not prefer to apply to the nearest institution applying the scheme for manual workers in the steel industry (R 1408/71 art. 62 para. 1 and R 574/72 art. 73).

C 312 — The statement in the minutes of the Council concerning article 35 para. 1 of regulation 1408/71 (cf. C 194 above: choice between the mine workers' scheme and the general scheme) also applies to the contingency referred to in No 414 (SRMC R 1408/71 ad art. 35 para. 1).

§ 4 — *Maximum duration of benefit*

415 — If, under any legislation, a maximum duration is set for the award of benefit, it is possible for the institution applying that legislation to take account of the period during which benefit has already been paid by the institution of another Member State (R 1408/71 art. 62 para. 2).

416 — An institution of a Member State called upon to pay benefit may ask the institution of another Member State to communicate to it any information necessary for the purpose of applying the preceding provisions (R 574/72, art. 74).

C 313 — The above provisions are similar to those laid down for sickness and maternity insurance (see Nos 242 and 243 above).

§ 5 — *Frontier workers*

417 — Frontier workers may also receive benefits in the territory of the competent State. They are paid by the competent institution in accordance with the provisions of the legislation of that State, as if the worker resided there (R 1408/71 art. 53).

C — Calculation of cash benefits

418 — Bearing in mind the special features of national legislations, cash benefits may be calculated as follows (R 1408/71 art. 58):

418-1 — where the applicable legislation provides for the consideration of an average salary, this salary is determined exclusively on the basis of salaries received during the periods completed under that legislation;

418-2 — where the applicable legislation provides for the consideration of a standard salary, account is taken exclusively of the standard salary or, where appropriate, the average of the standard salaries corresponding to the periods completed under that legislation;

418-3 — where the amount of benefit varies with the number of members of the family, members of the family residing in another Member State must also be taken into consideration as if they resided in the territory of the competent State.

C 314 — *The preceding provisions are identical to those laid down for sickness insurance (c.f. No 159 above). (Those referred to in Nos 418-1 and 418-3 correspond to the text of article 30 (2) of regulation No 3.)*

419 — For the calculation of benefit on the basis of the number of members of the family, a declaration, drawn up on form E 105, must be issued by the sickness insurance institution of the place of residence of these members or by another institution appointed for the purpose by Annex 10 of regulation 574/72 amended by regulation 878/73 (R 574/72 art. 4 and 70 para. 1).

420 — The validity of each such declaration is twelve months, renewable. Any change in the composition of the family must be notified without delay by the worker (R 574/72 art. 25 para. 2, 70 para. 1).

421 — In place of the declaration referred to above, the competent institution may make do with the production of recent civil status documents (R 574/72 art. 70 para. 1, third subpara.).

422 — Where the members of the family do not live under the same roof as the claimant, while the applicable legislation lays down this condition, the fact that these members of the family are nevertheless chiefly dependent upon the claimant must be established by documents proving the regular transmission of a part of earnings (R 574/72 art. 70 para. 2).

D — Costs of transporting the victim

423 — To the extent that the applicable legislation permits the acceptance of responsibility for the costs of transporting the victim, either to his residence or to hospital, or to the place of burial, the costs are undertaken by the institution of the competent State to the corresponding place (residence, hospital, place of burial) in the territory of another Member State where the victim actually resides or resided at the time of the accident (R 1408/71 art. 59 para. 1, 2).

424 — When it is a case of transporting the victim to his residence or to hospital, responsibility for accepting the costs is, except with regard to frontier workers, subject to prior authorisation by the competent institution (R 1408/71 art. 59 para. 1).

C 315 — Article 59 of regulation 1408/71 extends to all workers who suffer an accident at work or an occupational disease and who do not reside in the competent State and are transported to the territory of the country of their residence, the benefit of the provisions laid down for seasonal workers in paras. 8 and 9 of article 29 of regulation No 3 and, for frontier workers, in article 18 of regulation No 36.

C 316 — The application of the provisions concerning acceptance of responsibility for the costs of transporting the body of the victim to the place of burial has given rise to the following clarifications (SRMC R 1408/71 ad art. 59 para. 2):

C 316-1 — article 59 para. 2 (costs of transporting the body of the victim to the place of burial) relates to only a very small number of cases: apart from frontier workers, the workers referred to in these provisions are those who, at the time of the accident, are not in their country of employment;

C 316-2 — the contribution by the competent institution to the costs of transporting the body of the victim is thus provided for with regard to transport from the country where the accident occurs to the country where the victim resided, this country not necessarily being the country of the worker's origin;

C 316-3 — these provisions cannot be invoked in order to require that the content of the bilateral agreement between France and Italy with regard to contributing towards the cost of transporting the victim from France to Italy should also be applied in relations between France and the other Member States.

SECTION II — SPECIAL PROVISIONS CONCERNING OCCUPATIONAL DISEASES

Present regulations:	**R 1408/71 art. 57, 60, 94 para. 8, 99 amended by Treaty of Accession OJ EC L 73, 27 March 1972 and by R 2864/72 OJ EC L 306, 31 December 1972 R 574/72 art. 69, 71, amended by R 878/73 OJ EC L 86 of 31 March 1973**
Corresponding text of abrogated regulations:	**R 3 art. 31 and 31*bis*** **R 4 art. 54, 55**

A — Benefit for occupational diseases where the victim has been exposed to the same risk in several Member States

§ 1 — *First payment of benefit*

425 — If a victim of an occupational disease can receive benefit under the legislations of two or more Member States, benefit is awarded exclusively under the legislation of the State where he was last exposed to the risk, provided that the conditions for entitlement under that legislation are met (R 1408/71 art. 57 para. 1).

426 — However, if the legislation of a Member State requires that the first medical diagnosis of the disease has been made in that State, this condition is deemed to have been met if such a diagnosis has been made in another Member State (R 1408/71 art. 57 para. 2).

§ 2 — *Aggravation of an occupational disease for which benefit is being paid*

427 — Where an employment which may give rise to or aggravate the sickness has not been pursued in another State, the institution of the first State must assume responsibility for benefit, bearing in mind the aggravation and according to its own legislation (R 1408/71 art. 60 para. 1 *a)*).

428 — If on the other hand such an employment has been pursued in another State, the institution of the first State assumes responsibility for benefit without taking account of the aggravation; the institution of the second State awards a supplement equal to the difference between the amount of the benefit which would be due under the applicable legislation after aggravation and that which would have been due before aggravation.

For each element of the compensation, the applicable legislation is that of the competent country (R 1408/71 art. 60 para. 1 *b)*).

B — Special rules concerning sclerogenic pneumoconiosis

§ 1 — *Rules for distribution of charges*

429 — For the purpose of satisfying the conditions for entitlement to benefit (diagnosis of the disease within a prescribed period after cessation of exposure to the risk, duration of exposure to the risk) which may be required by the legislation of a Member State, account may be taken, to the extent necessary, of periods of exposure to the risk and medical diagnoses of the disease carried out in the territory of other Member States (R 1408/71 art. 57 para. 3 *a), b)*).

430 — Cash benefits, including allowances, are awarded in accordance with the applicable legislation by the competent institution, but the charge for the benefit, according to the investigation procedure described in Nos 455 to 458 below, is then distributed, under the applicable legislation, among the institutions of the Member States in the territory of which the victim has been exposed to the risk, in proportion to the duration of retirement insurance periods or residence periods referred to in article 45 para. 1 of regulation 1408/71 (c.f. No 304 above) completed under the legislation of each of the States (R 1408/71 art. 57 para. 3 *c)* amended by the Treaty of Accession).

C 317 — *The distribution of cash benefits laid down above applies among the institutions of all Member States in which the victim has been in an employment which may give rise to sclerogenic pneumoconiosis, even if entitlement to benefit, in one or other of the States concerned, has not been established because the victim does not meet the condition of a minimum degree of permanent incapacity laid down by the applicable legislation (SRMC R 1408/71 art. 57 para. 3 c)).*

431 — The provisions referred to in No 430 are applicable where the charge for benefit cannot, because of a failure to agree among the institutions, be distributed before the date of entry into force of the new regulations (R 1408/71 art. 94 para. 8, 99, amended by the Treaty of Accession and by R 2864/72).

§ 2 — *Aggravation of sclerogenic pneumoconiosis*

432 — If, in spite of having worked in an occupation likely to aggravate the disease, in another State, a worker suffering from sclerogenic pneumoconiosis is not entitled to benefit under the legislation of that State, the competent institution of the first State pays benefit, taking account of the aggravation, but the amount corresponding to the aggravation is borne by the institution of the second State (R 1408/71 art. 60 para. 1 *c)*).

C 318 — *If the second State's legislation does not make any distinction on the basis of the origin of the incapacity for work, the competent institution of that State awards the victim only a benefit calculated in accordance with the rules relating to invalidity benefit (SRMC R 1408/71 ad art. 60 para. 1 b)).*

433 — Where the charge for benefit has been distribued among two or more institutions, the competent institution which first awarded the benefit provided for under its legislation is still responsible for paying benefit taking account of the aggravation (R 1408/71 art. 60 para. 2 *a)*).

434 — The charge for cash benefits remains distributed among the institutions which were previously responsible in accordance with the provisions referred to in No 430 above (R 1408/71 art. 60 para. 2 *b)*, first sentence).

435 — But, if the worker again works in an occupation likely to provoke or aggravate the occupational disease, the competent institution of the State where this renewed employment takes place bears the charge for benefit corresponding to the aggravation (R 1408/71 art. 60 para. 2 *b)*, second sentence).

436 — In the cases referred to in Nos 432 and 435, the institution responsible for paying benefit notifies and seeks the agreement of the other institution for the amount which the latter must bear responsibility for, bearing in mind the aggravation. This amount is reimbursed to the first institution at the end of each calendar year, within a maximum of three months following the notification of the sums to be reimbursed (R 574/72 art. 71 para. 2 and 4).

437 — In the contingency where aggravation does not result from taking up new employment likely to entail exposure to the risk and where a distribution in proportion to insurance or residence periods has taken place before aggravation (c.f. No 434 above), the competent institution notifies the other institutions concerned of the changes which aggravation of the occupational disease involves to the previous distribution of charges (R 574/72 art. 71 para. 3).

C 319 — *The provisions described in Nos 436 and 437 correspond, subject to editorial improvement, to regulation No 4 art. 54 para. 6 and art. 55 para. 2*

§ 3 — *Practical procedures*

438 — For the purpose of distributing the charges for benefit, in accordance with the principle set out in No 430, all information concerning retirement insurance and residence periods is centralised by the institution responsible for paying cash benefits (No 425) by the use of forms E 205, E 206, E 207 (R 574/72 art. 69 *a), b)*, amended by R 878/73).

439 — On the basis of this information, the institution responsible for paying cash benefits carries out the distribution of charges and notifies for their agreement, with all documentary evidence in support, each institution involved of the amount of benefit due from it (R 574/72 art. 69 *c)*).

C 320 — The term "charges" means the charges for cash benefits. The Administrative Commission will examine the question whether the provisions in question mean gross charges (SRMC R 574/72 ad art. 69 c)).

440 — Each institution concerned refunds annually the sums which it owes to the institution responsible for paying cash benefits, within a maximum of three months with effect from receipt of a statement of benefits paid on its behalf sent to it at the end of each calendar year (R 574/72 art. 69 *d)*).

C 321 — Apart from editorial amendments, the preceding provisions correspond to those of para. 5 of article 54 of regulation No 4.

§ 4 — *Possible extensions*

441 — The benefit of the preceding provisions may be extended to other occupational diseases, a list of which is to be prepared by the Council of the European Communities (R 1408/71 art. 57 para. 4).

C 322 — The Council has in fact stressed that it is desirable to extend the system described above or to create another system appropriate to any occupational disease which raises similar problems in relations between Member States (SRMC R 1408/71 ad art. 57 paras. 3, 4).

C — General comment

C 323 — Subject to some editorial amendments, the provisions of regulation 1408/71 referred to in Nos 429 to 441 above take in those appearing in articles 31 and 31 bis of regulation No 3 amended by regulation No 8 of 21 February 1963.

SECTION III — RULES FOR TAKING ACCOUNT OF THE SPECIAL FEATURES OF CERTAIN NATIONAL LEGISLATIONS

Present regulation: **R 1408/71 art. 61**

Corresponding text of abrogated regulations: **R 3 art. 29 paras. 3, 4, 5, art. 30 para. 1**

442 — In the absence of any specialised insurance or institution in the country of stay or residence, benefits in kind due under insurance against accidents at work or occupational diseases are provided by the institution responsible for the said benefits under sickness and maternity insurance (R 1408/71 art. 61 para. 1).

443 — Where the legislation of the competent State makes the provision of benefits in kind free of all charge subject to the use of the medical service organised by the employer, benefits provided in the country or residence or stay, in accordance with the regulation, are treated as having been awarded by such a medical service (R 1408/71 art. 61 para. 2).

444 — If the legislation of the competent State contains a scheme relating to the employer's obligations, benefits in kind awarded in the country of stay or residence, in accordance with the regulation, are treated as having been provided at the request of the employer or the substituted insurer (R 1408/71 art. 61 para. 3).

445 — Where the scheme of the competent State does not have the nature of compulsory insurance, the provision of benefits in kind is carried out directly by the employer or by the substituted insurer (R 1408/71 art. 61 para. 4).

446 — Where the applicable legislation provides that accidents at work or occupational diseases occurring previously are taken into account for the assessment of the degree of incapacity, accidents or diseases occuring under another legislation are also taken into account (R 1408/71 art. 61 para. 5).

C 324 — The provisions of regulation 1408/71 referred to in Nos 442, 443 and 445 correspond to those of article 29 para. 3, 4 and 5 of regulation No 3.

C 325 — Those referred to in No 446 correspond to article 30 para. 1 of regulation No 3.

C 326 — *According to a statement in the minutes, the Council found that (SRMC R 1408/71 ad art. 61 para. 5):*

— *article 61 para. 5 of regulation 1408/71 does not come under the anti-overlapping provisions laid in article 12 para. 1 (c.f. No 61) but concerns the assessment of incapacity.*

— *this provision relates to the consideration of accidents at work and occupational diseases occurring previously under the legislation of a first Member State, as if they had occurred under the legislation of the second State in which the institution must assess the degree of incapacity following a further accident or a further occupational disease. The institution of the second State cannot re-assess the situation concerning the first accident, but must accept the decision taken in the first State;*

— *in addition, this provision obliges the institution of the second Member State to take into consideration accidents and occupational diseases which have occurred previously when setting an overall degree of incapacity; it can thus not determine the degree of incapacity solely on the basis of the second accident at work or the second occupational disease.*

SECTION IV — PROCEDURE AND PROOF FOR THE PURPOSE OF ESTABLISHING THE OCCUPATIONAL NATURE OF THE ACCIDENT; DIAGNOSIS OF THE DISEASE AND ASSESSMENT OF THE DEGREE OF INCAPACITY

Present regulations:	**R 574/72 art. 65, 66, 67, 68, 71 para. 1, 72, 76**
Corresponding text of abrogated regulations:	**R 4 art. 49, 50, 51, 52, 54, 55, 57** **R 36 art. 16, 17**
Administrative Comm'n:	Decision No 85

A — Statements, inquiries and exchange of information between institutions concerning an accident at work or an occupational disease

§ 1 — *Accident at work or occupational disease occurring or diagnosed in a Member State other than the competent State*

447 — The statement concerning the accident at work or the occupational disease must be made in accordance with the legislation of the competent State without prejudice, where appropriate, to any legal provisions in force in the territory of the Member State where the accident occurred or in which the medical diagnosis of the occupational disease was made (R 574/72 art. 65 para. 1).

448 — The statement is sent to the competent institution. A copy of the statement is sent to the institution of the place of residence or stay (R 574/72 art. 65 para. 1).

449 — The medical certificates, in duplicate, and any appropriate information, are passed on to the competent institution by the institution of the Member State in the territory of which the accident at work occurred or in which the first diagnosis of the occupational disease was made (R 574/72 art. 65 para. 2).

C 327 — The provisions referred to above correspond to articles 49 and 51 (first sentence) of regulation No 4 and to article 16 para. 4 (first sentence) of regulation No 36.

C 328 — Regulation No 4 laid down that the statement had to be made in accordance with the legislation of the country where the accident or the disease occurred, since the institutions of that country were normally able to see to it that the formalities prescribed in the legislation which it applied were respected. The new provisions provide, however, that the statement must be made in accordance with the legislation of the competent country. This rule, however, applies without prejudice to the legal provisions in force in the country where the accident at work occurs or in which the first diagnosis of the occupational disease is made.

This amendment is based on the revised administrative arrangement on the social security of Rhine boatmen, in the hope of harmonising the two instruments and in order to facilitate the application by the competent institution of the legislation to which the worker is subject, because of the close relationship between the formalities for statements and the checks on the occupational nature of the accident or the disease.

It should be noted that "the legal provisions in force in the territory of the Member State where the accident occurred or in which the first medical diagnosis of the occupational disease was made" relate to labour, health and safety regulations, social security legislation and common law responsibility, and to police and public safety laws which could be imposed on heads of undertakings, the victim, the doctor and any other person (ERER 574/72).

450 — In the case of a travelling accident occurring in the territory of a Member State other than the competent State, the competent institution may undertake an administrative inquiry in the country where the accident occurred (R 574/72 art. 65 para. 3).

C 329 — These provisions give general application to the procedure which was previously laid down only for frontier workers by para. 2 of article 17 of regulation No 36.

451 — On termination of treatment a detailed report, accompanied by medical certificates stating the permanent consequences of the accident or the disease, is sent to the competent institution. The relevant fees are the responsibility of the competent institution, but they are paid by the institution of the place of stay in accordance with its tariffs (R 574/72 art. 65 para. 4).

452 — The institution of the place of residence or stay must, at its request, be sent by the competent institution a notification of the decisions relating to the date of discharge from treatment or healing of injuries and to the award of an allowance (R 574/72 art. 65 para. 5).

C 330 — The provisions described in Nos 451 and 452 are based respectively on: article 51, second and third sentences, of regulation No 4, and para. 4, second and third sentences of article 16 of regulation No 36; and para. 5 of article 16 of regulation No 36.

§ 2 — Dispute concerning the occupational nature of the accident or the disease

453 — In case of dispute by the competent institution concerning the right to compensation under the legislation on accidents at work or occupational diseases, the benefits awarded by the institution of the place of stay or residence are treated as coming under sickness insurance and are paid on the basis of the certificates or declarations laid down for claimants of benefits in kind for sickness and maternity insurance in case of a stay in a Member State other than the competent State (c.f. No 179 and 183 above) (R 574/72 art. 66 para. 1).

454 — The final decision relating to the occupational nature of the accident or the disease must be immediately notified to the institution of the place of residence or stay which has provided benefits in kind. These continue to be provided under sickness insurance if the person is entitled to them, in the contingency where the occupational nature of the accident or the disease is not recognised. Otherwise, benefits already awarded are treated as provisional with respect to the legislation on accidents at work and occupational diseases (R 574/72 art. 66 para. 2).

C 331 — The provisions described above correspond to those of article 50 of regulation No 4, subject to editorial amendments and more precise wording concerning the provision of sickness and maternity insurance benefits on the basis of certificates or declarations referred to in articles 20 and 21 of regulation 574/72 while awaiting a decision on the occupational nature of the accident or the disease.

§ 3 — *Procedure in case of exposure to occupational disease risk in several Member States and in case of aggravation of an occupational disease*

a) Case of exposure to the risk of occupational disease in several Member States

455 — In the case set out in No 425, the statement concerning the occupational disease is sent either directly or through the intermediary of the institution of the place of residence, to the competent institution of the Member State under the legislation of which the person concerned has last been exposed to the risk (R 574/72 art. 67).

456 — If it finds that the person concerned has been exposed to the risk last under the legislation of another Member State, the competent institution referred to above forwards the statement and the accompanying documents to the corresponding institution of that Member State. (R 574/72 art. 67 para. 2.)

457 — If the conditions required by the legislation of the Member State where the person concerned was last exposed to the risk are not met for the purpose of obtaining benefit, bearing in mind the provisions described in Nos 426 and 429, the competent institution of that State forwards the papers of the person concerned without delay to the institution of the Member State under which the person was previously exposed to the risk. At the same time it notifies its decision, with the reasons therefor, to the person concerned, indicating the procedures and time limits for appeal and the date when the papers were forwarded to the second institution (R 574/72 art. 67 para. 3 *a), b)*).

C 332 — *The words "activity which might cause the occupational disease in question" mean any employment exposing the worker to the risk, whatever its duration (SRMC R 574/72 ad art. 67 para. 3).*

458 — Where appropriate, the same procedure is applied, going back to the institution of the Member State under the legislation of which the victim was first exposed to the risk (R 574/72 art. 67 para. 4).

C 333 — *The institution to which a statement of occupational disease is forwarded under article 67 para. 3 of regulation No 574/72 (No 457) must award benefit if the victim meets the conditions laid down by the legislation which it applies, bearing in mind where appropriate the provisions of article 57 para. 2 and 3 of regulation 1408/71 (c.f. No 426, 429 and 430 above), including the case where a decision to reject taken by the institution which forwarded the statement is based on the fact that the victim's degree of incapacity does not reach the minimum laid down by the legislation which the latter institution applies (AC decision No 85 of 22 February 1973; OJ EC C 75 of 19 September 1973, replacing lapsed decision No 62 OJ EC No 296 of 6 December 1967).*

C 334 — *Apart from editorial amendment, the provisions described in Nos 455 to 458 correspond to those of paras. 1 to 3 of article 54 of regulation No 4. In order to eliminate delays and practical difficulties which arose out of the application of regulation No 4, it has been expressly laid down that the institutions in question should forward all the papers concerning the victim together with all the medical documents relating thereto (ERER 574/72).*

b) Aggravation of an occupational disease

459 — In the cases referred to in Nos 427, 428 and 432, the worker must supply to the institution from which he is claiming benefit any information concerning benefit awarded previously for the same occupational disease. This institution may apply to any other previously competent institution in order to obtain the information considered necessary (R 574/72 art. 71 para. 1).

C 335 — *The provisions set out in No 459 correspond to those of para. 1 of article 55 of regulation No 4.*

§ 4 — *Exchange of information between institutions in case of appeal against a decision to reject claim — Payment of advances in case of such appeals*

a) Exchange of information

460 In case of submission of an appeal against a decision to reject a claim, the institution with which the appeal is lodged must so inform the institution to which the statement is forwarded in accordance with the procedure indicated in No 457 and later inform it of the final decision taken (R 574/72 art. 68 para. 1).

b) Payment of advances in case of appeal

461 — During the examination of an appeal, advances may be paid by the institution which received the statement, after consulting the institution against whose decision the appeal has been made. If the appeal is upheld, the said advances are deducted from the amount of benefit due to the person concerned and are refunded to the institution which awarded them (R 574/72 art. 68 para. 2).

C 336 — *The provisions described in Nos 460 and 461 correspond to those of para. 4 of article 54 of regulation No 4.*

B — Assessment of degree of incapacity in case of accident at work or occupational disease which has occurred previously

462 — For the purpose of such assessment, the worker must supply to the competent institution any information relating to the accidents at work or occupational diseases which have occurred previously, whatever the degree of incapacity caused by these accidents or diseases and whichever State they occurred or were diagnosed in (R 574/72 art. 72 para. 1).

463 — The competent institution takes account of the degree of incapacity resulting from these previous cases for entitlement to, and determination of the amount of, benefit in accordance with the legislation which it applies (R 574/72 art. 72 para. 2).

464 — The competent institution may apply to any other previously competent institution in order to obtain the information it considers necessary (R 574/72 art. 72 para. 3 1st subpara.).

465 — Any accident occurring under the legislation of a Member State which makes no distinction on the basis of the origin of incapacity for work, which would have been considered as an accident at work if it had occurred under the legislation of another Member State, must be taken into account as such by the competent institution of the latter State. For this purpose, at the request of the institution concerned, the competent institution or the body appointed by the competent authority of the first Member State must supply any relevant documentary evidence on the previous degree of incapacity, and any information enabling it to be established whether the incapacity is indeed the result of an accident in the sense of the legislation applied in the second State (R 574/72 art. 72 para. 3 second subpara.).

C 337 — The provisions described in Nos 462 and 464 correspond, subject to editorial improvement, to those of article 52 of regulation No 4.

C 338 — The provisions described in Nos 463 and 465 are new.

Under the terms of the provisions described in No 463, the competent institution does not have to re-assess the degree of occupational incapacity recognised by the institutions with which the person concerned has been insured previously, but simply has to take account of it, for entitlement and determination of the amount of benefit due under the legislation which it applies, on the basis of the overall incapacity assessed in accordance with that legislation alone.

In this way an attempt has been made to avoid the competent institution, when investigating entitlement and calculating benefit due from it, having to re-open the question of the assessment of the previous incapacity undertaken under the legislation of other Member States (ERER 574/72).

The provisions referred to in No 465 were added for the purpose of relations with the Netherlands institutions the legislation of which on incapacity for work makes no distinction on the basis of the origin, occupational or otherwise, of the incapacity.

C — Administrative checks and medical examinations

466 — Administrative checks and medical examinations are carried out at the request of the competent institution by the institution of the Member State of residence, in accordance with the legislation applied by that institution. The competent institution may however have the beneficiary examined by a doctor of its own choosing (R 574/72 art. 76 para. 1).

467 — Any recipient of an allowance must inform the institution from which it is due of any change of situation which may affect entitlement (R 574/72 art. 76 para. 2).

C 339 — The preceding provisions, subject to editorial simplification, correspond to those of article 57 of regulation No 4.

SECTION V — PROCEDURE AND PROOF TO BE SUPPLIED IN ORDER TO OBTAIN BENEFIT

Present regulations:	**R 574/72 art. 60 to 64, art. 75**
Corresponding text of abrogated regulations:	**R 4 art. 48, 56** **R 36 art. 15, 16**
Forms to be used:	**E 101, E 102, E 105, E 107, E 108, E 110, E 113, E 114, E 115, E 116, E 117, E 118, E 123**

A — Benefits in kind and cash benefits other than allowances

§ 1 — *Benefits in kind*

a) Case of residence in a Member State other than the competent State

468 — Entitlement to benefits in kind is established by the production of a declaration issued on form E 123 by the competent institution. If the persons concerned do not submit this declaration, it may be requested, by using form E 107 (to which should be annexed the medical report drawn up on form E 116), from the competent institution direct by the institution of the place of residence which, in the meantime, awards sickness insurance benefits in kind as long as the person concerned meets the conditions laid down for this purpose (R 574/72 art. 60 para. 1).

469 — To the extent that the applicable legislation so provides, the worker must also present a notification of receipt of the statement concerning the accident at work or occupational disease (R 574/72 art. 60 para. 1).

470 — The declaration referred to in No 468 does not have its validity limited in advance, except where it emanates from a French institution (validity limited in this case to three months renewable) or where it relates to a seasonal worker (estimated duration of seasonal work) (R 574/72 art. 60 paras. 2, 3).

471 — The declaration thus normally remains valid as long as it is not cancelled by a notification of suspension or withdrawal of entitlement, sent on form E 108 by the competent institution to the institution of the place of residence (R 574/72 art. 60 para. 2).

472 — The provision of benefits in kind is carried out in accordance with a single procedure which is normally that laid down by the legislation of the country of residence, it being understood, however, that other procedures may be adopted between two or more Member States after consulting the Administrative Commission (R 574/72 art. 60 para. 4, 9).

473 — Hospitalisation and the award of prostheses and other substantial benefits in kind appearing on the list drawn up by the Administrative Commission must be notified to the competent institution by the institution of the place of residence. Depending on the case concerned, forms E 113 and E 114 should be used (R 574/72 art. 60 para. 5, 6).

474 — Any change of circumstances which might alter entitlement to benefits in kind must be communicated by the persons concerned or by the competent institution to the institution of the place of residence which may, on its own initiative, check the existence of entitlement with the competent institution (R 574/72 art. 60 para. 7).

475 — With regard to frontier workers, medicines, bandages, spectacles, minor appliances, examinations and laboratory analyses can only be issued or carried out in the territory of the Member State in which they have been prescribed and in accordance with the provisions of the legislation of that Member State (R 574/72 art. 60 para. 8).

C 340 — The provisions appearing in Nos 468 to 475 are similar to those in Nos 147, 149, 150, 151 and 153 to 158 concerning sickness insurance. In fact the provisions of article 60 of regulation 574/72 are identical to those of articles 17 and 19 of the same regulation. The comments appearing in Nos C 139 to C 147 and C 150 to C 153 also apply here.

The provision appearing in No 469 relating to the submission of a notification of receipt of the statement concerning the accident at work or the occupational disease corresponds to subpara. b) of para. 3 of article 16 of regulation No 36.

In addition it should be noted that the method of reimbursement by means of lump-sums does not apply with regard to accidents at work and occupational diseases. This explains why the last sentence of paras. 6 and 7 of article 17 of regulation No 574/72 has not been included in paras. 5 and 6 of article 60 of the same regulation.

b) Case of stay in a Member State other than the competent State

476 — For the purpose of obtaining medical treatment, including hospitalisation, workers must present to the institution of the place of stay:

476-1 — either the declaration of entitlement (form E 123); this declaration sets out in particular the maximum duration for the award of medical treatment in accordance with the legislation of the competent country. Where necessary this declaration can be requested by the institution of the place of stay from the competent institution (R 574/72 art. 62 para. 7);

476-2 — or, for posted workers, the certificate of posting (form E 101 and, where appropriate, E 102) and, for workers in international transport, a declaration issued on form E 110 by the employer or his agent during the the course of the calendar month of its submission or the two preceding calendar months. For these workers form E 123 may be used instead of forms E 101 and E 110 (R 574/72 art. 62 paras. 1, 2, 6).

477 — In the second contingency referred to above (No 476-2), the production of certificates of posting or the special declaration by the employer constitutes a presumption of entitlement for the institution of the place of stay (R 574/72 art. 62 paras. 1, 2).

478 — Checks on entitlement with the competent institution are carried out by the institution of the place of stay by means of form E 107, within three days of the production of the certificate of posting or the special declaration (R 574/72 art. 62 para. 3).

479 — The competent institution must, possibly by the use of form E 107, make known its decision concerning the existence of entitlement within ten days from the receipt of the inquiry. This decision may set out the maximum duration for the award of benefits in kind in application of the legislation of the competent country (R 574/72 art. 62 para. 4).

480 — For the provision of benefit, the provisions described above (c.f. No 473 above) concerning hospitalisation and the award of substantial benefits in kind are applied (R 574/72 art. 62 para. 8).

481 — Benefits in kind provided on the basis of the presumption referred to above (No 477) must be wholly reimbursed by the competent institution (R 574/72 art. 62 para. 5).

482 — The provisions set out in Nos 189 to 191 concerning the recuperation of benefits in kind provided in error to workers in international transport may be applied here (R 574/72 art. 113).

C 341 — *The provisions described in Nos 476 to 482 are similar to those appearing in Nos 179, 181, 183 to 188. In fact article 62 of regulation 574/72 is identical to articles 20 and 21 of the same regulation.*

c) Case of transfer of residence or return to the country of residence — Workers authorised to to go another Member State to obtain treatment

483 — In these contingencies, the worker must submit a declaration of maintenance of entitlement drawn up on form E 123 by the competent institution. This declaration may be issued after departure at the request of the worker where it has not been possible to prepare it before for reasons of force majeure (R 574/72 art. 63 paras. 1, 3).

484 — For the provision of benefit, the provisions described above (c.f. No 473) concerning hospitalisation and the award of substantial benefits in kind are applied (R 574/72 art. 63 para. 2).

C 342 — *The wording of Nos 483 and 484 is similar to that of Nos 180 and 181 because of the identical provisions of articles 22 and 63 of regulation 574/72.*

a) Where the beneficiary resides in a Member State other than the competent State

485 — The conditions for the award of cash benefit indicated below are normally valid for all Member States. However, these States or their competent authorities may agree, after consulting the Administrative Commission, on other implementation procedures (R 574/72 art. 61 para. 9).

486 — In order to obtain cash benefits, the person concerned must, within three days after the commencement of incapacity for work, submit to the institution of the place of residence, in accordance with the applicable legislation, a notification of cessation of work or a certificate of incapacity for work issued by his doctor. This institution draws up a form E 115 and forwards it to the competent institution. This form may be accompanied by medical certificates and a medical report drawn up on form E 116 (R 574/72 art. 61 paras. 1 and 2).

487 — In order to establish incapacity for work, the person applies directly to the institution of the place of residence where doctors in that country do not issue certificates of incapacity to work (R 574/72 art. 61 para. 2).

488 — Apart from the contingency referred to above, the institution of the place of residence normally undertakes a medical examination of the worker within three days and in any case as soon as possible and as quickly as it would do in the case of one of its own insured persons (R 574/72 art. 61 para. 3).

489 — The institution of the place of residence, where necessary, carries out administrative checks or medical examinations of the workers as if they were insured by it. Non-recognition or termination of incapacity for work is notified to the competent institution by the use of form E 118 (R 574/72 art. 61 paras. 4, 6).

490 — The competent institution may arrange for an examination by a doctor of its own choosing (R 574/72 art. 61 para. 5).

491 — It notifies its decision concerning the award of cash benefits simultaneously to the worker and to the institution of the place of residence, using form E 117. If it is a refusal of benefit, this is sent to the worker with a copy to the institution of the place of residence, by the joint use of forms E 117 and E 118 (R 574/72 art. 61 para. 6).

C 343 — *The provision of benefit to workers cannot be affected by the fact that the institution of the place of residence has not complied with the obligations placed upon it under the provisions of article 61 paras. 2, 3 and 4 of regulation 574/72 (c.f. Nos 486, 488 and 489 above) (SRMC R 574/72 ad art. 61 para. 6).*

492 — Cash benefits are paid either directly by the competent institution or through the intermediary of the institution of the place of residence (R 574/72 art. 61 para. 8).

493 — If the applicable legislation so specifies, the worker must advise the competent institution of his resumption of work (R 574/72 art. 61 para. 7).

C 344 — Because of the identical wording of the provisions of article 61 and article 18 of regulation 574/72, the provisions appearing in Nos 485 to 493 are similar to those of Nos 163 to 171. The comments appearing beneath these latter numbers also apply with respect to accidents at work and occupational diseases.

b) Where the person concerned stays in a Member State other than the competent State

494 — The procedure laid down for workers residing in a Member State other than the competent State (cf. Nos 485 and following) are applicable by analogy. However, a worker staying in a Member State without being in paid employment there is not obliged to submit a notification of cessation of work as referred to in No 486 above (R 574/72 art. 64).

C 345 — The wording of No 494 is similar to that of No 182, since article 64 of regulation 574/72 is itself similar to article 24 of the same regulation.

B — Submission and investigation of claims for allowances except for occupational disease allowances due in cases where the victim has been exposed to the risk in several Member States

495 — The claim must be submitted on a form laid down by the legislation applied by the competent institution and sent, with documentary evidence, to the said institution either directly or through the intermediary of the institution of the place of residence (R 574/72 art. 75 para. 1 *a)*).

496 — The accuracy of the information given must be established by official documents or confirmed by the competent bodies of the Member State of residence (R 574/72 art. 75 para. 1 *b)*).

497 — The decision of the competent institution is notified to the claimant directly or through the liaison body of the competent State. A copy of the notification is sent to the liaison body of the Member State of residence (Regulation 574/72, Article 75 (2).

C 346 — The provisions of Regulation 574/72 described above correspond, subject to editorial amendments, to paras. 1 and 2 of article 56 of Regulation No 4.

C 346 a — According to the Judgment of the Court of Justice of the EC of 18 February 1975 in Case 66/74 (Alfonso Farrauto v. Bau-Berufsgenossenschaft, Wuppertal FRG), the word "directly" in the text of Article 56 (2) of Regulation No 4 (and taken over in Article 57 (2) of Regulation No 574/72; cf. No 497 above), "must be interpreted as meaning that the notification referred to in the provision must be effected without an intermediary and that dispatch by the postal telecommunication services meets this condition."

In the grounds given for the judgment the Court of Justice stated that "direct communication between social security institutions and the persons concerned resident in other Member States, without intermediaries, except for the postal and telecommunication services, serves to simplify administrative formalities and to speed matters up". It noted, however, that "a special problem concerning legal certainty may arise if the decision is notified to the person concerned in a language which he does not understand."

In this context, the Court of Justice observed:

— that certain provisions of Community rules take account of difficulties of a linguistic nature;

— that the national courts of the Member States must take care that legal certainty is not prejudiced by a failure arising from the inability of the worker to understand the language in which a decision is notified to him.

SECTION VI — PAYMENT OF ALLOWANCES

Present regulation:	R 574/72 art. 77
Corresponding text of abrogated regulations:	R 4 art. 58

498 — The payment of allowances due to recipients who have their residence in the territory of a Member State other than the competent State is made in accordance with the same procedure as for invalidity, retirement and death pensions (cf. Nos 387 to 393 above) (R 574/72 art. 77).

C 347 — Article 77 of regulation 574/72 corresponds to article 58 of regulation No 4.

SECTION VII — REIMBURSEMENT BETWEEN INSTITUTIONS

Present regulations:	R 1408/71 art. 63 R 574/72 art. 96, Annex 2 amended by R 878/73 OJ EC L 86 of 31 March 1973 and R 1392/74 OJ EC L 152 of 8 June 1974
Corresponding text of repealed regulations:	R 3, art. 29 para. 6 R 4, art. 76 R 36/63, art. 16 para. 6

499 — Benefits in kind are reimbursed by the competent institution to the institutions which have provided them (R 1408/71 art. 63 para. 1).

500 — These refunds are determined and carried out similarly to the manner provided for sickness and maternity insurance (cf. No 251 and following above and Chapter XVI below) (R 1408/71 art. 63 para. 2 and R 574/72 art. 96).

501 — It is possible for Member States or the competent authorities of those States, after consulting the Administrative Commission, to renounce all reimbursement or to draw up other procedures for assessing the amounts to be reimbursed (R 1408/71 art. 63 para. 3).

CHAPTER XII

DEATH GRANTS

DEFINITION

502 — A death grant means any sum paid once for all, in case of death, excluding capital payments referred to in No 60 (R 1408/71, art. 1-*c)*).

C 347a— In the terms of a decision of 27 November 1973 given in case 130/73 (widow Magdalena Vandeweghe and Solange Verhelle v. Berufsgenossenschaft für die Chemische Industrie, Heidelberg), the Court of Justice of the EC specified that "the provisions of regulation 1408/71 must be interpreted as meaning that the terms "taxes" and "pensions" embody the lump-sum indemnity to pay to the widow in the case of re-marrying, but not in the death grant".

SECTION I — DETERMINATION OF ENTITLEMENT

Present regulations:	R 1408/71, art. 64 as amended by R 2864/72, OJ EC L 306, 31 December 1975 and art. 65 R 574/72, art. 9, amended by R 878/73, OJ EC L 86, 31 March 1973 and by R 2595/77, OJ EC L 302, 26 November 1977
Corresponding text of abrogated regulations:	R 3, art. 32 R 4, art. 8, *a), b)*

A — Aggregation of insurance periods or periods of residence and exemption from residence condition

503 — For the purpose of acquisition, maintenance or recovery of entitlement, all insurance or residence periods completed under the legislation of the various Member States are aggregated, so long as they are not superimposed and to the extent necessary (R 1408/71 art. 64 amended by R 2864/72).

504 — For the determination of entitlement neither the place of death nor the place of residence of the beneficiaries, provided that these places are in the territory of a Member State, can be grounds for rejection (R 1408/71, art. 65, paras. 1, 2).

505 — The above exemption from the territorial condition applies: to workers, to pensioners or pension claimants (including those resulting from an accident at work or an occupational disease), and members of their families (R 1408/71, art. 65, paras. 1, 2, 3).

C 348 — The preceding provisions correspond to those appearing in article 32 of Regulation No 3.

B — Applicable legislation

506 — Entitlement under several legislations may not overlap (cf. No 61 above) (R 1408/71, art. 12, para. 1).

507 — The death grant is awarded only under:

507-1 — the legislation of the State in the territory of which the death occurred, provided that entitlement to the said grant exists under that legislation (R 574/72, art. 9, para. 1);

507-2 — the legislation of the Member State to which the deceased was last subject in case of death occurring in the territory of a Member State or a non-member State but outside the territory of Member States under the legislation of which a death grant is due (R 574/72, art. 9, para. 2, amended by R 878/73 and by R 2595/77).

C 349 — The provisions of regulation 574/72 described in No 507, with some editorial amendments, correspond to subparas. a) and b) of article 8 of Regulation No 4.

The provisions of subpara. c) of article 8 of Regulation No 4 relating to overlap of benefits resulting from overlapping subjection to compulsory insurance in a Member State with voluntary or optional continued insurance in one or more other Member States have not been taken into the new regulation since the problem of overlapping insurance of this kind is settled in article 15 of regulation 1408/71 (cf. No 97 to 101 above).

C 349a— The replacement of the words "the worker" by "the deceased person" in article 9, para. 2 of regulation 574/72 (cf. section 507-2 above) as amended by regulation 2595/77 of 21 November 1977 henceforth allows for death grants to be awarded to persons receiving pensions awarded under the legislation of more than one Member State if they reside in a Member State whose legislation does not provide for such a grant. The previous wording of article 9, para. 2 settled this problem only where workers were concerned.

SECTION II — PROCEDURES AND PROOF

Present regulations:	R 574/72, art. 78 and 79, amended by R 878/73, OJ EC L 86, 31 March 1973
Corresponding text of abrogated regulations:	R 4, art. 59 and 60
Forms to be used:	E 104, E 124

508 — In case of residence in the territory of a Member State other than the competent State, the award of the death grant is subject to the submission of a claim drawn up on form E 124 and sent either to the competent institution or to the institution of the place of residence. This claim must be accompanied by documentary evidence required by the competent institution (R 574/72, art. 78).

509 — In addition the claimant must submit to the competent institution a declaration stating insurance or residence periods completed under the legislation to which he was last subject or, as far as necessary, under the legislation of any other Member State. This declaration is issued on form E 104 by the sickness insurance institution or the retirement insurance institution with which the worker was insured. Where necessary the said declaration is requested directly by the competent institution (R 574/72, art. 79 amended by R 878/73).

C 350 — The preceding provisions correspond to those appearing in articles 59 and 60 of regulation No 4, subject to the difference that, according to regulation 574/72, the claim may be sent either to the competent institution or to the institution of the place of residence and that the documents which must accompany the claim are expressly indicated.

The death grant being a once-for-all payment, it has not been considered necessary to lay down, as was done in article 61 of regulation No 4, the possibility of making payment through the intermediary of the institution of the place of the beneficiary's residence (ERER 574/72).

SECTION III — AWARD OF GRANTS

Present regulations:	R 1408/71 art. 65, 66 R 574/72 Annex 2, amended by R 878/73 OJ EC No L 86 of 31 March 1973, R 1392/74, OJ EC No L 152 of 8 June 1974, R 1209/76, OJ EC No L 138 of 26 May 1976 and R 2595/77, OJ EC No L 302 of 26 November 1977
Corresponding text of abrogated regulations:	R 3, art. 32 (3) R 4, art. 61

510 — The institution from which the benefit is due is the competent institution whatever the place of residence of the beneficiary. This institution in the various Member States is determined by Annex 2 of regulation 574/72 (R 1408/71, art. 65, § 2, R 574/72, art. 4, § 2). This Annex 2 has been amended by regulations 878/73 (OJ EC No L 86 of 31 March 1973), 1392/74 (OJ EC No L 152 of 8 June 1974), 1209/76 (OJ EC No L 138 of 26 May 1976 and 2595/77 (OJ EC No L 302 of 26 November 1977).

511 — The institution bearing the charge for sickness and maternity insurance benefits in kind provided to a pensioner who had his residence in the territory of another Member State awards death grants due under the legislation which it applies as if the pensioner, at the time of his death, resided in the territory of the State where it is established (R 1408/71, art. 66).

C 351 — The provisions referred to in No 511 do not have any corresponding text in regulation No 3. They are intended to settle difficulties met with mainly by the Luxembourg institutions in awarding death grants, of the nature of funeral expenses, in the case of death of pensioners under their legislation residing in the territory of other Member States.

In fact, entitlement to these grants, according to Luxembourg legislation, derives from the pensioner's insurance with a Luxembourg sickness insurance fund. In consequence, strictly speaking, the said grants should not be paid where the pensioner resides in another Member State since by this fact he is not insured with a Luxembourg institution but with the institution of the place of his residence.

Article 66 of regulation 1408/71 eliminates this juridical difficulty by permitting the award, in the contingency in question, of the death grant (ERER 1408/71).

CHAPTER XIII

UNEMPLOYMENT

C 352 — *In comparison with the previous scheme, regulation 1408/71 introduces considerable improvements with regard in particular to the conditions for entitlement to unemployment benefits and the export of the said benefits in case of transfer of residence by the unemployed person from the country of his last employment.*

A more complete coordination system is set up between the national schemes for unemployment insurance and assistance in all Member States. In fact the new system of coordination is extended to all catagories of workers who find themselves unemployed and not just to skilled workers in the coal and steel industries as was provided in certain contingencies by article 36 of regulation No 3.

The coordination rules can be applied to certain industrial agreements on unemployment insurance, such as the supplementary French scheme which is now, following a statement by the French government to the Council, included in the scope of regulation 1408/71 (c.f. No 24 above).

SECTION I — COMMON PROVISIONS

Present regulations	R 1408/71 art. 67 and 68, Annex V amended by Annex to the Treaty of Accession OJ EC L 73, 27 March 1973 R 574/72 art. 80, 81, 82 and Annex 10 amended by R 878/73 OJ EC L 86, 31 March 1973; by R 1392/74, OJ EC L 152 of 8 June 1974; and by R 2595/77, OJ EC L 302 of 26 November 1977
Corresponding text of abrogated regulations:	R 36 art. 19 R 3 art. 33 paras. 1 to 5, 34 R 4 art. 62 to 65
Court of Justice EC:	Cases 66/77, 126/77
Administrative Commission:	Decision No 83
Forms to be used:	E 301, E 302

A — Aggregation of insurance, residence or employment periods

§ 1 — *General rules*

512 — Insurance or employment periods completed under the legislations of the various Member States are taken into account as far as necessary for the acquisition, maintenance or recovery of entitlement to unemployment benefit (R 1408/71, art. 67, para. 1).

513 — If, according to the applicable legislation, entitlement to unemployment benefit or the duration of its award is subject to the completion of insurance periods, account must be taken, as far as necessary, of insurance periods completed in other Member States and of employment periods so long as these latter periods would have been considered as insurance periods under that legislation (R 1408/71 art. 67 para. 1, 4).

514 — If, according to the applicable legislation, entitlement to unemployment benefit or the duration of its award is subject to the completion of employment periods, account must be taken, as far as necessary, of insurance or employment periods completed in the other Member States as if these were employment periods completed under that legislation (R 1408/71 art. 67 para. 2, 4).

515 — In order to benefit from the preceding provisions, the unemployed person must have last completed — depending on the contingency in question — either insurance periods (No 513) or employment periods (No 514) according to the provisions of the legislation under which benefit is claimed (R 1408/71 art. 67 para. 3).

516 — This requirement is not made, however, in the case of wholly unemployed workers (frontier and seasonal workers in particular) who are admitted to receipt of unemployment benefit in their country of residence under the conditions set out in Nos 546 and 549 below (R 1408/71 art. 67 para. 3).

C 353 — The provisions of regulation 1408/71 described above correspond to paras. 1 to 5 of article 33 of regulation No 3, subject to some editorial amendments.

The provisions appearing in Nos 513 to 515 are explained by the fact that national legislations relating to unemployment benefit are in some cases based on insurance and in others on assistance. Recourse must therefore be had to conditions of completion either of insurance periods or of employment periods.

§ 1 — *Special implementation procedures for the legislation of certain Member States*

a) Denmark

517 — For the purpose of acceptance as a member of an approved unemployment insurance fund, account may be taken of insurance or employment periods completed in a Member State other than Denmark (R 1408/71 Annex V B 3 amended by the Treaty of Accession).

C 354 — *Danish legislation makes admission to approved unemployment funds, as full member, subject to the completion of a five-week period of employment. Only full members are entitled to daily cash benefit, provided that they have contributed as such for at least twelve months (Social Affairs doc. SEC (71) 4376 and 4550).*

b) United Kingdom

518 — To the extent that United Kingdom legislation so requires for entitlement to unemployment benefit, any insured person is deemed to have resided in the territory of the United Kingdom during any period prior to the date of his claim for benefit during which he has resided or completed insurance or employment periods in the territory of another Member State (R 1408/71 Annex V J 4 amended by the Treaty of Accession).

C 355 — *The legislation of the United Kingdom lays down a residence condition for entitlement to unemployment benefit in Northern Ireland. However, article 67 of regulation 1408/71 provides for aggregation of insurance or employment periods, but not of residence periods (Social Affairs Doc. SEC (71) 4376 and 4550).*

§ 3 — *Certification of insurance or employment periods*

519 — In order to benefit from the provisions referred to in Nos 512 to 514, the person concerned must submit to the competent institution a declaration on form E 301 certifying the insurance or employment periods to be taken into consideration for the award of unemployment benefit (R 574/72 art. 80 paras. 1, 3).

520 — This declaration is issued, at the request of the person concerned or of the competent institution of the place of residence, by the competent institution or institutions or by the institutions appointed for this purpose by the competent authority of the Member State or States to the legislation of which the unemployed person has previously been subject (R 574/72 art. 80 paras. 2, 3).

521 — The institutions and bodies appointed in the various Member States by the competent authorities are indicated in Annex 10 of regulation 574/72 amended by regulation 878/73 (R 574/72 art. 4 para. 10), and R 2595/73

C 356 — *The provisions of regulation 574/72 described in Nos 519 and 520 correspond to article 63 of regulation No 4, subject to editorial simplifications.*

§ 4 — *Judgments of the Court of Justice EC on the interpretation of provisions of the regulation concerning the aggregation of periods to acquire entitlement to unemployment benefits*

C 356 a — *Case 66/77 (Petrus Kuyken v. Rijksdienst voor Arbeidsvoorziening), Judgment of the Court of 1 December 1977.*

A Belgian national attended a secondary school in Belgium and after obtaining his school-leaving certificate on 30 June 1971 he attended a course at a Hogere Technische School (College of Advanced Technology) in the Netherlands, where, on 24 June 1974, he obtained the diploma of Technical Academy engineer.

On 28 October 1976, having failed to find a post in Belgium, he applied to the Rijksdienst voor Arbeidsvoorziening for unemployment benefit under article 124 of the Royal Decree of 20 December 1963 which provides for the award of such benefits to "a young worker who has completed a full course of study in an educational establishment provided, recognized or subsidized by the State, or who has obtained a diploma or a school-leaving certificate from the central board". The award of these unemployment benefits was, however, subject to the condition that the "period which has elapsed between the completion of studies, the grant of a school-leaving diploma or a certificate from the central board or the completion of apprenticeship and the application for benefit does not exceed one year".

The question was whether Community law provided, for the purpose of entitlement to unemployment benefits provided under Belgian legislation, that periods of study completed in another Member State were to be treated as periods of study completed in an educational establishment provided, recognized or subsidized by the Belgian State.

Considering, in particular, that:

— *it was clear from the wording of articles 67, 69 and 71 of regulation 1408/71 that they had no application in the case of an unemployed person who had never been in employment and had never been treated as an employed person under national legislation applicable to employed persons, particularly that relating to unemployment,*

and that

— *furthermore, the position of a person who had gone to another Member State in order to follow a course of study and who, during that period, was not insured under a social security scheme set up for the benefit of employed persons did not come within the scope of the provisions of articles 48 to 51 of the Treaty, which were intended to facilitate the free movement of workers.*

The Court of Justice, in a Judgment of 1 December 1977, ruled as follows:

"Neither the Treaty establishing the EEC nor the provisions of regulation (EEC) 1408/71 of the Council relating to unemployment require a competent institution in one Member State, for the purposes of the award of unemployment benefits to former students who have never been employed, to treat studies completed in another Member State as though they had been completed in an establishment provided, recognized or subsidized by the competent State."

C 356 b — Case 126/77 (Maria Frangiamore v. Office national de l'Emploi), Judgment of 15 March 1978.

The Belgian Cour de cassation had submitted the following question to the Court of Justice EC:

"Must the provision contained in article 67 (1) of regulation (EEC) 1408/71 of the Council of 14 June 1971, pursuant to which a Member State shall take into account a period of employment completed under the legislation of another Member State only if that period of employment would have been counted as an insurance period had it been completed under the legislation of the first Member State, be taken to mean that that condition applies even if the period of employment is counted as an insurance period in the other Member State?"

This question was asked in a dispute between the Office national de l'Emploi and an Italian national who was employed as a domestic servant in Italy from 21 December 1958 to 4 August 1973 and from 27 August 1973 to 30 November 1973 worked for 83 days for an undertaking in Belgium. When she became unemployed in Belgium, she claimed unemployment benefits in December 1973.

In order to qualify for benefits, the person concerned should, under Belgian legislation, have completed 450 working days or days treated as such within the 27 months prior to her claim, that is from 3 September 1971 to 3 December 1973.

In order to fulfil the qualifying conditions under Belgian legislation, the person concerned therefore applied that periods completed by her in Italy as a domestic servant be added to the 83 working days completed in Belgium and be considered, for the purposes of Belgian legislation, as unemployment insurance periods for the period from 2 July 1972 to 4 August 1973.

The dispute arose because the Office national de l'Emploi refused to effect this aggregation on the ground that according to Belgian legislation working days completed as a domestic servant could not be taken into consideration for the award of the relevant benefits.

In reply to the question submitted, and considering:

— *that article 67 (1)* in fine *of the regulation permitted the aggregation, on the one hand, of insurance periods within the meaning of article 1 (r) and, on the other hand, of ordinary periods of employment defined or recognized as such in a Member State other than that in which the competent institution was established;*

— *that in the latter case, periods of employment should be aggregated only if they would have been counted as insurance periods had they been completed under the legislation of the competent State;*

— *that on the other hand, that condition did not apply to the aggregation of insurance periods within the meaning of article 1 (r) of the regulation, i.e. "contribution periods or periods of employment as defined or recognized as insurance periods by the legislation under which they were completed".*

The Court of Justice EC ruled as follows:

"A period of employment completed under the legislation of a Member State other than that in which the competent institution is established, and defined or recognized as an insurance period under that legislation, is not subject to the condition laid down in article 67 (1) in fine *of regulation 1408/71."*

B — Calculation of benefit

§ 1 — *Calculation of benefit in relation to previous salary*

522 — Where in a Member State the calculation of benefit is based on the amount of the previous salary, the institution of that State only takes account of the salary received by the person concerned for the last employment pursued in its territory, provided that this employment has been pursued for at least four weeks (R 1408/71 art. 68 para. 1).

522a — **For the calculation of benefits for unemployment varying according to salary in the United Kingdom and in Ireland, reference is made to similar measures to those mentioned above (247, 247b and C 196a) for sickness insurance (R 1408/71 amended by the Treaty of Accession, Annex V E 7 and I II plus R 1392/74).**

523 — If the last employment in question has not been pursued for at least four weeks, account is taken of the usual corresponding salary in the place where the unemployed person is residing or staying for an equivalent or similar employment to that last pursued by the person concerned in the territory of another Member State (R 1408/71 art. 68 para. 1).

524 — In the contingency referred to in No 523 above, the institution responsible for benefit must be presented with a declaration indicating the nature of the last employment pursued in the territory of another Member State for at least four weeks and the branch of the economy in which this employment has been pursued. This declaration is drawn up by the competent institution for unemployment or by any other institution qualified for the purpose (see No 521 above) in the Member State with which the person concerned was last insured. Form E 301 is also used in this case (R 574/72 art. 81).

§ 2 — *Calculation of benefit in relation to the number of members of the family*

525 — Where in a Member State the amount of benefit varies according to the number of members of the family, the institution of that State must also take account of members of the family residing in the territory of another Member State, except if in that country these members of the family have already been taken into account for the award of unemployment benefit to a person other than the worker (R 1408/71 art. 68 para. 2).

526 — In order to benefit from the provisions set out in No 525, the person concerned must submit to the competent institution a declaration (form E 302) relating to the members of his family to be taken into consideration for the calculation of benefit (R 574/72 art. 82 para. 1).

527 — This declaration is issued by the institution referred to in No 521 above of the Member State in the territory of which the members of the family reside. Its validity is for twelve months with effect from the date of issue; it may be renewed. The person concerned must immediately notify any occurrence requiring an amendment of the said declaration (R 574/72 art. 82 para. 2 amended by R 878/73).

528 — The declaration mentioned above must certify that the members of the family are not being taken into account for the calculation of unemployment benefit due to another person under the legislation of the said Member State. If the institution issuing the declaration is not able to certify that this is so, the worker must complete the declaration with a statement in this sense when he submits the document to the competent institution (R 574/72 art. 82 para. 2 and 3 added by R 878/73).

C 357 — The issue of a declaration E 302 which has been drawn up after the commencement of the period of unemployment for which benefit is payable does not have the effect of postponing the date of entitlement to unemployment benefit at the increased rate based on family responsibilities, which is determined in accordance with the legislation of the competent country (AC Decision No 83 of 22 February 1973; OJ EC No C 75 of 19 September 1973, replacing decision No 57 OJ EC No 53 of 31 March 1965).

C 358 — The provisions of article 68 of regulation 1408/71 referred to above in Nos 522 and 525 correspond essentially to those of article 34 of regulation No 3.

C 359 — The provisions of articles 81 and 82 of regulation 574/72 described in Nos 524 and 526 to 528 replace those of articles 64 and 65 of regulation No 4.

In particular they lay down the declaration must certify that the members of the family have not been taken into consideration for the calculation of unemployment benefit due to another person under the legislation of the Member State where they reside.

The second sentence of No 528 sums up the provisions of para. 3 of article 82 which was added to regulation 574/72 by regulation 878/73 in order to take account of the fact that in the United Kingdom and in Ireland the institutions are not able to certify that the members of the family residing in their territory have not been taken into consideration for the calculation of unemployment benefit due under the legislation which they apply.

SECTION II — UNEMPLOYED PERSONS GOING TO A MEMBER STATE OTHER THAN THE COMPETENT STATE

Present regulations:	R 1408/71 art. 69, 70 R 574/72 art. 83, 97
Corresponding text of abrogated regulations:	R 3 art. 35, 37, 38 R 4 art. 66
Form to be used:	E 303

court of Justice case 40/76, 35/77

A — Conditions and limits for maintenance of entitlement to benefit

§ 1 — *Rules concerning preservation of entitlement*

529 — The maintenance of entitlement to unemployment benefit is subject to the following conditions:

529-1 — Before his departure for another State, the unemployed person must have been registered as seeking work and have been available to the employment services of the competent State for at least four weeks after the commencement of unemployment. This period may be reduced by the competent services or institutions (R 1408/71 art. 69 para. 1 *a)*).

529-2 — The unemployed person must register as seeking work with the employment services of each of the Member States to which he goes and undergo any checks which may be carried out there. This condition is considered as having been met for the period prior to registration (cf. No 530 below) if this has taken place within seven days with effect from the date on which the person concerned has ceased to be available to the employment services of the State which he has left (this period may exceptionally be extended by the services or institutions of the competent State) (R 1408/71 art. 69 para. 1 *b)*).

530 — Entitlement to benefit is maintained for a period of three months at most, with effect from the date when the person concerned ceased to be available to the employment services of the State which he has left. The total duration for the award of benefits cannot, however, exceed that during which they would have been paid to him if he had not left the competent State (R 1408/71 art. 69 para. 1 *c)*).

531 — If a seasonal worker is involved, this duration is in any case limited to the period remaining up to the end of the season for which he was engaged (R 1408/71 art. 69 para. 1 *c)*).

C 360 — Member States have undertaken to take in common all steps to avoid the provisions of article 69 para. 1 of regulation 1408/71 (cf. Nos 529 to 531 above) being used for purposes other than they were intended for. It has been agreed that if, after a certain period of implementing the regulation, one or more Member States find that the possibilities offered by article 69 have led unemployed persons to make use of it in ways not in accordance with its purpose, the Council, at the request of these governments and on the proposal of the Commission, will examine the possibility of eliminating these disadvantages (SRMC R 1408/71 ad art. 69).

532 — The person concerned only retains his entitlement to benefit in the competent State if, failing to find work in the Member State or States to which he has gone, he returns before the expiry of the time limit of three months; otherwise he normally loses all entitlement to benefit. In exceptional cases, this time limit may be extended by the competent services or institutions (R 1408/71 art. 69 para. 2).

533 — The benefit of entitlement to retention of unemployment benefit while seeking work in one or more other Member States can be made use of only once between two employment periods (R 1408/71 art. 69 para. 3).

534 — An unemployed person in receipt of unemployment benefit under Belgian legislation who returns to Belgium after the expiry of the three months time limit (cf. No 532) only recovers entitlement to Belgian benefit after having been employed there for at least three months (R 1408/71 art. 69 para. 4).

C 361 — Like para. 1 of article 35 of regulation No 3, article 69 of regulation 1408/71 sets out the principle of retention of entitlement to unemployment benefit where an unemployed person who meets the conditions required by the legislation of a Member State, transfers his residence to the territory of another Member State.

But more precise rules have been laid down concerning maintenance of entitlement to benefit in order to avoid the difficulties encountered when applying regulation No 3 to unemployed persons who only claimed benefit under the provisions of this article a long time after transferring their residence.

C 361 a — In Case 27/75 (Bonaffini and Others v. Istituto nazionale della Previdenza sociale) the Court of Justice of the EC ruled, in a Judgment delivered on 10 July 1975, that "Article 69 of Regulation (EEC) No 1408/71 is intended solely to ensure for the migrant worker the limited and conditional preservation of the unemployment benefits of the competent State even if he goes to another Member State and this other Member State cannot, therefore, rely on mere failure to comply with the conditions prescribed under that article to deny the worker entitlement to the benefit which he may claim under the national legislation of that State".

In this particular case, the worker concerned argued that because he was a frontier worker he was entitled to the unemployment benefits provided by the legislation of the country of residence. The Court of Justice considered that in view of the interpretation given above, the question on the applicability of Regulation No 1408/71 in the case in question was no longer relevant.

C 361 b — Case 40/76: Slavica Kermaschek v. Bundesanstalt für Arbeit; Judgment of 23 November 1976.

The question in this case was whether the spouse of a national of a Member State could apply for unemployment benefits in accordance with articles 67 and 70 of regulation (EEC) 1408/71 even though she was not a national of a Member State and she had acquired the potential entitlement to benefit before her marriage.

The person concerned was a national of the Socialist Federal Republic of Yugoslavia who had married a German worker and who had therefore resigned her job and left her residence in the Netherlands. She had applied for an unemployment allowance in the Federal Republic of Germany on the grounds that she had to be treated as a German employed person as she had married a German national and had resigned her job in the Netherlands to live with him.

Following the refusal by the competent institution to grant her an unemployment allowance because the periods of employment did not correspond to a potential entitlement to that benefit, the Court of Justice of the EC, to which the matter had been referred by a German court for a preliminary ruling, gave the following judgment on 23 November 1976:

"Articles 67 to 70 of regulation (EEC) 1408/71 have only one main purpose, namely the coordination of the rights to unemployment benefits provided by virtue of the national legislation of the Member States for employed persons who are nationals of a Member State.

The members of the family of such workers are entitled only to the benefits provided by such legislation for the members of the family of unemployed workers, and it is to be understood that the nationality of those members of the family does not matter for this purpose".

The plaintiff could not be given a judgment in her favour as, in this case, the "export" of entitlement to unemployment benefits from one Member State to another was, under articles 67 to 70 of regulation 1408/71, conceded only to workers, not to the members of their families or to their survivors.

Apart from the question on the award of unemployment benefits, this judgment is of interest, as it defines, in the grounds for judgment, the legal nature and the scope of rights, under regulation (EEC) 1408/71, of employed persons and of the members of their families and their survivors (cf. C 18a).

C 361 c — Case 35/77 (Elizabeth Beerens v. Rijksdienst voor Arbeidsvoorziening), Judgment of the Court of Justice EC of 29 November 1977.

After working in the Netherlands from 1 June 1975 to 9 June 1975, when she ceased to be employed because of illness, the plaintiff was dismissed by her employer with effect from 1 August 1975.

As she did not fulfil the conditions required under the Netherlands Law on compulsory insurance of workers against the financial consequences of involuntary unemployment ("Werkloosheidswet"), she received, as from 1 October 1975, the benefits provided for under the Netherlands Law laying down rules for public allowances for unemployed workers ("Wet Werkloosheidsvoorziening", WWV). She received those benefits until 14 July 1976, when she took up residence in Belgium on the occasion of her marriage to a Belgian national. On registering with the Rijksdienst voor Arbeidsvoorziening, she applied to it for unemployment benefits, relying on the provisions of Article 69 of regulation 1408/71 according to which "a worker who is wholly unemployed and who satisfies the conditions of the legislation of a Member State for entitlement to benefits and who goes to one or more other Member States in order to seek employment there shall retain his entitlement to such benefits" under the conditions and within the limits indicated in that Article.

The dispute concerned the classification of the unemployment benefits the person concerned had received in the Netherlands. Could the provisions of the Netherlands Law pursuant to which benefits had been provided be invoked with regard to article 69 of regulation 1408/71 if that Law was one on social assistance and not on social security?

As the relevant Law was expressly mentioned in the Netherlands declaration (OJ C 12 of 24 March 1973; cf No 27 above), specifying, as laid down by articles 5 and 96 of regulation 1408/71, which legislation and schemes referred to in article 4, (1) and (2) fell within the scope of the regulations, the Court of Justice EC, after recording that the fact that a national law or regulation had not been specified in the declarations referred to in article 5 of the regulation was not of itself proof that law or regulation did not fall within the field of application of the said regulation, ruled, however, that

"The fact that a Member State has specified a law in its declaration under article 5 of regulation 1408/71 must be accepted as proof that the benefits granted on the basis of that law are social security benefits within the meaning of the said regulation."

§ 2 — Administrative proofs and formalities

535 — In order to preserve benefit, an unemployed person must submit to the institution of the place where he has gone a declaration drawn up on form E 303 concerning the maintenance of his entitlement to unemployment benefit. This declaration is drawn up by the competent institution of the last country of employment (R 574/72 art. 83 para. 1).

536 — If the unemployed person does not present the above declaration, the institution of the place where he has gone applies to the competent institution in order to obtain it. The employment services of the competent State must ensure that the unemployed person has been informed of his obligations under the provisions described above (R 574/72 art. 83 para. 2).

537 — Benefit due is that of the competent State. It is paid in accordance with the procedures laid down in the legislation of the Member State to which the unemployed person has gone (R 574/72 art. 83 para. 3).

538 — The procedure for checking on the unemployed person is carried out according to the methods laid down by the legislation of the country to which the unemployed person has gone. It is up to the institution of that country to notify the competent institution of the date the unemployed person is registered, of the date of commencement of payment of benefit and of the occurrence of any contingency which may affect entitlement to benefit. If such an occurrence entails suspension or withdrawal of benefit, the payment of this must be stopped as soon as the institution responsible for paying it has taken note of the event. The payment of benefit can only be resumed after receipt of the necessary information from the competent institution (R 574/72 art. 83 para. 3.)

539 — Two or more Member States may agree, after consulting the Administrative Commission, on other implementation procedures (R 574/72 art. 83 para. 4).

C 362 — The procedure described above is new and replaces that laid down by article 66 of regulation No 4.

B — Provision of benefit and reimbursement

540 — Unemployment benefit is paid by the institution of each of the Member States to which the unemployed person goes in order to seek work. It is then refunded to that institution by the competent institution of the Member State to the legislation of which the worker was subject at the time of his last period of employment (R 1408/71 art. 70 para. 1).

541 — Refunds are made on proof of actual expenses (R 1408/71 art. 70 para. 2, R 574/72 art. 97).

542 — It is open to Member States or to the competent authorities of those States to lay down other methods of payment or reimbursement or even to renounce all reimbursement (R 1408/71 art. 70 para. 3, R 574/72 art. 97).

C 363 — The provisions of regulation 1408/71 described in Nos 540 and 441 correspond to those laid down in article 37 of regulation No 3.

But for the reimbursement of unemployment benefit, regulation 1408/71 has adopted a different system from that laid down in regulation No 3, the application of which was found to be too complicated. Bearing in mind that the various legislations differ widely with regard to the amount and duration of unemployment benefit, the principle has been set out that the competent institution should reimburse the whole amount of benefit paid out on its behalf.

C 363 a — This principle that the competent institution shall refund the cost of benefits in full was confirmed by Administrative Commission Decision No 100 of 23 January 1975 (OJ EC No C 150 of 5 July 1975). That Decision provides "that the institution of the place of stay or of residence shall be reimbursed in full by the competent institution for amounts awarded to persons concerned on behalf of the competent institution, in the currency of the country of stay or of residence, in accordance with... Article 70(1), second subparagraph, of Regulation No 1408/71" (see No 540 above).

SECTION III — UNEMPLOYED PERSONS WHO, DURING THEIR LAST EMPLOYMENT, RESIDED IN A MEMBER STATE OTHER THAN THE COMPETENT STATE

Present regulations:	R 1408/71 art. 17 R 574/72 art. 84
Corresponding text of abrogated regulations:	R 3 art. 33 para. 6, art. 35 paras. 6 and 7 R 4 art. 66 para. 5 R 36 art. 19
Administrative Commission:	Decisions Nos 99 and 100
Form to be used:	E 301

A — Frontier workers

§ 1 — Partially or intermittently unemployed frontier workers

543 — These workers received unemployment benefit in accordance with the provisions of the legislation of the competent State, as if they resided in its territory (R 1408/71 art. 71 para. 1 *a), i)*).

544 — The provision of benefit is in this case carried out by the competent institution and the person concerned cannot claim benefit under the legislation of the State of residence as long as he has entitlement from the competent State (R 1408/71 art. 71 para. 2).

545 — For the application of the provisions referred to in No 544, the institution of the place of residence asks the competent institution for any information required relating to the entitlement of the unemployed person with regard to the latter institution (R 574/72 art. 84 para. 3).

§ 2 — *Wholly unemployed frontier workers*

546 — These receive unemployment benefit in accordance with the provisions of the legislation of the country of residence, as if they had been subject to that legislation during the course of their last employment. The payment of benefit is carried out by the institution of the place of residence which bears the cost (R 1408/71 art. 71 para. 1 *a), ii)*).

547 — The institution of the place of residence is considered as being the competent institution for the application of article 80 of regulation 574/72 (cf. No 519 and 520 above) (R 574/72 art. 84 para. 1).

C 364 — The provisions of regulation 1408/71 described in Nos 543 to 547 correspond to those referred to in article 19 of regulation 36 subject to some editorial amendments.

C 365 — For the purpose of carrying out checks with regard to the provision of benefit instituted by the French law of 24 October 1946 in the event of bad weather unemployment of wage-earners employed abroad, the Council has stated that the necessary administrative cooperation in this case may be granted in the spirit of article 84 of regulation 574/72 and by analogy with article 69 of regulation 1408/71 (SRMC R 574/72 ad art. 84).

B — Workers other than frontier workers

§ 1 — *Workers other than frontier workers, partially, intermittently or wholly unemployed, who remain available to their employer or to the employment services in the territory of the competent State*

548 — The provisions described in Nos 543, 544 and 545 are applicable to these workers (R 1408/71 art. 71 para. 1 *b), i)* and para. 2).

§ 2 — *Workers other than frontier workers, wholly unemployed, who make themselves available to the employment services in the territory of the Member State where they reside or who return to that territory*

549 — Normally the provisions appearing in Nos 546 and 547 are applied (R 1408/71 art. 71 para. 1 *b), ii)*, first sentence).

550 — The unemployed person must submit to the institution of the place of his residence, in addition to form E 301, a declaration from the institution of the Member State to the legislation of which he was last subject indicating that he is not entitled to benefit under the provisions referred to in No 529 to 534 above (R 574/72 art. 84 para. 2).

551 — However, a wholly unemployed worker who has been awarded benefit to the charge of the competent institution of the Member State to the legislation of which he was last subject, continues to receive this benefit under the conditions and limits indicated in Nos 529 to 534. Benefit due under the legislation of the State of residence is suspended as long as the person concerned is entitled to benefit under the legislation to which he was last subject (R 1408/71 art. 71 para. 1 *b), ii)*, second sentence).

C 366 — The provisions of regulation 1408/71 described in Nos 548, 549 and 551 correspond to the provisions of para. 6 of article 33 and paras. 6 and 7 of article 35 of regulation No 3 respectively.

C 366 a — The provisions shown in paragraphs 549 to 551 apply, apart from seasonal workers and in the case where interested persons live in the territory of a Member State other than the competent State (Administrative Commission, Decision No 94 of 24 January 1974, published in OJ EC No C 126 of 17 October 1974):

— to workers on international transport systems, mentioned in No 75;

— to workers other than those on international transport systems carrying out their normal profession on territories of several Member States, mentioned in No 79;

— to workers employed by an enterprise on the border areas, mentioned in No 81.

On the implementation of Decision No 94, see the judgments of the Court of Justice of the EC in cases 39/76 and 76/76 (cf. C 366c and C 366d).

C 366 b — In its Decision No 100 of 23 January 1975 (OJ EC No C 150 of 5 July 1975) the Administrative Commission provided that "the institution of the place of stay or of residence shall be reimbursed in full by the competent institution for amounts awarded to persons concerned on behalf of the competent institution, in the currency of the country of stay or of residence, in accordance with ... Article 71(1) (b) (ii), second-last sentence of Regulation No 1408/71" (benefits referred to in No 551 above).

C 366 c — Case 39/76: Board of the Bedrijfsvereniging voor de Metaalnijverheid, The Hague, v. Mr M.L.J. Mouthaan. — Judgment of 15 December 1976.

The case concerned entitlement to unemployment benefit of a Dutch worker who, after a period worked in the Netherlands, had retained his residence in that country but had been employed in the Federal Republic of Germany for a Netherlands undertaking established in the Netherlands without being insured under German legislation. On becoming unemployed, he had made himself available to the Netherlands employment service.

In reply to the question as to whether the person concerned was entitled to Netherlands unemployment benefits, the Court of Justice, in a judgment of 15 December 1976, ruled as follows:

"A wholly unemployed worker who, in the course of his last employment, was employed in a Member State other than that of his residence by an undertaking established in the latter State and who, in respect of that activity, was subject to the legislation of the State of employment may, by virtue of article 71, para. 1 b), ii) of regulation 1408/71, claim unemployment benefits under the provisions of the national legislation of the State where he resides and to whose employment services he makes himself available for work."

In its grounds for judgment, the Court of Justice had recalled that according to the ninth recital of regulation 1408/71, article 71, para. 1, b), ii) served to ensure that a worker placed in one of the situations therein set out may receive unemployment benefits in conditions most favourable to the search for new employment. To this end this provision laid down that the unemployment insurance scheme applicable to such a worker shall be that established by the national legislation of the Member State to whose employment services the worker made himself available for work and on the territory of which he resides or to whose territory he returned. As the work carried out in the course of the last employment must be regarded as having been carried out on the territory of that State it follows that article 71, para. 1, b), iii) subjects the right to benefits of the person concerned to the national legislation of the same State both as regards the amount and the duration of the payments and as regards the conditions governing the acquisition of that right.
(See also C 8a and C 26a.)(on this case, see also C 9-4 and C 26a)

C 366 d — Case 76/76: Silvana di Paolo v. Belgian Office national de l'emploi; Court of Justice EC, Judgment of 17 February 1977.
This case concerns the interpretation of article 71, para. 1, b), ii) of regulation 1408/71, which provides that "a worker, other than a frontier worker, who is wholly unemployed and who makes himself available to the employment services of the Member State in which he resides, or who returns to that territory, shall receive benefits in accordance with the legislation of that State as if he had been last employed there; the institution of the place of residence shall provide such benefits at its own expense ...".

What was at issue was whether article 71, para. 1, b), ii), which was an exception to the general rule as regards the aggregation of periods and the payment of benefits, applied only to the cases referred to in Administrative Commission Decision No 94 of 24 January 1974 (cf. C 366a above) or whether, in other circumstances, it allowed the country of residence to take care of a worker even if the worker was not insured there.

This question was asked in an action concerning an Italian national who was born in Italy on 14 June 1951 and who came to Belgium in 1965 with her parents. After attending courses in technical education, secretarial skills and foreign languages, until June 1972, and working in the United Kingdom from September 1972 to July 1973, she returned to her parents in Belgium. As she was then unemployed, she had applied to the Belgian Office national de l'emploi for unemployment benefits. To support her application, she based herself on article 67, para. 1 of regulation 1408/71, which provides that periods of insurance of employment shall be aggregated for the purposes of ascertaining entitlement to unemployment benefits, and on article 71, para. 1, b), ii) of regulation 1408/71 which, according to the applicant, entitled her to benefits under Belgian legislation as, during her stay in the United Kingdom, she had maintained her residence in Belgium, which was "the habitual centre of her interests" because her family resided in that State.

The Belgian Office national de l'emploi rejected this argument on the grounds that as the applicant, who had worked in only one Member State (the United Kingdom), had not completed the insurance periods as required by the legislation under which she was applying for benefit, and that the exception provided for in article 71, para. 1, b), ii) could not apply in this case, as the applicant was not a worker referred to in Decision No 94 of the Administrative Commission.

After finding that the list of persons entitled to benefit under article 71, para. 1, b), ii) pursuant to Administrative Commission Decision No 94 is not exhaustive and while accepting that transferring the cost of providing unemployment benefits from the Member State where the person was last employed to the Member State of residence, which article 71, para. 1, b), ii) of regulation 1408/71 implied, could be done only in the case of certain categories of workers who retained close links with the country where they had settled and where they usually stayed, the Court of Justice considered that the concept of "the Member State in which he resides, or who returns to that territory", defined in article 71, para. 1, b), ii) of regulation 1408/71, should be understood by taking into account all factors, such as the family situation of the worker, the reasons which had led him to move, and the nature of the work, as the concept of residence did not necessarily exclude non-habitual residence in another Member State.

The Court of Justice of the EC therefore ruled as follows:

"The concept of the Member State where the worker resides, appearing in article 71, para. 1, b), ii) of regulation 1408/71, must be limited to the State where the worker, although occupied in another Member State, continues habitually to reside and where the habitual centre of his interests is also situated;

the addition to that provision of the words "or who returns to that territory" implies merely that the concept of residence in one State does not necessarily exclude non-habitual residence in another Member State;

for the purposes of applying article 71, para. 1, b), ii), account should be taken of the length and continuity of residence before the person concerned moved, the length and purpose of his absence, the nature of the occupation found in the other Member State and the intention of the person concerned as it appears from all the circumstances".

CHAPTER XIV

FAMILY BENEFITS AND ALLOWANCES FOR WORKERS AND UNEMPLOYED PERSONS

SECTION I — GENERAL PROVISIONS

Present regulations:	R 1408/71, art. 1, *u), i)* and *ii)*, art. 72, art. 90 and Annex I, amended by Treaty of Accession, OJ EC L 73, 27 March 1972 and by R 1209/76, OJ EC L 138, 26 May 1976, R 574/72, art. 4 and 85, Annex 10, amended by R 878/73, OJ EC L 86, 31 March 1973, by R 1392/74, OJ EC L 152, 8 June 1974 and by R 2595/77, OJ EC L 302, 26 November 1977
Corresponding text of abrogated regulations:	R 3 art. 39 R 4 art. 67
Forms to be used:	E 405, E 104

A — Definitions and exclusions

552 — Included in the term "family benefits" are all benefits in cash and in kind designed to ease the load of family responsibilities under a legislation laid down in article 4 para. 1 subpara. *h)* of regulation 1408/71 (cf. No 14 above), but excluding childbirth allowances under Belgian and Luxembourg legislations and ante-natal and post-natal allowances in France under the Social Security Code (R 1408/71 art. 1, *u), i);* Annex I amended by Treaty of Accession and by R 1209/76).

553 — The following may not be awarded to the persons concerned residing in the territory of a Member State other than the competent State to the extent that these have been introduced after the entry into force of the regulation (R 1408/71 art. 90):

553-1 — Housing allowances;

553-2 — Family benefits introduced in Luxembourg for demographic reasons.

C 367 — When regulation 1408/71 came into effect, only French legislation provided for housing allowances. But these are not exportable outside French territory under the provisions described in No 569 below.

The provisions described in No 553 thus relate only to housing allowances which might be introduced in future in one or more other Member States and which would — if these provisions had not been included — have had to be exported because of the system in force (see No 561 below) with regard to these States, for the payment of family benefits where workers are subject to their legislation.

554 — The term "family allowances" means periodical cash payments awarded only in relation to the number and, where appropriate, the age of the members of the family (R 1408/71, art. 1, *u), ii)*).

C 368 — It is understood that the benefits referred to above (Nos 552 and 554) only include benefits emanating from social security branches and not fiscal or other benefits (SRMC R 1408/71 ad art. 1, u)).

B — Aggregation of insurance or employment periods

§ 1 — *Aggregation rule*

555 — For the purpose of acquiring entitlement to benefit under the legislation of a Member State, account is taken to the extent necessary of insurance or employment periods completed in the territory of any other Member State (R 1408/71, art. 72 amended by Annex to the Treaty of Accession).

C 369 — The provisions of regulation 1408/71 described above correspond to those of article 39 of regulation No 3.

§ 2 — *Certification of insurance or employment periods*

556 — The person concerned must submit to the competent institution a declaration drawn up on form E 405 stating the insurance or employment periods completed under the legislation to which he was previously subject or, as far as is necessary, under the legislations to which he was previously subject (R 574/72, art. 85, paras. 1, 3).

557 — This declaration is issued in the Member State where the insurance or employment periods have been completed, either by the competent institution for family benefits or by one of the institutions listed in Annex 10 of regulation 574/72 as amended by regulations 873/73, 1392/74 and 2595/77 (regulation 574/72, art. 4, (10) and art. 85, (2)).

558 — This declaration may be replaced by a copy, issued by the sickness insurance institution, of the declaration drawn up on form E 104 concerning aggregation of insurance periods (R 574/72, art. 85, para. 2).

C 370 — The provisions of regulation 574/72 described above correspond to article 67 of regulation No 4, subject to more precise wording concerning procedure similar to that indicated for sickness insurance (141), invalidity insurance (292), death grants (509) and unemployment benefit (519).

The option of using the declaration previously supplied to the sickness insurance institution has been offered with a view to simplification (ERER 574/72).

SECTION II — BENEFIT WHICH MAY BE GRANTED WHERE THE FAMILY MEMBERS RESIDE IN A MEMBER STATE OTHER THAN THE COMPETENT STATE

Present regulations:	R 1408/71 amended by Treaty of Accession OJ EC L 73, 27 March 1973: art. 73, 74, 76, 98, Annex V R 574/72 art. 4, 10, 86, 87, 88, 89, Annex 8 amended by R 878/73 OJ EC L 86, 31 March 1973, R 1392/74, OJ EC L 152 of 8 June 1974, R 1209/76, OJ EC L 138 of 26 May 1976 and R 2595/77, OJ EC L 302 of 26 November 1977
Corresponding text of abrogated regulations:	R 3 art. 39, 40, 41 R 4 art. 9 paras. 4, 5, art. 68 R 36 art. 21 and 22
Court of Justice EC:	Case 134/77
Administrative Commission:	Decision Nos 76, 77, 84
Forms to be used:	E 401, E 402, E 403, E 404, E 405, E 406, E 407, E 408, E 409, E 410

C 371 — The provisions of regulation 1408/71 (art. 73, 74, 76) described below differ substantially from the corresponding provisions (art. 40, 40 bis, 41, 42) of regulation No 3. Regulation No 3 laid down for children residing in a Member State lther than that where the worker was employed and insured that family allowances would be awarded under the legislation of the country of employment, but the amount of such allowances could not exceed what would have been due for the same children under the legislation of their country of residence. This limitation was waived, however, firstly where the legislation of the country of employment permitted the award of the whole of the family allowance and, secondly, where more favourable provisions (in particular for frontier workers) had been laid down in bilateral conventions remaining in force.

When regulation 1408/71 was being drafted, a uniform rule could not be drawn up because of the variety of Member States' regulations.

In fact, according to the provisions at present applicable, the obligations imposed on France by article 73 of regulation 1408/71 are different from those laid down for the other Member States. Workers and unemployed persons subject to French legislation are entitled, for their children residing outside France but in community territory, to the family allowances of the place of residence, while workers and unemployed persons subject to the legislation of the other Member States receive the family benefits of the country of employment, whatever the place of residence of the members of the family. For the former, the benefits paid are only family allowances in the strict sense. For the latter, benefits include specialised benefits, in addition to family allowances in the strict sense.

This use of two different solutions results from doctrinal differences which could not be resolved when the European Social Security regulations were being revised.

559 — The problem thus posed, with regard to the payment of family benefits, will have to be re-examined with a view to reaching a uniform solution for all Member States (R 1408/71 art. 98).

A — Workers and unemployed persons subject to the legislation of a Member State other than France

§ 1 — *Determination of entitlement*

560 — Depending on whether it is a case of members of the family of a worker or of an unemployed person, family benefits are those of the country of employment or those laid down in the legislation of the Member State under which unemployment benefit is awarded, as if the members of the family resided in the same territory as the worker or the unemployed person (R 1408/71 art. 73 para. 1, art. 74 para. 1).

C 372 — The provisions described above are applicable both to members of the family of a frontier or seasonal worker and to members of the family of any other worker and replace the corresponding provisions of article 40 of regulation No 3 and articles 21 and 22 of regulation No 36.

The conditions which the worker has to meet in order to have entitlement to benefit are independent of the place of residence of his family and are assessed solely under the legislation to which the worker or the unemployed person is subject, bearing in mind the rules for the aggregation of periods set out in No 555 above.

The members of the family who may receive benefit are those who, under the legislation to which the worker or the unemployed person is subject, are entitled to benefit.

C 373 — Article 73 para. 1 of regulation 1408/71 (No 560) also applies to members of the family accompanying a posted worker who works outside the country to the legislation of which he is subject (SRMC R 1408/71 ad art. 73 para. 1).

Family benefits (subject to the reservation set out in No 561) thus continue to be awarded for the members of the family accompanying a posted worker according to the legislation of the State to which the worker remains subjec during his posting as if he kept his residence in the territory of that State

§ 2 — *Benefits which may be granted*

561 — Benefits which may be granted are those referred to in No 552 above, i.e. all benefits in kind or in cash designed to help meet family expenses under a legislation laid down in article 4 para. 1 *h)* of regulation 1408/71 (c.f. No 14 above), but excluding special childbirth allowances provided by Belgian and Luxembourg legislation and ante-natal and maternity allowances in France under the Social Security Code (R 1408/71 art. 1 *u), i),* art. 73 para. 1, Annex I amended by Treaty of Accession).

C 374 — *It is, however, explained that the exclusion from the scope of the regulation of the ante-natal allowances laid down by French legislation does not imply any change in the conditions imposed by national legislation for the award and payment in French territory of these allowances. These thus continue to be paid without any discrimination based on nationality (SRMC R 1408/71 ad art. 1 subpara. u)).*

§ 3 — *Special implementation procedures in certain national legislations*

562 — Special procedures have been laid down in Annex V of regulation 1408/71 with regard to:

562-1 — *Belgium* — For the application by Belgian institutions of Chapters 7 and 8 of Title III of the regulation (Chapter XIV and XV of the Practical Handbook) the child is considered as being brought up in the Member State in the territory of which be resides (R 1408/71 Annex V A 2).

562-2 — *United Kingdom* — For the purpose of meeting the residence conditions linked to British citizenship and place of birth, for entitlement to family allowances which may be awarded under United Kingdom legislation, the territory of any other Member State, and presence in that territory are deemed to be the territory of the United Kingdom and residence in the latter country (R 1408/71 Annex V J 5 amended by the Treaty of Accession).

C 375 — *Family allowances provided under United Kingdom legislation depend neither on insurance nor employment conditions. Generally speaking, allowances are payable only to families living in the United Kingdom provided that certain residence conditions are met linked to British citizenship and place of birth. The insertion of these provisions in Annex V of regulation 1408/71 is designed to guarantee to nationals of Member States covered by the regulation entitlement to family allowances without the restrictions which might otherwise apply (c.f. supplement to 13th interim report of the Commission to the Council on technical adaptation of the Community regulations to the situation in the enlarged Community "Social Affairs" Doc. Sec. (71) 4376 and 4550).*

§ 4 — *Formalities*

563 — In order to receive family benefits, the worker or unemployed person must submit to the competent institution a claim supported by the following documents (R 574/72 amended by R 878/73, art. 86 paras. 1, 2, 3 and art. 88):

563-1 — Certificate (form E 401) relating to the members of the family concerned, issued either by the competent authorities for civil status affairs of the country of residence of the members of the family, or by the institution of the place of residence of these members of the family which is competent for sickness insurance purposes, or by another institution appointed by the competent authority of the Member State in the territory of which these members of the family reside. This certificate must be renewed every year (R 574/72 art. 86 para. 2 amended by R 878/73).

563-2 — Declaration of student status (form E 402) normally renewable quarterly.

563-3 — Where applicable, apprenticeship declaration (form E 403), normally renewable quarterly.

563-4 — Where applicable, medical certificate (form E 404), renewable at least once a year.

563-5 — Information enabling the person to whom the family benefits are payable in the country of residence to be identified (R 574/72 art. 86 para. 3).

564 — The worker must inform the competent institution of any fact or event (change in the circumstances or the number of members of the family, transfer of residence, pursuit of paid employment ...) which might alter entitlement to family benefits (R 574/72 art. 86 para. 5).

C 376 — *1 — The provisions of regulation 574/72 amended replace those of article 68 of regulation No 4. They correspond to paras. 1, 4, 5, and 6 of that article.*

C 376-2 — Article 86 para. 2 of regulation 574/72 has had to be amended by regulation 878/73 (No 563-1) in order to take account of the fact that in the United Kingdom the competent authorities for civil status matters do not issue family certificates.

C 376-3 — The conditions for the use of forms E 402, E 403 and E 404 have been explained in a decision of the Administrative Commission, No 76 of 22 February 1973 OJ EC C 75 of 19 September 1973, replacing lapsed decision No 20 OJ EC 16 July 1960. According to this decision, the renewal period for forms E 402 and E 403 may be extended to one year.

B — Workers and unemployed persons subject to French legislation

§ 1 — *Determination of entitlement*

565 — The members of the families of these workers or unemployed persons residing in the territory of another Member State receive the family allowances provided in the legislation of that State (R 1408/71 art. 73 para. 2; art. 74 para. 2).

C 377 — These provisions are applicable both to members of the family of a frontier or seasonal worker and to the members of the family of any other worker.

566 — The worker must meet the conditions of employment required by French legislation for entitlement to benefit (R 1408/71 art. 73 para. 2).

C 378 — The conditions for entitlement to benefit required by French legislation may be assessed by aggregating insurance or employment periods (c.f. No 555).

C 379 — A declaration inserted in the Minutes of the Council explains in this respect that entitlement to benefit exists if the conditions laid down in French legislation with regard to the paid employment of the worker are met, it being understood that at present these are only conditions linked to the duration of employment periods or periods credited as such (SRMC R 1408/71 ad art. 73 para. 2).

§ 2 — *Benefits which may be granted*

567 — The benefits which may be granted are family allowances referred to in No 554, i.e. periodical cash benefits awarded under the legislation of the country where the members of the family reside, solely on the basis of the number and, where appropriate, the age of the members of the family (R 1408/71 art. 1 *u), ii)* and art. 73 para. 2).

C 380 — The beneficiaries, the benefits and the rates are those laid down in the legislation of the Member State where the members of the family of the worker reside (SRMC R 1408/71 ad art. 73 para. 2).

C 381 — For the application of the principles set out in Nos 565, 566 and 567 the following rules have been laid down (AC No 77 of 22 February 1973 OJ EC C 75 of 19 September 1973, replacing lapsed decision No 25 OJ EC No 18 of 17 February 1961):

C 381-1 — Where the legislation of the Member State or States, other than France, where the members of the family reside lays down rules and in particular amounts which differ for various categories of workers, family allowances are to be awarded in accordance with the rules and the amounts which would be applicable if the worker were employed in the State of residence of the members of his family;

C 381-2 — Where the legislation of the Member States, other than France, in the territory of which the children of the worker are dispersed, lays down differing amounts according to the child's position in the family, the institution of each of these States must award the family allowances due for the children residing in its territory as if all the children resided in that State.

§ 3 — *Maintenance of accrued entitlement*

568 — The application of the provisions described in Nos 565 and 567 above may, however, have the effect of reducing the entitlements which the persons concerned had at the date of entry into force of regulation 1408/71 or at the date of its application in the territory of the Member State concerned, bearing in mind in particular bilateral agreements concluded with France which will continue to apply as long as the persons concerned are subject to French legislation and without account being taken of interruptions of less than one month, nor of periods of receipt of benefit for unemployment or sickness (R 1408/71 art. 94 para. 9 amended by Treaty of Accession).

569 — The maintenance of accrued entitlement is guaranteed for members of the family who were entitled to benefit on the day preceding that of the entry into force of regulation 1408/71. This entitlement is retained under the conditions and limits laid down at that time either under article 41 or Annex D of regulation No 3 or under article 20 or Annex 1 of regulation No 36 (R 574/72 art. 119 para. 1).

570 — As long as the amount of benefit referred to in No 568 above is higher than the amount of family allowances which would be due under the provisions described in No 567, the competent French institution must provide the former to the worker or directly to the members of his family at their place of residence for children entitled to benefit (R 574/72 art. 119 para. 2).

571 — Where family allowances referred to in Nos 565 and 567 are due, these are paid, according to the legislation which it applies, by the institution of the place of residence of the members of the family, for reimbursement by the French competent institution (R 574/72 art. 119 para. 3).

572 — In bilateral relations between the Member States concerned, the implementation procedures for the provisions referred to in Nos 568 to 571 are determined by those States or their competent authorities (R 574/72 art. 119 para. 4).

§ 4 — *Special case of members of the family of a posted worker subject to French legislation accompanying him to the country of posting*

573 — A worker subject to French legislation and posted under the conditions set out in article 14 para. 1 subpara. *a)* of regulation 1408/71 (c.f. No 71 above) to the territory of another Member State is entitled, for the members of his family who accompany him, to family benefits as listed below (R 1408/71 art. 73 para. 3; Annex V D 4):

— ante-natal allowances laid down in article L 516 of the Social Security Code;

— family allowances laid down in articles L 524 and L 531 of the Social Security Code;

— compensation payment for scheduled taxes laid down in article L 532 of the Social Security Code; this benefit may not, however, be paid unless the salary received while on posting is subject in France to income tax;

— single salary allowance laid down in article L 533 of the Social Security Code.

§ 5 — *Procedure for granting family allowances*

a) Workers

574 — The award of family allowances according to the legislation of the country of residence of the members of the family is subject to the production of a declaration drawn up on form E 407 certifying that the worker meets the conditions for entitlement to family benefits in accordance with French legislation and to registration of the members of the family with the institution of the place of residence. The declaration must state the duration of employment whenever entitlement is based on the duration of employment periods (R 574/72 art. 87 para. 1).

575 — The declaration is issued by the French family allowances institution to which the worker is attached by reason of his employment, at the request of the worker (drawn up in duplicate on form E 406) who must sign a statement certifying that no entitlement to family allowances exists under the legislation of the country of residence of the members of the family on the basis of any paid employment (R 574/72 art. 87 para. 1).

576 — It is up to the institution of the place of residence of the members of the family to obtain the declaration from the competent institution if the members of the family do not submit it (R 574/72 art. 87 para. 1).

577 — The declaration must be renewed every three months. However, if it concerns a seasonal worker, it remains valid throughout the estimated duration of the seasonal work, provided that it is not cancelled meanwhile (form E 410) by the competent institution (R 574/72 art. 87 paras. 2, 3).

578 — Where French legislation and that of the country of residence apply differing criteria concerning the payment of family allowances during a prescribed period of time, family allowances are, depending on the particular case, awarded as follows:

578-1 — in proportion to the duration of employment completed in relation to the duration laid down by the legislation of the country of residence of the members of the family whenever, according to French legislation, entitlement to family allowances exits for a period corresponding to the duration of employment while, in the country of residence, family allowances are awarded monthly or quarterly (R 574/72 art. 87 para. 4).

578-2 — for a month, if this period is laid down in French legislation while, in the Member State of residence, allowances are awarded on the basis of the number of days of employment completed (R 574/72 art. 87 para. 5).

578-3 — by applying the conversion formula referred to in No 113 above where, in the cases set out in Nos 578-1 and 578-2, the employment periods completed under French legislation are expressed in different units from those used to calculate family allowances under the legislation of the country of residence of the members of the family (R 574/72 art. 87 para. 6).

579 — Any new elements which may have repercussions on entitlement to family allowances must be the subject of exchanges of information between the institutions concerned and must, where necessary, be reported to the institution of the place of residence by the members of the family (R 574/72 art. 87 paras. 7, 8).

In these contingencies, use is made, as appropriate, of the following forms:

— E 408: request for information sent by the institution of the place of residence of the members of the family to the French institution to which the worker is attached;

— E 409: check on the statement of absence of entitlement to family allow ances on the basis of paid employment in the family's country of residence;

— E 410: notification by the competent French institution of withdrawal of entitlement to family allowances.

b) Unemployed persons

580 — The members of the family must submit to the institution of the place of residence a declaration drawn up on form E 407 indicating that the person concerned is in receipt of unemployment benefit under French legislation. This declaration is issued by the competent French institution for unemployment or by the institution referred to in Annex 10 of regulation 574/72 amended by regulation 878/73 (R 574/72 art. 4 para. 10, Art. 89 para. 1).

581 — In addition, the unemployed person must sign a statement certifying that no entitlement to family allowances exists under the legislation of the country of residence of the members of the family (R 574/72 art. 89 para. 1).

582 — The procedure described in Nos 577 to 579 above is applicable by analogy (R 574/72 art. 89 para. 2).

C — Applicable rules in case of overlap of entitlement to family benefits or allowances

583 — If because of the pursuit of paid employment, family benefits or allowances are also due under the legislation of the country of residence of the members of the family, entitlement to family benefits or allowances under the provisions referred to in Nos 560, 565 and 573 is suspended (R 1408/71 art. 76).

C 382 — *The reference to the legislation of the State in the territory of which the members of the family reside implies also the application of the rules which set priorities for the purpose of avoiding overlapping (SRMC R 1408/71 ad art. 76).*

C 383 — *For the application of the preceding provisions the phrase "because of the pursuit of paid employment" relates to family benefits or allowances due because of any professional activity, salaried or not, and during the course of a period of suspension of this activity during paid holidays or as a result of sickness, maternity, accident at work, occupational disease, unemployment, strike or lock-out, up to a limit of six months (AC Decision No 84 of 22 February 1973; OJ EC C 75 of 19 September 1973 replacing lapsed decision No 61 OJ EC No 120 of 21 June 1967).*

584 — Where family allowances or benefits are due for the same period for the same member of the family under the provisions referred to in Nos 560 and 565 above on the one hand and under the legislation of the country of residence of this member of the family on the other, entitlement to benefit under the legislation of the country of residence of the members of the family is normally suspended, leaving only the entitlement to benefit resulting from the application of the provisions referred to in 560 and 565 above. However, the opposite solution is adopted whenever paid employment is pursued in the territory of the country of residence (R 574/72 art. 10 para. 1, amended by R 878/73 and R 1209/76).

C 384 — The overlap rules described in No 584 above were set out in R 878/73 in order to take account of the fact that, in the three new Member States, entitlement to family benefits or allowances is based on the residence of the members of the family in the territory of those countries. In case of residence in one of those countries, the members of the family are normally entitled on the one hand to family benefits or allowances under the legislation of their country of residence and, on the other hand, to the benefits laid down either by articles 73 or 74 of the regulation where the worker is employed in the territory of another Member State or in receipt of unemployment benefit under the legislation of that other State, or by articles 77 or 78 of the regulation which determine the legislation under which benefits referred to in those articles are due to pensioners and orphans (c.f. Chapter XV below). In contrast to those of the original Member States under the legislation of which entitlement to family benefits or allowances is also based on residence, the legislations of the new Member States do not contain anti-overlap provisions (ERER 878/73).

C 384 a — However, "the suspension under article 76 of regulation 1408/71, of the entitlement to family benefits or allowances in pursuance of article 73 of that regulation is not applicable when the father works abroad in a Member State whilst the mother is employed in the country in which the other members of the family reside and has not acquired under the legislation of the said country of residence a right to family allowances either because only the father is acknowledged to have the status of head of household or because the conditions for awarding to the mother the right to payment of the allowances have not been fulfilled" (Judgment of the Court of Justice EC of 20 April 1978 in case 134/77 (Silvio Ragazzoni v. Caisse de Compensation pour Allocations Familiales "Assubel")).

This case concerned an Italian worker employed in Belgium; his wife and three children resided in Italy, where his wife was employed.

The Belgian institution refused to provide family allowances as it considered that article 76 of regulation 1408/71 laid down a Community rule of priority which was applied every time a professional or trade activity was pursued in the territory of the Member State where the members of the family resided.

In reply to this argument and in support of its ruling, the Court of Justice pointed out that

— *pursuit of a professional or trade activity in the State in whose territory the members of the family are residing is not sufficient for the suspension of the entitlement conferred by article 73 since pursuant to article 76 it is necessary in addition that the family benefits should be "payable" under the legislation of that Member State.*

— *for family allowances to be regarded as "payable" under the legislation of the Member State in whose territory the members of the family are residing the law of such State of residence must recognize the right to the payment of allowances in favour of the person in that family who works in such State.*

— *it was not disputed that in the situation in which the dispute arose and on the basis of the provisions in force in Italy at the time, Italian legislation, in that it did not confer the status of head of household upon a mother who was neither separated from nor abandoned by her husband, precluded the right of the former to receive family allowances for her children;*

— *it followed that the family benefits or allowances were not "payable" under the legislation of the Member State in whose territory the members of the family were residing.*

585 — If a worker has successively been subject to the legislation of two Member States during the period between two due dates for benefit, the family allowances or benefits are awarded by the institutions concerned on the basis, as appropriate, either of the number of daily benefits or allowances due in application of the legislation concerned or in proportion to the duration of the period during which the worker has been subject to the legislation of each of the Member States in relation to the period laid down in the legislation concerned. For this purpose, use is made of form E 405 (R 574/72 art. 10 para. 2 *a)*).

586 — Accounting between institutions may have to take place where one of them has for a period paid family benefits or allowances due from the other institution (R 574/72 art. 10 para. 2 *b)*).

587 — For the application of the preceding provisions, use is made as appropriate of the conversion rules referred to in No 113 above where the periods in question are expressed in differing units of time (R 574/72 art. 10 para. 2 *c)*).

588 — By way of exception to the principles set out in No 585 above, family allowances or benefits relating to a period concerned are taken to be the responsibility of the institution which should pay them on the basis of the first employment, for the whole amount and for the whole period concerned (R 574/72 art. 4, 10 para. 2 *d)* and Annex 8 amended by R 878/73):

588-1 — with a reference period of one calendar month in relations between:

— Germany and France

— Germany and Ireland

— Germany and Luxembourg

— Germany and the United Kingdom

— France and Luxembourg

588-2 — with a reference period of a calendar quarter in relations between:

— Denmark and Germany

589 — A special rule has been introduced concerning the provision of family allowances where the members of the family of a worker or an unemployed person subject to French legislation transfer their residence from the territory of one Member State to the territory of another Member State during the course of a calendar month. In this case the institution responsible for providing family allowances at the beginning of that month continues to pay them for the whole of the month (R 574/72 art. 10 para. 3).

C 385 — The provisions of regulations 1408/71 and 574/72 described in Nos 583 to 589 cover the same ground as those included in article 40 para. 8 of regulation No 3 and article 9 para. 4 and 5 of regulation No 4. They have had to be adopted in order to take account of the legislations of the new Member States.

SECTION III — PROVISION OF BENEFIT AND REIMBURSEMENT

Present regulations:	R 1408/71 art. 75 R 574/72 art. 86 para. 4, art. 98
Corresponding text of abrogated regulations:	R 3 art. 40*bis*
Administrative Commission:	Decision No 100

A — Case where family benefits of the country of employment or unemployment are paid (employed or unemployed persons coming under the legislation of a Member State other than France and workers subject to French legislation but posted to the territory of another Member State)

590 — Familly benefits are provided by the competent institution of the State to the legislation of which the worker is subject or under which he is in receipt of unemployment benefit. This institution applies its own rules for the provision of benefit, whatever the Member State of residence or stay of the natural or legal person to whom benefits have to be paid (R 1408/71 art. 75 para. 1 *a)*).

591 — If family benefits are not applied by the person to whom they should normally be paid for the maintenance of the members of the family, payment is made to the natural or legal person actually responsible for the maintenance of the members of the family, at the request and through the intermediary of the institution of the place of their residence or the body appointed for this purpose by the competent authority of the country of residence (R 1408/71 art. 75 para. 1, *b)*).

592 — Two or more Member States may agree that family benefits will be paid directly to the natural or legal person actually responsible for the members of the family, either directly or through the intermediary of the institution of the place of residence (R 1408/71 art. 75 para. 1 *c)*).

593 — It is open to the competent authorities of two or more Member States to agree on special procedures for the payment of family benefits, especially with a view to facilitating the implementation of the provisions referred to in Nos 590 and 591 above, but such agreements must be notified to the Administraive Commission (R 574/72 art. 86 para. 4).

C 386 — This option given by regulation 574/72 had been expressly provided for in a statement in the Minutes of the Council (SRMC R 1408/71 ad art. 75 para. 1 subpara c)).

C 387 — The provisions of regulation 1408/71 described in Nos 590 to 592 correspond to those appearing in article 40bis of regulation No 3, subject to editorial amendments and more precise wording.

B — Case where family allowances of the country of residence of the family members are paid (workers subject to French legislation — unemployed persons receiving unemployment benefit under French legislation)

594 — Family allowances are provided by the institution of the place of residence of the members of the family, in accordance with the legislation applied by that institution (R 1408/71 art. 75 para. 2 *a)*).

595 — However, if the applicable legislation provides for the payment of allowances to the worker himself, the institution of the place of residence makes the payment of allowances directly to the members of the family or to the natural or legal person actually responsible for them in the place of their residence (R 1408/71 art. 75 para. 2 *b)*).

596 — The allowances paid are wholly refunded to the institutions of the country of residence by the competent French institution (R 1408/71 art. 75 para. 2 *c)*; R 574/72 art. 98 para. 1).

597 — However, France and each of the other Member States concerned may agree on lump-sum reimbursement of these family allowances. The lump-sum is established by multiplying the annual average cost per family by the annual average number of families to be considered (R 574/72 art. 98 paras. 2, 3).

598 — The methods and procedures for calculation referred to above are laid down by the Administrative Commission, on the recommendation of the Audit Board (R 574/72 art. 98 para. 4).

599 — France and each of the other Member States concerned may after consulting the Administrative Commission, agree on other methods of establishing the lump sum (R 574/72 art. 98 para. 5).

C 387 a — Notwithstanding the above provisions, the Administrative Commission decided (Decision No 100 of 23 January 1975, published in OJ EC No C 150 of 5 July 1975) that allowances referred to in No 594 above which had been provided by the institution of the place of stay or of residence on behalf of the competent institution shall be reimbursed in full by the latter in the currency of the country of stay or of residence.

CHAPTER XV

BENEFITS FOR DEPENDENT CHILDREN OF PENSIONERS AND FOR ORPHANS

SECTION I — DEPENDENT CHILDREN OF PENSIONERS

Present regulations: R 1408/71 art. 77, amended by R 2864/72 OJ EC L 306, 31 December 1972

Corresponding text of abrogated regulations: R 3 art. 42

Court of Justice Case 19/71

C 388 — In order to resolve the difficulties arising from the diversity of national legislations (some provide for the payment of family allowances to the children of pensioners, others award pension supplements and orphans' pensions, others again allow the overlap of these various benefits), regulation 1408/71 sets out the principle of treating as family allowances all benefits awarded under other social security branches to children of pensioned or deceased workers.

Children's benefits are awarded under the legislation and to the charge of the competent institution of a single Member State, as if the worker had completed his whole working life under the legislation of that State. The applicable legislation is determined in accordance with criteria similar to those adopted for the award of sickness/maternity insurance benefits in kind to pensioners.

A — Definition

600 — "Benefits", under this section, are considered as including family allowances provided for recipients of a retirement, invalidity, accident at work or occupational disease pension or allowance, together with increases or supplements to these pensions or allowances provided for the children of these pensioners, except for supplements awarded under accident at work and occupational disease insurance (R 1408/71 art. 77 para. 1).

C 389 — The exception set out in No 600 is explained by the compensatory nature of supplements to accident at work or occupational disease allowances which are, in any case, exportable and governed by other provisions of the regulation.

B — Determination of applicable legislation

601 — Whatever the Member State in the territory of which the children or the pensioner reside, benefits are awarded in accordance with the legislation of a single Member State under the following conditions:

601-1 — Where a pension or allowance is due under the legislation of a single State, benefits are awarded in accordance with the legislation of that State (R 1408/71 art. 77 para. 2 *a)*).

601-2 — Where the pensions or allowances are due under the legislations of several Member States, benefits are awarded:

601-2-1 — in accordance with the legislation of the Member State in the territory of which the pensioner resides as long as he is entitled to a pension or allowance under the legislation of that State (R 1408/71 art. 77 para. 2 *b), i)*);

601-2-2 — in other cases (i.e. if no pension or allowance is due under the legislation of the Member State in the territory of which the pensioner resides), in accordance with the legislation of the State to which the person concerned was subject the longest, provided that he has entitlement under that legislation. If not, the conditions for entitlement under the legislation of the other Member States are investigated in decreasing order of duration of insurance or residence periods completed under the legislation of those Member States (R 1408/71 art. 77 para. 2 *b), ii)* amended by R 2864/72);

601-2-3 — in case of equal duration or the periods to be considered, benefits are awarded in accordance with the legislation of the State to which the worker was most recently subject (R 1408/71 art. 79 para. 2 amended by R 2864/72).

C 390 — In order to determine whether entitlement exists, account is taken of the rules set out in Nos 607 to 611.

C 391 — It is understood that the legislation under which the pensioner's pension or allowance is due is determined, once and for all, and after exhausting the entitlement provided by that legislation there can be no recourse to another legislation which might enable other benefit to be paid (SRMC R 1408/71 ad art. 77 para. 2 b) ii)).

C 392 — The provisions described above take in and make more coherent the solutions given in paras. 1 to 4 of article 42 of regulation No 3.

C 392 a — The application of article 42, paras. 1 and 2 of Regulation No 3 as amended by article 1 of regulation 1/64 of 18 December 1963, the tenor of which is contained in article 77, para. 2, a) (cf. 601-1 above) and article 77, para. 2, b), i) (cf. 601-2-1 above) of regulation 1408/71 has given rise to two rulings by the Court of Justice of the European Communities.

C 392a-1 — Judgment by the Court of Justice of 25 June 1975 in Case 17/75, Antonio Anselmetti v. Belgian Caisse de compensation des allocations familiales de l'industrie charbonnière:

"Under a combined sickness/invalidity insurance scheme cash benefits paid as invalidity benefits, howsoever designated, must be regarded as pensions within the meaning of article 42 of Regulation No 3".

The case concerned entitlement to family allowances of an Italian national who had worked and resided with his family in Belgium until 1965, at the end of which year he had returned to Italy after having stopped working in December 1963 because of illness and after having been declared incapable of working under the Belgian sickness and invalidity insurance scheme.

The dispute had arisen because according to the Belgian competent body, article 40 and not article 42 of Regulation No 3 on workers in active employment whose children resided in the territory of a Member State other than the competent State, should have been applied in the case of the person concerned. On the basis of that interpretation, the person concerned would, in respect of his children, have been entitled only to the family allowances provided by the competent country, up to the amount of the allowance provided under the legislation of the Member State on whose territory his children resided or were being brought up.

The Court of Justice of the EC had decided otherwise by taking account of the fact that legislative systems such as that of Belgium have, for social reasons, organized sickness insurance and invalidity insurance within a single scheme, cash benefits granted under whatever name to a worker whose total or partial incapacity to work shows a tendency to become stabilized must be regarded as pensions within the meaning of article 42 even if the incapacity is not permanent, the pensions mainly envisaged by this article being sometimes themselves subject to review.

C 392a-2 — Judgment of 13 July 1976 in Case 19/76, Pietro Triches v. Caisse de compensation pour allocations familiales de la région liégeoise.

This dispute also concerned an Italian worker who became disabled after working in Italy from 1938 to 1945 and in Belgium from 1946 to 1960, when he was awarded two invalidity pensions of which one was awarded under Belgian legislation while the other was awarded under Italian legislation.

On the basis of article 42, para. 2 of Regulation No 3 as amended by article 1 of Regulation No 1/64, the Caisse de compensation de la région liégeoise had, after 31 March 1969, ceased paying the family allowances due under Belgian legislation, as on that date the person concerned had obtained, from the Istituto Nazionale della Previdenza Sociale, a pension supplement in respect of his dependants.

In its reply to a reference for a preliminary ruling on whether article 48, para. 2 of Regulation No 3 as amended by article 1 of Regulation No 1/64 of 18 December 1963 was compatible with articles 3, 48, 51 and 117 of the Treaty, and whether the contested provisions had the effect of creating inequalities between workers which would be likely to create barriers to freedom of movement for workers, the Court of Justice ruled as follows:

"Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of the provision at issue".

C 393 — The technical adaptions of regulation 1408/71 brought about by R 2864/72 were made necessary by the new Danish legislation and result in particular from the fact that with regard to family benefits, as in most branches of insurance, entitlement to benefit derives from residence in the country.

SECTION II — ORPHANS

Present regulations:	R 1408/71, art. 78, amended by R 2864/72 and Annex V
Corresponding text of abrogated regulations:	R 3, art. 42
Court of Justice EC:	Case 3/70, 32/76

A — Definition

602 — "Benefits" in the sense of this section mean family allowances and, where appropriate, supplementary or special allowances provided for orphans, together with orphans' pensions and allowances except for orphans' allowances awarded under accident at work and occupational disease insurance (R 1408/71, art. 78, para. 1).

C 394 — The above exception is based on the considerations explained in No C 389.

B — Determination of applicable legislation

603 — Whatever the Member State in the territory of which the orphan or the natural or legal person responsible for the orphan reside, benefits are awarded under the legislation of a single Member State under the following conditions:

603-1 — Where the deceased worker was subject to the legislation of a single Member State, benefits are awarded in accordance with the legislation of that State (R 1408/71, art. 78, para. 2, *a)*).

603-2 — Where the deceased worker was subject to the legislation of several Member States, benefits are awarded:

603-2-1 — in accordance with the legislation of the Member State in the territory of which the orphan resides if the latter has entitlement to one of the benefits referred to in No 602 above under the legislation of that State (R 1408/71, art. 78, para. 2, *b), i)*).

603-2-2 — in other cases (i.e. if no benefit is due under the legislation of the Member State in the territory of which the orphan resides), in accordance with the legislation of the State to which the deceased worker was longest subject, provided that entitlement exists for the orphan under that legislation. If not, the conditions for entitlement under the legislations of the other Member States are investigated in decreasing order of the duration of insurance or residence periods completed under the legislation of those Member States (R 1408/71, art. 78, para. 2, *b), ii)* amended by R 2864/72),

603-2-3 — In case of equal duration of the periods to be considered. benefits are awarded in accordance with the legislation of the State to which the worker was most recently subject (R 1408/71, art. 79, para. 2, amended by R 2864/72).

C 395 — *It is understood that the legislation under which the orphan receives benefits is determined once and for all and that after exhausting the entitlement provided by that legislation there can be no recourse to another legislation which might enable benefit to be continued (SRMC R 1408/71 ad art. 78, para. 2, b), ii)).*

604 — Where, after the award of the benefits referred to in No 600, the death of this pensioner gives rise to the award of orphans' benefits, the legislation of the Member State which was responsible for the provision of the first benefits remains so for the provision of orphans' benefit (R 1408/71, art. 78, para. 2, *b)*, fourth para.).

C 396 — The provisions of regulation 1408/71 described above fill a loophole in Regulation No 3. Article 42, paras. 5 and 6 of this regulation only in fact referred to family allowances for orphans, which sometimes meant that only the payment of reduced benefit could be authorized or, on the other hand, could entail an overlap, partially or wholly, of benefits according to the country of residence of the orphan where the deceased worker had been subject, during his working life, to legislations some of which provided for the payment of pensions and others for the award of family allowances to orphans (ERER 1408/71).

C 397 — The application of article 42, paras. 5 and 6 of Regulation No 3 gave rise to two rulings by the Court of Justice of the European Communities.

C 397-1 — Judgment of 13 October 1976 in Case 32/76, Alphonsa Saieva v. Caisse de Compensation des Allocations Familiales for the mining industry of the Charleroi and Basse-Sambre Belgium coalfields.

The dispute concerned the interpretation of article 42, para. 5 of Regulation (EEC) No 3, which laid down the legislation on family allowances applicable in the case of the death of an employed person or a person treated as such in respect of whom a pension for an accident at work or an accupational disease was payable under the legislation of a Member State. The Case concerned the widow of an Italian worker who had died in Belgium as a result of an accident at work who had returned to Italy with her children, where she had received, in accordance with Belgian legislation, a pension for an accident at work for herself and her three children, and family allowances for the children.

The Belgian fund had stopped payment of family allowances as soon as the children had reached the age of 18 on the grounds that under Belgian legislation they were no longer entitled to a pension for an accident at work. To this argument the plaintiff replied that family allowances were payable as long as the children fulfilled the qualifying conditions laid down by the country providing the pension. If they had resided in Belgium, the children would have been entitled to family allowances beyond the age of 18 if they were still attending school.

The point at issue was, therefore, whether article 42, para. 5 of Regulation No 3 was to be interpreted as meaning that family allowances were no longer due when according to the legislation of the State providing the benefits, the orphans' entitlement to the temporary pension for an accident at work expired.

In its reply to this question, the Court of Justice of the EC, considering that the family allowance payable to the children of a deceased worker under article 45, para. 5 of Regulation No 3 were not merely those awarded in the case of entitlement to any pension payable as a result of the death, in particular, the pension awarded to the widow, and that the wording of this paragraph showed that its aim was to determine the legislation of the state which was liable to pay the pension for accidents at work as the sole legislation applicable with regard to the payment of family allowances in the cases to which it refers, ruled as follows:

"Article 42, para. 5 of Regulation No 3 must be interpreted as determining the legislation applicable to the payment of family allowances to the children of a worker who died as a result of an accident at work and as meaning that the right of the children of the deceased to family allowances is not linked to the award of an orphans' pension".

See also C 48a.

C 397-2 — In a judgment of 17 June 1970 (Case 3/70 Caisse d'Allocations Familiales des Charbonnages du Couchant de Mons v. Dame Di Bella) the Court of Justice of the EC ruled as follows:

— *the expression "has been subject to the legislation" contained in article 42 para. 6, letter a) of regulation No 3 (regulation 1408/71, article 78, uses the same expression) must be understood in the sense that the deceased worker can only be considered as having been subject to the legislation if he actually met the conditions giving rise to entitlement to benefit for himself or for those deriving benefit from him;*

— *where the orphan resides in the territory of a Member State where the deceased worker has completed insufficient insurance periods to have gained entitlement to the benefits provided by the legislation of the country of residence, the competent institution of the country from which the pension or allowance is due must pay the family allowances to the persons deriving benefit from him.*

Article 78 of regulation 1408/71, the scope of which extends to family allowances and special orphans' allowances, now settles without ambiguity the question in the sense of the above interpretation by the Court of Justice.

C — Special implementation procedures in the legislation of certain Member States

605 — *Germany*

In order to determine under German legislation whether there is a child in receipt of an orphan's pension, the fact of being in receipt of one of the benefits mentioned in article 78 of regulation 1408/71 (No 602 above) or of some other family benefit awarded under French legislation for a minor residing in France is deemed to be equivalent to being in receipt of an orphan's pension under German legislation (R 1408/71, Annex V, C 4).

SECTION III — COMMON PROVISIONS FOR BENEFITS FOR DEPENDENT CHILDREN OF PENSIONERS AND FOR ORPHANS

Present regulations:	R 1408/71, art. 79, amended by R 2864/72, OJ EC L 306, 31 December 1972 R 574/72, art. 90 to 92, amended by R 878/73, OJ EC L 86, 31 March 1973 R 1392/74, OJ EC L 152 of 8 June 1974, and R 2595/77, OJ EC L 302, 26 November 1977
Corresponding text of abrogated regulations:	R 3, art. 42 R 4, art. 69 to 71
Administrative Commission:	Decision No 84
Court of Justice EC :	Case 115/77

A — Determination of entitlement

606 — Benefits for dependent children of pensioners or for orphans are provided by the institution of the State of which the legislation is found to be applicable in accordance with the provisions referred to in Nos 601 and 603 above. They are to the charge of that institution as if the pensioner or the deceased worker had been subject only to the legislation of that State (R 1408/71, art. 79, para. 1).

C 398 — A new system of apportioning charges may however be sought, on a proposal of the Commission, if a Member State reports that the application of this rule leads to very clear financial imbalance in relations between two or more Member States (SRMC R 1408/71 ad art. 77 and 78).

607 — Where the acquisition, maintenance or recovery of entitlement to benefit depends on the duration of insurance or employment periods, use is made where necessary of the aggregation rules laid down for retirement benefits (Nos 304, 305 and 306 above) or family benefits (No 555 above) (R 1408/71, art. 79, para. 1 *a)*).

608 — Where the amount of benefit is calculated on the basis of the amount of the pension or depends on the duration of insurance periods, this calculation is made by reference to the theoretical amount applicable in the determination of retirement benefits (No 309-1 above) R 1408/71, art. 79, para. 1, *b)*).

B — Applicable rules in case of overlapping entitlement to benefit

609 — Entitlement to benefit is suspended if the children concerned are entiteed to family benefits or allowances under the legislation of a Member State because of the pursuit of paid employment. In this case, they are considered as the members of the family of a worker (R 1408/71, art. 79, para. 3).

C 399 — For the application of the preceding rule, the phrase "because of the pursuit of paid employment" relates to family benefits or allowances due because of any professional activity, salaried or not, and during the course of a period of suspension of this activity during paid holidays or as a result of sickness, maternity, accident at work, occupational disease, unemployment, strike or lock-out, up to a limit of six months (AC Decision No 84 of 22 February 1973 OJ EC C 75 of 19 September 1973, replacing and abrogating decision No 61 published in the OJ EC No 120 of 21 June 1967).

610 — Where benefits are due for the same period for the same member of the family in application of articles 77 and 78 of the regulation (Nos 601 and 603 above) on the one hand and under the legislation of a Member State according to which the acquisition of entitlement to these benefits is not subject to insurance or employment conditions on the other, entitlement to benefit under the legislation of the country of residence of the members of the family is normally suspended leaving only the entitlement to benefit resulting from the application of articles 77 or 78 of the same regulation (R 574/72 art. 10 para. 1 *b)* first sentence, amended by R 878/73).

611 — However, the opposite solution is adopted where paid employment is pursued in the territory of the country of residence, it being understood that in addition to family benefits or allowances of the Member State in the territory of which the children reside, the person concerned receives, as appropriate, benefits other than family allowances due in application of article 77 or article 78 of the regulation from the competent State in the sense of this article (R 574/72 art. 10 para. 1 *b)*, second sentence, amended by R 878/73).

C 400 — The overlap rules described above are founded on similar reasons to those given in No C 384 above.

Note that in the contingency referred to in No 611, the suspension of entitlement is limited only to family allowances due in application of article 77 or 78 of regulation 1408/71.

C 400 a — Case 115/77 (Gert Laumann and Anja Laumann v. Landesversicherungsanstalt Rheinprovinz), Judgment of 16 March 1978.

In this dispute between a German institution and two minor children of German nationality who, after the divorce of their parents in the Federal Republic of Germany, the death of their father and the susbsequent remarriage of their mother to a Belgian national, resided in Belgium with their mother and stepfather. The point at issue was to what extent the persons concerned could receive an orphan's pension provided by the German institution overlapping with the family allowances awarded under the Belgian social security scheme in respect of periods of employment the stepfather of the appellants completed in Belgium.

A German court put the following question to the Court of Justice EC for a solution to the problem:

"Is article 79 (3) of regulation (EEC) 1408/71 to be understood in the sense that rights to benefits under articles 77 and 78 and article 79 (2) of that regulation are to be suspended in order to avoid duplication of benefits only where rights which by their nature are similar are given in another Member State? That is to say: rights to an orphans' pension against insurance institutions in two Member States lead to the suspension of one of the rights to an orphans' pension and rights to a family allowance in two Member States lead to the suspension of one of the rights to a family allowance, while rights in two Member States which by their nature are different (for example on the one hand a family allowance and on the other an orphan's pension) are not covered by article 79 (3)."

After considering that:

— *even if article 78 of regulation 1408/71, the purpose of which was to define the legislation under which oprhans' benefits must be granted, included family allowances and orphans' pensions, those two types of benefit were of a clearly different kind, and this was furthermore recognized in articles 1, u), ii) and 4, (1) of the regulation, which drew an express distinction between survivors' benefits and family benefits;*

— *in the system established by regulation 1408/71 family allowances were generated by an actual occupation (even if the worker was no longer engaged in such an occupation) and the direct and sole recipient was the worker himself;*

— *on the other hand, the direct and sole recipient of the orphans' pension was the orphan himself and the pension, like other survivors' benefits, constituted the projection in time of a prior occupation, pursuit of which ceased on the death of the worker;*

— *it would therefore be contrary to the objectives of the Community provisions against the overlapping of benefits in the field of social security if the grant of a benefit to one dependant could be adversely affected by a benefit paid to another dependant, the Court of Justice therefore ruled as follows:*

"The right to the benefits referred to in article 79, (3) of regulation 1408/71 of the Council is to be suspended, pursuant to the provisions of that paragraph, in order to prevent duplication of benefits only in so far as that right overlaps rights to benefits of the same kind acquired by virtue of the pursuit of a professional or trade activity."

The Commission of the European Communities had questioned whether regulation 1408/71 was applicable to the present case since neither the father, the mother nor the stepfather of the appellants has moved from one Member State to another in connection with work.

The Court of Justice EC did not follow this line of argument, in reply to which it recorded in its grounds for judgment that as in the case of the earlier regulation No 3, the persons covered by regulation 1408/71, as was indicated by its heading, included not only employed persons but also their families moving within the Community, and that the general terms in which article 2, (1) of regulation 1408/71 was couched showed that the regulation also applied when the residence in another Member State was that not of the worker himself but of a survivor of his.

C — Investigation of claims and payment of benefit

§ 1 — *Submission of claims for benefit*

612 — Depending on his place of residence, the claimant must send a claim either to the institution of the place of residence in accordance with the procedures provided under the legislation which that institution applies, or to the competent institution through the intermediary, where necessary, of the institution of the place of residence (R 574/72, art. 90, para. 1, 2).

C 401 — The provisions of regulation 574/72 described above correspond to those of article 69 of regulation No 4.

613 — If the institution to which a claim for benefit is sent finds that entitlement does not exist under its legislation, it forwards this claim without delay to the institution of the Member State to the legislation of which the person concerned was subject longest. After this, where necessary, the same procedure applies back to the institution of the Member State under the legislation of which the person concerned completed the shortest insurance or residence period (R 574/72, art. 90, para. 3 amended by R 878/73).

C 402 — The amendment made by regulation 878/73 brings about a technical adaptation made necessary by Danish legislation.

614 — Supplementary procedures necessary for the submission of pension claims may be determined, as far as necessary, by the Administrative Commission (R 574/72, art. 90, para. 4).

§ 2 —*Payment of benefit*

615 — The payment of benefits for children of pensioners or for orphans is made in accordance with the rules laid down for the payment of invalidity and retirement pensions (Nos 387 to 393 above). The competent institutions for the payment of benefit are listed, where necessary, in Annex 10 of regulation 574/72 (R 574/72, art. 4 and 91, paras. 1, 2).

C 403 — The provisions described in No 615 correspond to those laid down in article 71 of regulation No 4.

§ 3 — *Information concerning situations which may affect entitlement to benefit*

616 — Persons in receipt of benefit must inform the institution from which benefit is due of any event which might alter entitlement (change of circumstances of the children, alteration in the number of children or orphans, transfer of residence, pursuit of paid employment...) (R 574/72, art. 92).

C 404 — The provisions described in No 616 correspond to those of article 70 of regulation No 4, subject to editorial improvements.

CHAPTER XVI

PROVISIONS COMMON TO THE VARIOUS BRANCHES OF INSURANCE

SECTION I — RIGHTS OF DEBTOR INSTITUTIONS VIS-A-VIS RESPONSIBLE THIRD PARTIES — CLAIMS AGAINST THIRD PARTIES RESPONSIBLE FOR ACCIDENTS OR INJURIES

Present regulations:	R 1408/71, art. 93
Corresponding text of abrogated regulations:	R 3, art. 52 R 4, art. 85
Court of Justice EC:	Case 31/64, 33/64, 44/65, 27/69, 78/72, 72/76

617 — Each Member State recognises the right of subrogation or the direct right enjoyed by the institution from which benefits are due, under the legislation which it applies, vis a vis responsible third parties for the recovery of damages (R 1408/71, art. 93, para. 1).

618 — The above provisions are also applicable to recourse against employers or workers in their service where the responsibility of these persons is not excluded (R 1408/71, art. 93, para. 2, second paragraph).

619 — Cases in which the persons concerned are exonerated from responsibility are determined by the legislation of the competent State, i.e. the Member State whose social security legislation was applicable at the time of the event giving rise to entitlement to benefit (R 1408/71, art. 93, para. 2, first paragraph).

C 405 — The provisions of regulation 1408/71 described above in No 617 take in, with some editorial amendments, those of the first three subparagraphs of article 52 of regulation No 3.

C 406 — In its last subparagraph, article 52 of Regulation No 3 provided that the application of these provisions should be the subject of bilateral agreements (an agreement of this kind has in fact been concluded between France and Luxembourg).

However, in three judgments (Case 31/64 of 11 March 1965 Caisse Commune d'Assurances "La Prévoyance Sociale", Brussels v. Wh. Bertholet; case 33/64 of 11 March 1965 Betriebskrankenkasse der Heseper Torfwerk GmbH v. Mrs. Egberdina Van Dijk; case 27/69 of 12 November 1969 Caisse Maladie des C.F.L. Entraide Médicale Luxembourg and Société Nationale des Chemins de Fer Luxembourgeois v. Cie Belge d'Assurance Générale sur la Vie et contre les Accidents) the Court of Justice of the European Communities considered that, as they were drafted in imperative terms, the provisions of article 52, para. 1 of Regulation No 3 were directly applicable without awaiting the conclusion between Member States concerned of bilateral agreements, since such agreements could only settle the procedures for this implementation without the direct effect of the standard in question depending upon it.

Bearing in mind these judgments, it was not considered necessary to lay down in article 93 of regulation 1408/71 that the application of the right of subrogation or of direct right should be the subject of bilateral agreements.

C 407 — According to the Court of Justice of the European Communities, the provisions relating to the right of subrogation and direct right are applicable:

C 407-1 — to all workers who, while in receipt under the legislation of a Member State of one of the benefits referred to in article 2 of Regulation No 3 (now article 4 of regulation 1408/71) for an injury occurring in the territory of another Member State, is entitled in the territory of the latter State to claim from a third party compensation for this injury (Judgments 31/64 and 33/64 referred to above);

C 407-2 — whether or not the injury has any relationship with the occupation (judgment 33/64 mentioned above) and whatever the reason for the victim's stay in the territory of the Member State where the accident occurred (Judgment 27/69 mentioned above);

C 407-3 — even if the victim is not a migrant worker and if the accident is prior to 1 January 1959, the date of entry into force of Regulation No 3 (Judgment 44/65 of 9 December 1965 Hessische Knappschaft v. Singer);

C 407-4 — even in cases where the institution from which the benefits are due brings its action under national jurisdiction (Judgment 27/69 mentioned above).

C 408 — Article 93 of Regulation (EEC) No 1408/71 which, apart from some amendments to the wording, adopted the first three subparagraphs of article 52 of Regulation No 3, laid down a rule on conflicts of law which allows the social security institutions of the Member States to implement the refund procedure, which they are entitled to under their legislation, in the territory and under the legislation of all the other Member States. If that right of appeal is undisputedly based on the legislation which applies to the institution providing the pension, the question is whether the actual right is to be governed by the legislation of the institution providing the pension or by the national legislation which defines the source and the limits of the entitlement to compensation of the victim or his dependants with reference to the third party liable. That question was asked with regard to the direct right and of the action by subrogation.

C 408-1 — As regards the direct right, in case 78/72 (L'Etoile-Syndicat générale insurance company v. Mr. W.E. de Waal), an action which arose out of an accident which occurred on Dutch territory and in which a Dutch citizen resident in the Netherlands was killed while on his way to work in Belgium; as he had been insured by his employer with a Belgian insurance company, the Court of Justice of the European Communities, considering, in particular, that

— it appeared from article 52 of Regulation No 3 that the direct right of the institution liable vis-à-vis the third party responsible derived from the fact that the person receiving the benefit of payments had a right, in the territory of the State in which the damage occurred, to claim compensation from that third party, and that

— while article 52 referred to the national legislation of the institution liable to determine whether it could invoke in the Member State in which the damage occurred, the benefit of subrogation to the rights of the victim or his dependants, or the exercise of the direct rights referred to under letter b), it in no way modified the system of extra-contractual liability, which remained subject to the rules of national law alone,

it ruled as follows in a judgment of 16 May 1973:

"The substantive content of the direct right referred to under letter b) of article 52 of a Regulation No 3 of the Council of the European Communities is determined by the rules of the national law defining the source and limits of the right of compensation vested in the victim or his dependants vis-à-vis the third party responsible."

C 408-2 — As regards the action by subrogation, in case 72/76 (Landesversicherungsanstalt Rheinland-Pfalz v. Mrs. Töpfer), judgment of 16 February 1977, which arose out of a traffic accident in France in which a German national was killed. His widow was awarded a pension by a German fund. The courts had to rule on the claims of that institution, which wished to rely on German legislation to determine the extent of its action by subrogation.

The German institution claimed that it was entitled to the repayment of all amounts it had paid to the widow whereas the French courts would accept repaying only those benefits which were provided as compensation, in other words, the widow's pension from the death of her husband until she could, on the grounds of her age, apply for an old-age pension, as the payment of a pension after that date would no longer be an effect of the accident.

Considering, in particular, that under the terms of article 52 of Regulation No 3, the subrogation takes place under the legislation applicable to the institution liable to pay benefits, that therefore the grant of the right of subrogation must be examined on the basis of that legislation account must, on the other hand, for the purposes of determining the content of that right, be taken of the limitation resulting from the provisions of article 52 of the regulation, whereby subrogation is permitted only in so far as the damage is the cause of the benefits paid by the institution liable to pay them. In this case the damages defined by the courts before which the action was brought (French courts) would exclude, in accordance with the case law of the Cour de Cassation, benefits which do not remedy the effects of the accident and which the institution would have had to pay even if the accident had not occurred (for example, old-age pensions).

In a judgment of 16 February 1977 the Court of Justice of the EC ruled as follows:

"The action by subrogation which may be available, under the terms of article 52 of Regulation No 3, to a social security institution in a Member State, as the consequence of an accident in the territory of another Member State involving a person insured with such institution must be recognized on the basis of the legislation applicable to the institution liable to pay benefits. However, the right of subrogation covers only the compensation to which the victim or his legal successors are entitled under the legislation of the State in the territory of which the injury occurred which corresponds to the benefits paid by the institution liable to pay them, and not compensation granted for non-material damage or in respect of other items of damage of a personal nature."

C 409 — Any problems posed by the provisions of article 93 of regulation 1408/71 relating to claims against responsible third parties for injuries caused to workers will be examined by the Administrative Commission (SRMC R 574/72 ad art. 110 and following).

SECTION II — RECOVERY OF CONTRIBUTIONS

Present regulations:	R 1408/71 art. 91, 92 R 574/72 art. 109, 116
Corresponding text of abrogated regulations:	R 3 art. 51 R 4 art. 85

A — Contributions due from employers or undertakings outside the territory of the competent State

620 — An employer cannot be obliged to bear increases in contributions because of the fact that his home or the registered office of his undertaking is in the territory of a Member State other than the competent State (R 1408/71 art. 91).

B — Recovery of contributions from another Member State

621 — Contributions due to the institution of a Member State may be recovered from another Member State, following the administrative procedure and with the guarantees and privileges laid down in the legislation of that State (R 1408/71 art. 92 para. 1).

C 410 — The principle expressed above was already set out in article 51 of regulation No 3.

622 — The procedures for implementing the principle set out in No 621 above are contained where necessary in agreements between Member States which should be inserted in Annex 5 of regulation 574/72. To the extent that they are referred to in that Annex, agreements concluded for the application of article 51 of regulation No 3 remain valid. These implementation procedures may also relate to enforced recovery (R 1408/71 art. 92 para. 2; R 574/72 art. 116 paras. 1, 2).

623 — A worker attached to an employer whose undertaking does not have an establishment in the territory of the Member State whose legislation is applicable to him may, in agreement with the employer, be required to pay contributions due from the latter. The employer should advise the competent institution of any such arrangement (R 574/72 art. 109).

C 411 — The provisions of regulation 574/72 described in No 623 are new and have no corresponding text in regulation No 4.

SECTION III — ADMINISTRATIVE AND JUDICIAL COOPERATION

Present regulations:	R 1408/71 art. 84, 85, 86, 87, 88 R 574/72 art. 110, 115, 117
Corresponding text of abrogated regulations:	R 3 art. 45, 46, 47, 48 R 4 art. 17 para. 6, art. 22 para. 6, art. 48 subpara. *c)*, art. 72
Court of Justice EC:	Case 6/67, 45/72, 40/74, 55/77
Administrative Commission:	Decision No 101

A — Administrative cooperation

§ 1 — *Cooperation of competent authorities*

624 — The competent authorities of Member States will pass to each other all information concerning on the one hand measures taken for the application of the regulation and on the other hand any amendments of their legislation which might affect the application of the regulation (R 1408/71 art. 84 para. 1).

625 — The authorities and institutions of Member States may communicate directly with each other and with the persons concerned or their representatives. They will mutually extend their good offices to each other and may make agreements on the reimbursement of certain costs (see No 641 below) (R 1408/71 art. 84 paras. 2, 3).

626 — Requests or other documents sent to authorities, institutions and courts may not be rejected because they are written in an official language of another Member State. Use may be made of the good offices of the Administrative Commission for their translation (R 1408/71 art. 84 para. 4).

C 412 — Authorities, in the sense of article 45 of regulation No 3, include all national courts competent with regard to social security matters (Court of Justice EC, Judgment 6/67 of 5 July 1967, Guerra Theresa widow of Pietro Pace v. Institut national d'assurance maladie-invalidité) including tribunals and administrative courts (Judgment 45/72 of 13 December 1972, Giuseppe Merola v. Fonds national de retraites des ouvriers mineurs).

C 412 a — Case 55/77 (Marguerite Maris v. Rijksdienst voor Werknemerspensionen), Judgment of the Court of Justice EC of 6 December 1977.

The case concerned the compatibility of article 84 (4) of regulation 1408/71 (cf 626 above) with the provisions of a national law (art. 40 of the Belgian law of 15 June 1935 and art. 862 of the Code judiciaire (Judicial Code)) under which courts were required to declare of their own motion that any pleading drawn up in a language other than the official language of the court was null and void. The plaintiffs application was written in French whereas, according to article 2 of the Belgian law of 15 June 1935, the language of procedure, under national legislation, ought to be Dutch.

Whereas the general nature of the rule laid down in article 84, (4) did not allow any distinctions to be drawn on grounds of nationality or residence between those persons who were entitled to avail themselves of that provision, but whereas it was impossible for the authority of Community law to vary from one Member State to the other as a result of domestic laws, whatever their purpose, if the efficacy of that law and the necessary uniformity of its application in all Member States and to all those persons covered by the provisions at issue were not to be jeopardized,

the Court of Justice EC ruled as follows:

"Under article 84, (4) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community the authorities, institutions and tribunals of the Member States are bound, notwithstanding any provision of their national laws to a different or contrary effect, to accept all claims or other documents which relate to the implementation of the said regulation and which have been drawn up in an official language of another Member State and they are not allowed in this connection to make any distinctions on grounds of nationality or residence between the persons concerned."

In a peculiar sphere this Judgment confirmed that Community law took precedence over national law. This has always been expressed in the case-law of the Court of Justice (cf. in particular the Judgment of 13 February 1969 in case 14/68, Walt Wilhelm and Others v. Bundeskartellamt, Reports, p. 1).

C 413 — The provisions of regulation 1408/71 described in Nos 624 to 626 take in the provisions of article 45 of regulation No 3.

627 — The institutions of the various Member States extend their good offices to each other in case of claims for the recovery of excess benefit payments (R 574/72, art. 110).

C 414 — The provisions of regulation 574/72 described above, which constitute an application for the recovery of excess payments of the general principle of administrative cooperation, bring together the scattered provisions of para. 6 of article 17, para. 6 of article 22, subpara. c) of article 48 and article 72 of regulation No 4.

§ 2 — *Tax exemptions or reductions — Exemption from authentication*

628 — Benefit of exemption or reductions of taxes, stamp duty and notarial or registration fees laid down by a legislation extends to similar documents which have to be produced in application of the legislation of another Member State or of the regulation (R 1408/71 art. 85 para. 1).

629 — Certificates and documents which have to be produced for the application of the regulation do not require authentication by diplomatic and consular authorities (R 1408/71 art. 85 para. 2).

C 415 — The provisions of regulation 1408/71 described in Nos 628 and 629 are identical to those of article 46 of regulation No 3.

§ 3 — *Electronic data processing*

630 — Documents and operations and methods of transmitting data for the purpose of applying the regulations may be adapted for electronic data processing under agreements concluded between two or more Member States after consulting or on the initiative of the Administrative Commission (R 574/72 art. 117).

C 416 — These new provisions were introduced in order to permit the adoption of the most recent techniques of automatic data processing in the application of the European social security regulations (EMPR 574/72).

C 417 — Article 117 of regulation 574/72 does not prevent a prescribed institution of a Member State introducing electronic processing of data referred to in the provision. The right to decide to use electronic methods rests definitively with each Member State and its competent authorities (SRMC R 574/72 ad art. 117).

B — Claims, statements or appeals submitted to an authority, an institution or a court of a Member State other than the competent State

631 — Claims, statements or appeals to be submitted within a prescribed time limit to an authority, institution or court of a Member State are receivable if they are submitted within the same time limit to the corresponding institution of another Member State. The date on which these claims, statements or appeals are submitted is considered to be the date of submission to the body competent to take note of them (R 1408/71 art. 86).

C 418 — The provisions described above have taken in and made more precise the provisions of article 47 of regulation No 3.

C 418 a — *With regard to the application of article 47 of regulation No 3, the Court of Justice of the European Communities, in its judgment of 3 December 1974 (Case 40/74 Kingdom of Belgium, Henri Costers and Maria Vounckx v. Berufsgenossenschaft der Feinmechanik und Elektrotechnik), considered that "in using the adjective corresponding", article 47 requires that the claims, declarations or appeals in question be submitted to an authority, institution or other agency forming part of the social security system of the Member State in question. Consequently, the Court ruled that "a liaison department such as that referred to in article 3 of regulation No 4 may be considered as another corresponding agency within the meaning of article 47 of Regulation No 3, even where one is dealing with the submission of an appeal".*

The judgment specifies, however, that, subject to exceptions, article 47 of regulation No 3 (the provisions of which were taken over in article 86 of regulation No 1408/71) "cannot apply where the party involved is resident, or is for the purpose of his claim, declaration or appeal represented by a representative, e.g. a laywer, established in the Member State whose law must be applied".

C — Expert medical opinions

632 — Expert medical opinion as specified in the legislation of a Member State may be obtained at the request of the competent institution in the territory of another Member State through the institution of the place of residence or stay (R 1408/71 art. 87 para. 1).

633 — The institution of the place of stay or residence in this case makes the arrangements in accordance with the procedures laid down in the legislation which it applies or, failing the existence of appropriate provisions in that legislation, in accordance with indications supplied by the competent institution (R 574/72 art. 115).

634 — The opinions thus obtained are deemed to have been obtained in the territory of the competent State and will thus have the same legal value (R 1408/71 art. 87 para. 2).

C 419 — *These new provisions in regulations 1408/71 and 574/72 are intended to avoid legal actions relating to the propriety of an expert medical opinion obtained where there is a dispute of a medical nature concerning the state of health of an insured person attached to the institution of another country the legislation of which lays down that an expert medical opinion shall be obtained for the settlement of such actions (ERER 1408/71).*

D — Transfers from one Member State to another of sums due in implementation of the regulation

635 — Transfers of sums due in implementation of the regulation will take place in accordance with the agreements in force between States concerned at the time of transfer. If there are no existing agreements, the competent authorities of these States will decide by common agreement the measures which are necessary (R 1408/71 art. 88).

C 420 — The provisions described above correspond to para. 2 of article 48 of regulation No 3.

SECTION IV — PROVISIONAL PAYMENT OF BENEFIT IN CASE OF DISPUTES OVER THE APPLICABLE LEGISLATION OR THE INSTITUTION CALLED UPON TO PROVIDE BENEFIT — RECUPERATION OF BENEFITS PROVIDED IN ERROR

Present regulations:	R 574/72 art. 111 to 114
Corresponding text of abrogated regulations:	R 4 art. 84

A — Provisional payment of benefit in case of disputes over the applicable legislation or the institution called upon to provide benefit

636 — Provisional benefit is paid in case of dispute between the authorities or institutions of several Member States over the determination either of the applicable legislation or the institution responsible for providing benefit. This provisional benefit is awarded, depending on the case concerned, in accordance with either the legislation of the place of residence or the legislation applied by the institution to which the claim was first submitted. Where after settlement of the dispute the institution called upon to provide benefit is not the one which made the provisional payments, the recuperation of the amounts paid in error may be carried out by applying the provisions described in Nos 637 and following below (R 574/72 art. 114).

C 421 — The provisions described above are based on those of article 33 of the Convention of 5 May 1953 on Social Insurance and on article 23 of the Convention of the same date on unemployment insurance between Germany and Italy and on article 33 of the General Convention of 28 October 1952 between Italy and the Netherlands. It appeared useful to extend to all Member States and to all branches of social security covered by the regulations the provisions of these articles which were maintained in force by insertion in Annex 6 of regulation No 4 (ERER 574/72).

B — Recuperation of benefits provided in error

637 — Amounts paid in excess may be recuperated. Excess benefit payments paid by an institution of a Member State may be recuperated through the intermediary of any institution of another Member State from current payments being made by the latter, under the conditions and limits laid down by the legislations applied respectively by the two institutions concerned (R 574/72 art. 111 para. 2).

C 422 — See Nos 396 and 397 above for special procedures relating to repetition of the excess in case of invalidity, retirement and death pensions.

638 — Recuperation may be made, through the intermediary of the paying body, of assistance allowances paid by a Member State during a period when the person concerned was entitled to benefit under the legislation of another Member State. This recuperation is, however, subject to the two following conditions: the legislation of the Member State to which the assistance organization is subject must permit appeal for social security benefits and the appeal may not be exercised except to any limit which may be set by the legislation of the Member State which the institution required to make the deduction comes under (R 574/72 art. 111 para. 3 subparas 1 and 3).

639 — The provisions described in No 638 are applicable by analogy where the assistance has been provided to a member of the family on the basis of whom a person to whom the regulation applies has received benefit under the legislation of a Member State (R 574/72 art. 111 para. 3 subpara. 2).

C 423 — The provisions of regulation 574/72 described in Nos 637 and 638 correspond to article 84 of regulation No 4. They lay down more precisely than regulation No 4 the recuperation of benefits provided in error or assistance allowances paid by the institution or body of a Member State from benefits awarded by the institution of another Member State (cf. No C 300 above).

640 — Where, following payments in error, recuperation is found to be impossible, the sums in question remain finally to the charge of the institution from which benefit is due except in the case where the excess payment is the result of a fraudulent act on the part of the beneficiary (R 574/72 art. 112).

C 424 — See Nos 189 to 191 above for procedures laid down for the recuperation of benefits in kind provided in error to international transport workers.

SECTION V — FINANCIAL SETTLEMENTS — PROVISIONS COMMON TO REIMBURSEMENT BETWEEN INSTITUTIONS AND PAYMENTS OF CASH BENEFITS

Present regulations:	Reg 574/72, Art 99 to 107, Annex 10 amended by Reg 878/73, OJ EC L 86, 31 March 1973, by Reg 1392/74, OJ EC L 152, 8 June 1974, by Reg 2639/74, OJ EC L 238, 19 October 1974 and by Reg 2595/77, OJ EC L 302, 26 November 1977
Corresponding text of repealed regulations:	Reg 4, Art 77, 78, 79, 80, 81, 82 and 86
Administrative Commission:	Decisions Nos 14, 17 and 92 and 109

A — Reimbursement between institutions

§ 1 — *Administrative costs*

641 — The amounts of benefits in kind for sickness insurance (cf. No 248 to 256 above), accident at work or occupational disease (No 500), unemployment benefit (No 541 and 542) and family allowances (Nos 596 to 599) paid by an institution on behalf of another may, under agreements between two or more Member States or the competent authorities of these States, be increased by a prescribed percentage in order to take account of administrative costs. This percentage may vary according to the benefits concerned (R 574/72 art. 99).

C 425 — *The provisions set out above correspond to those of article 77 of regulation No 4 with the addition of the provision that the percentage for administrative costs may vary according to the benefits concerned (ERER 574/72).*

§ 2 — *Frequency and procedures for financial settlements*

642 — Reimbursement between institutions of benefits in kind for sickness/maternity insurance (No 248) or accident at work/occupational disease insurance (No 499) and unemployment benefits (No 540) and family allowances (No 594 to 596) is carried out through the intermediary of the bodies appointed in Annex 10 of regulation 574/72 as amended by regulations 878/73, 1392/74 and 2595/77. These bodies notify the Administrative Commission of the sums refunded within the time limits and in accordance with the procedures laid down by the said Commission (R 574/72, art. 102, para. 2).

643 — Provided that, under agreements referred to in Annex 5 of regulation 574/72, the competent authorities of two or more Member States have not adopted other time limits or procedures for reimbursement between institutions, the frequency of financial settlements is (R 574/72 art. 102 paras. 3, 4, 5 and art. 104):

643-1 — half-yearly (settlements made for each calendar half-year during the course of the following calendar half-year) where refunds calculated on the basis of actual costs are concerned;

643-2 — annual, for refunds determined on the basis of lump-sums; in this case advances are paid half-yearly by the competent institutions.

C 426 — The provisions of regulation 574/72 described in Nos 642 and 643 correspond to those of paras. 1 to 4 of article 79 and of article 81 of regulation No 4. However, article 102 para. 2 of regulation 574/72 (No 642) no longer provides for the intervention of the Administrative Commission in reimbursements as was laid down in para. 1 of article 79 of regulation No 4.

C 426 a — The amount of advances to be paid in the case referred to in No 643-2 is calculated by multiplying the last approved average cost by the last known number of persons concerned, as obtained from the data established by the institutions responsible for the lists (AC Decision No 92 of 22 November 1973, OJ EC No C 99 of 23 August 1974 as replaced by Decision No 109 of 30 November 1977, OJ EC C 125 of 30 May 1978).

§ 3 — *Late claims*

644 — The period after which credit arrears claims between the institutions of Member States may be disregarded is set at three years, with effect from the date of transmission of claims for reimbursement or, with regard to reimbursements calculated on lump-sum bases, with effect from the date of publication in the Official Journal of the European Communities of the annual average costs of sickness/maternity insurance benefits established in accordance with articles 94 and 95 of regulation 574/72 (Nos 250 to 258 above) (R 574/72 art. 100).

C 427 — The provisions described above take in those of para. 2 of article 78 of regulation No 4, but the time limit has been extended by one year.

§ 4 — *Credit position*

645 — A credit position is established for each calendar year, on the report of the Audit Board (No 127 above), by the Administrative Commission which may for this purpose arrange for any checks which it considers necessary with regards to reimbursements of sickness/maternity insurance benefits in kind (No 248 above) accident at work and occupational disease insurance benefits in kind (No 499), unemployment benefits (No 540) and family allowances (No 594 to 596) (R 574/72 art. 101).

C 428 — On this item regulation 574/72 has taken in the provisions of paras. 1, 3 and 4 of article 78 of regulation No 4.

§ 5 — *Gathering of statistical and accounts data*

646 — The gathering of statistical and accounts data is carried out in accordance with the procedures decided upon by the competent authorities of the Member States (R 574/72 art. 103).

C 429 — This provision corresponds to that of article 80 of regulation No 4.

B — Provisions common to payments of cash benefits

§ 1 — *Information for Administrative Commission*

647 — The Administrative Commission receives from the competent authorities notification of the amount of cash benefits paid to beneficiaries residing or staying in the territory of other Member States (R 574/72 art. 106).

C 430 — These provisions correspond to those of article 86 of regulation No 4.

§ 2 — *Conversion of currencies*

648 — The conversion of amounts shown in different national currencies is carried out by reference to the market exchange rate and their *de facto* parity (i.e. the parity declared to the International Monetary Fund or the central rate in force) for the purpose of the following operations (R 574/72 art. 107 1 *a), b)* as amended by R 2639/74):

— the application of the rules against overlapping of benefits (see Nos 62, 63, 65 above);

— the payment of sickness and maternity insurance cash benefits (see Nos 144, 178, 193-2 and 235 above);

— the payment of benefits for aggravation of invalidity (see No 274 above);

— the determination of old-age pensions (see Nos 310 to 314 above);

— the payment of cash benefits under insurance against accidents at work and occupational diseases, except for sclerogenic pneumoconiosis (No 421);

— the payment of unemployment benefits (see Nos 540 and 551 above);

— the payment of family benefits in the case referred to at No 570 above.

649 — In all other cases, conversion is carried out at the official rate applicable on the day of payment either for paying benefits or for making refunds (R 574/72, art. 107 as amended by R 2639/74).

650 — In all the cases referred to at No 648, the conversion rate of currencies is fixed differently depending on whether for the currencies concerned the difference between the market exchange rate and the rate that corresponds to their *de facto* parity ratio may or may not exceed a margin of 2.25%.

In the first case, the conversion rate is a rate calculated by the Commission on the basis of the arithmetic mean of the exchange rate of these currencies recorded on each of the two national foreign exchange markets during the reference period specified at No 651 below. The exchange rates to be adhered to in this case are specified for the different currencies in Article 107 (3) of Regulation No 574/72 as amended by Regulation No 2639/74.

In the second case, the conversion rate is the last rate in force on the last business day of the reference period specified below.

651 — The reference period is: the month of January, the month of April, the month of July and the month of October for conversion rates to be applied respectively from either 1 April following, or 1 July following, or 1 October following, or 1 January following (Regulation No 574/72, art. 107 as amended by Regulation No 2639/74).

652 — The date to be taken into account for the purpose of determining the exchange rates to be applied in the cases referred to at Nos 650 and 651 above is fixed by the Administrative Commission in its Decision No 101 of 29 May 1975 (OJ EC *C 44* of 26 February 1976).

The conversion rates to be applied are published in the Official Journal of the European Communities in the course of the last month but one preceding the month from the first day of which they are to apply (Regulation No 574/74, art. 107 as amended by Regulation No 2639/74).

C 431 — *The amendments made to Article 107 (1) of Regulation No 574/72 by Regulation No 2639/74 enter into force with regard to the conversion rates to be applied from 1 January 1975 (Regulation No 2639/74, art. 2).*

These amendments were made on the grounds that the international monetary situation has changed since Regulations Nos 1408/71 and 574/72 entered into force and that the procedure should be based as closely as possible upon economic realities in the conversions of currency imposed by the implementation of the Community Regulations.

C 432 — Under Decision No 101 of 29 May 1975 of the Administrative Commission, replacing Decision No 14 of 20 November 1959 published in the OJ of 27 February 1960 and adopted under Regulations Nos 3 and 4, the date to be taken into account for determining the conversion rate is that from which the provisions of Regulation No 1408/71 take effect for the person concerned with regard to the application of rules against overlapping of benefit (Nos 62, 63 and 65 above) or the granting of either a benefit increase for aggravation of invalidity (Nos 274 and 275 above) or an increase of an old-age pension granted under the conditions referred to in Nos 314 and 333 above. However, as regards pensions that became due prior to 1 January 1975 and which had not yet been awarded when this Decision entered into force, the rate of conversion to be taken into account is that applicable on 1 January 1975.

Under the terms of the same Decision, the amount to be paid to the person concerned will be converted at the conversion rate applicable:

- *during the month in which payment is authorized by the competent institution in the case of payment of cash benefits either under sickness insurance (see Nos 144, 178 and 193-2), or under insurance for accidents at work and occupational diseases, with the exception of sclerogenic pneumoconiosis (No 412 above);*
- *during the month in which the competent institution issues the order for paying unemployment benefits (see Nos 540 and 551 above).*

C 433 — In its Decision No 99 of 13 March 1975 (OJ EC 150 of 5 July 1975), the Administrative Commission explained that:

"Article 107 (1) shall be interpreted as determining the rate of conversion applicable when benefits are fixed or when they are calculated in accordance with Article 51 (2) of Regulation (EEC) No 1408/71. On the other hand, Article 107 (1) involves no obligation to recalculate current benefits (especially pensions) every three months by applying the rate of conversion specified in Article 107 (1) (a) and (b)."

In other words, Article 107 of EEC Regulation No 574/72 does not mean that all benefits should be recalculated every three months (indeed, this would hardly be feasible, in particular for pensions, and would entail delays in payment of benefits); its application is confined to cases in which benefits are first awarded or in which current benefits are recalculated following a change in the method by which they are determined or the rules according to which they are calculated.

C 434 — Rates of conversion of currencies:

Period of application	Reference period	Official Journal of the EC
First quarter 1975	October 1974	C 143, 18 November 1974
Second quarter 1975	January 1975	C 48, 28 February 1975
Third quarter 1975	April 1975	C 117, 27 May 1975
Fourth quarter 1975	July 1975	C 190, 21 August 1975
First quarter 1976	October 1975	C 269, 25 October 1975
Second quarter 1976	January 1976	C 44, 26 February 1976
Third quarter 1976	April 1976	C 116, 25 May 1976
Fourth quarter 1976	July 1976	C 193, 18 August 1976
First quarter 1977	October 1976	C 271, 17 November 1976
Second quarter 1977	January 1977	C 49, 26 February 1977
Third quarter 1977	April 1977	C 121, 20 May 1977
Fourth quarter 1977	July 1977	C 198, 19 August 1977
First quarter 1978	October 1977	C 282, 23 November 1977
Second quarter 1978	January 1978	C 39, 16 February 1978
Third quarter 1978	April 1978	C 114, 17 May 1978
Fourth quarter 1978	July 1978	C 197, 19 August 1978
First quarter 1979	October 1978	C 277, 21 November 1978

Decisions of the Court of Justice of the European Communities concerning the implementation of the European Social Security Regulations

Date	Case	Practical Handbook reference	Reference to Collected Judgments of the Court of Justice
19 March 1964	75/63 (Unger v. Bedrijfsvereniging voor Detailhandel en Ambachten)	C 9-1; C 164	Vol. X p. 349
9 June 1964	92/63 (Dame N... v. Bestuur der Sociale Verzekeringsbank)	C 82	Vol. X p. 559
15 July 1964	100/63 (Widow V... v. Bestuur der Sociale Verzekeringsbank)	C 250	Vol. X p. 1107
2 December 1964	24/64 (Dingemans v. Sociale Verzekeringsbank Amsterdam)	C 30-1	Vol. X p. 1261
11 March 1965	31/64 (Caisse commune d'ass. La Prévoyance sociale v. Bertholet)	C 406	Vol. XI p. 112
11 March 1965	33/64 (Betriebskrankenkasse v. Egberdina Van Dijk)	C 406	Vol. XI p. 132
1 December 1965	33/65 (Dekker v. Bundesversicherungsanstalt)	C 141	Vol. XI p. 1112
9 December 1965	44/65 (Singer v. Hessische Knappschaft)	C 407	Vol. XI p. 1192
30 June 1966	61/65 (Vaasen-Goebbels v. Beambtenfonds Mijnbedrijf)	C 33; C 140	Vol. XII p. 378

Date	Case	Practical Handbook reference	Reference to Collected Judgments of the Court of Justice
13 July 1966	4/66 (Hagenbeek v. Raad van Arbeid Arnhem)	C 278	Vol. XII, p. 618
5 July 1967	1/67 (Ciechelski v. Caisse régionale de Sécurité sociale du Centre)	C 250	Vol. XIII, p. 236
5 July 1967	2/67 (de Moor v. Caisse belge de pension des employés privés)	C 250	Vol. XIII, p. 256
5 July 1967	6/67 (T. Guerra, veuve P. Pace v. Institut national belge d'assurance maladie, invalidité)	C 412	Vol. XIII, p. 284
5 July 1967	9/67 (K. Colditz v. Caisse d'assurance vieillesse des travailleurs salariés de Paris)	C 250	Vol. XIII, p. 298
12 December 1967	11/67 (M. Couture v. Office national belge des pensions pour ouvriers)	C 232	Vol. XIII, p. 488
13 December 1967	12/67 (J. Guissart v. Etat belge)	C 232	Vol. XIII, p. 552
5 December 1967	14/67 (J. Welchner v. Institution d'assurances sociales du Land Rhénanie Palatinat)	C 273	Vol. XIII, p. 428
30 November 1967	18/67 (Cossuta, veuve A. Pagotto v. Office National belge des pensions pour ouvriers)	C 256	Vol. XIII, p. 400
5 December 1967	19/67 (H. J. van der Vecht v. Bestuur der Sociale Verzekeringsbank)	C 87 (1); C 93	Vol. XIII, p. 446

Date	Case	Practical Handbook reference	Reference to Collected Judgments of the Court of Justice
30 November 1967	22/67 (Goffart)	C 269	Vol. XIII p. 414
19 December 1968	19/68 (De Cicco G. v. Landesversicherungsanstalt Schwaben)	C 9-2	Vol. XIV p. 690
7 May 1969	28/68 (Caisse régionale de sécurité sociale du Nord de la France v. Torrekens)	C 30-2	Vol. XV p. 125
12 November 1969	27/69 (Caisse maladie des CFL "Entr'aide médicale" and others v. Cie belge d'assurance générale sur la vie et contre les accidents and others)	C 406	Vol. XV p. 405
10 December 1969	34/69 (Mrs. Jeanne Duffi v. Caisse d'assurance vieillesse des travailleurs salariés de Paris)	C 79	Vol. XV p. 597
14 April 1970	68/69 (Elisabeth Brock v. Bundesknappschaft)	C 274	Vol. XVI p. 171
17 June 1970	3/70 (Caisse de compensation pour allocations familiales des Charbonnages du Couchant de Mons v. Francesca di Bella)	C 397	Vol. XVI p. 415
1 December 1970	32/70 (Union nationale des Mutualités spécialistes v. La Marca, Stéphanie)	C 212	Vol. XVI p. 987
17 December 1970	35/70 (SARL Manpower v. Caisse primaire d'assurance maladie de Strasbourg)	C 92	Vol. XVI p. 1251

Date	Case	Practical Handbook reference	Reference to Collected Judgments of the Court of Justice
27 October 1971	23/71 (Janssen v. Alliance nationale Mutualités chrétiennes)	C 9-3	Vol. XVII p. 853
10 November 1971	26/71 (Heinrich Gross v. Caisse régionale d'assurance vieillesse de Strasbourg)	C 241	Vol. XVII p. 871
10 November 1971	27/71 (Auguste Keller v. Caisse régionale d'assurance vieillesse de Strasbourg)	C 242	Vol. XVII p. 885
10 November 1971	28/71 (Eugen Höhn v. Caisse régionale d'assurance vieillesse de Strasbourg)	C 241	Vol. XVII p. 893
22 March 1972	80/71 (Merluzzi Adalgisa v. Caisse primaire d'assurance maladie de la région parisienne)	C 276	Vol. XVIII p. 175
22 June 1972	1/72 (Mrs. Rita Frilli v. Belgian Government)	C 30-3	Vol. XVIII p. 457
6 June 1972	2/72 (Salvatore Murru v. Caisse régionale d'assurance maladie de Paris)	C 243	Vol. XVIII p. 333
16 November 1972	14/72 (Helmut Heinze v. Landesversicherungsanstalt, Rheinprovinz)	C 30-4; C 130	Vol. XVIII p. 1105
16 November 1972	15/72 (Land Niedersachsen v. Landesversicherungsanstalt Hanover)	C 30-4; C 130	Vol. XVIII p. 1127
16 November 1972	16/72 (Allgemeine Ortskrankenkasse Hamburg v. Landesversicherungsanstalt Schleswig-Holstein, Lübeck)	C 30-4; C 130	Vol. XVIII p. 1141

Date	Case	Practical Handbook reference	Reference to Collected Judgments of the Court of Justice
13 December 1972	45/72 (Merola v. Fonds national belge de retraites des ouvriers mineurs)	C 412	Part XVIII, p. 1255
1 March 1973	73/72 (Bentzinger v. Steinbruchs Berufsgenossenschaft)	C 94-1	1973, p. 283
16 May 1973	78/72 (de Waal v. Compagnie d'assurance "l'Étoile - Syndicat général")	C 408	1973, p. 499
7 June 1973	82/72 (MCJ Walder v. Bestuur Verzekeringsbank)	C 39	1973, p. 599
12 July 1973	13/73 (Établissements Angenieux v. Hakenberg)	C 94-2	1973, p. 935
10 October 1973	110/73 (Fiege v. Caisse régionale d'assurance maladie de Strasbourg)	C 71c; C 226a	1973, p. 1001
11 October 1973	35/73 (Ludwig Kunz v. Bundesversicherungsanstalt für Angestellte, Berlin)	C 182	1973, p. 1025
7 November 1973	51/73 (Sociale Verzekeringsbank v. Smieja)	C 71b	1973, p. 1213
27 November 1973	130/73 (Vve Vandeweghe et Solange Verhelle v. Berufsgenossenschaft für die Chemische Industrie Heidelberg)	C 73a; C 347a	1973, p. 1329
6 December 1973	140/73 (Direction régionale de la Sécurité sociale de la Région parisienne v. Carmela Mancuso)	C 210a	1973, p. 1449

Date	Case	Practical Handbook reference	Reference to Collected Judgments of the Court of Justice
15 May 1974	**184/73** (Bestuur van de Nieuwe Algemene Bedrijfsvereniging v. H.W. Kaufmann)	C 79a	1974, p. 517
28 May 1974	**187/73** (Odette Callemeyn v. État belge)	C 30-5; C 40a	1974, p. 553
28 May 1974	**191/73** (Rudolf Niemann v. Bundesversicherungsanstalt für Angestellte)	C 250 (5th para.)	1974, p. 571
9 October 1974	**24/74** (Caisse régionale d'assurance maladie, Paris v. Guiseppa Biason)	C 30-7; C 71d	1974, p. 999
12 November 1974	**35/74** (Alliance nationale des mutualités chrétiennes et Institut national d'assurance maladie-invalidité (Belgique) v. Thomas Rzepa)	C 213a; C 291a	1974, p. 1241
13 November 1974	**39/74** (Luciana Costa épouse Mazzier v. État belge)	C 30-6	1974, p. 1251
3 December 1974	**40/74** (Royaume de Belgique, Henri Costers et Marie Vounckx v. Berufsgenossenschaft der Feinmechanik und Elektrotechnik)	C 418a	1974, p. 1323
18 February 1975	**66/74** (Alfonso Farrauto v. Bauberufsgenossenschaft Wuppertal)	C 346a	1975, p. 157
17 June 1975	**7/75** (Angelo and Marie Fracas v. Belgian State)	C 30-6	1975, p. 679

Date	Case	Practical Handbook reference	Reference to Reports of cases before the Court of Justice
26 June 1975	6/75 (Ulrich Horst v. Bundesknappschaft Bochum)	C 236a; C 276a	1975, p. 823
24 June 1975	8/75 (CPAM Sélestat v. Association du Football Club d'Andlau)	C 94-3a; C 307a	1975, p. 739
25 June 1975	17/75 (Antonio Anselmetti v. Caisse de compensation des Allocations familiales de l'industrie charbonnière)	C 71-4; C 269b; C 392a	1975, p. 781
9 July 1975	20/75 (Gaetano d'Amico v. Landesversicherungsanstalt Rheinland-Pfalz)	C 241; C 274a	1975, p. 891
10 July 1975	27/75 (Gaetano Bonaffini v. Istituto Nazionale della Previdenza sociale)	C 361a	1975, p. 971
21 October 1975	24/75 (Teresa Petroni and Silvana Petroni v. Office national des pensions pour travailleurs salariés)	C 256a	1975, p. 1149
30 October 1975	33/75 (Galati v. Landesversicherungsanstalt Schwaben)	C 113a; C 236b	1975, p. 1323
20 November 1975	49/75 (Borella v. Landesversicherungsanstalt Schwaben)	C 210c; C 233a	1975, p. 1461
25 November 1975	50/75 (Caisse de pensions des employés privés de Luxembourg v. Helga Massonet)	C 87-2; C 250b	1975, p. 1473

Date	Case	Practical Handbook reference	Reference to Reports of cases before the Court of Justice
9 December 1975	57/75 (Fernand Plaquevent v. Caisse primaire d'Assurance maladie du Havre and Directeur régional de la Sécurité sociale de Rouen)	C 210b	1975, p. 1581
17 December 1975	93/75 (Jacob Adlerblum v. Caisse nationale d'Assurance Vieillesse des travailleurs salariés de Paris)	C 30-8	1975, p. 2147
9 March 1976	108/75 (Giovanni Balsamo v. Institut national d'Assurance maladie-invalidité (Belgium))	C 210e; C 268a	1976, p. 375
8 April 1976	112/75 (Directeur régional de la Sécurité sociale de Nancy v. Auguste Hirardin and Caisse régionale d'Assurance maladie de Nancy)	C 236a; C 276b	1976, p. 553
26 May 1976	103/75 (Walter Th. Aulich v. Bundesversicherungsanstalt für Angestellte)	C 180a	1976, p. 697
13 July 1976	19/76 (Pietro Triches v. Caisse de compensation pour allocations familiales de la région liégeoise)	C 392a	1976, p. 1243
29 September 1976	17/76 (Mrs M.L.E. Brack (widow of Mr Brack) v. Insurance officer)	C 9a	1976, p. 1429
13 October 1976	32/76 (Alfonsa Saieva v. Caisse de compensation des allocations familiales de l'industrie charbonnière des bassins de Charleroi et de la Basse-Sambre)	C 397-1; C 48a	1976, p. 1523
23 November 1976	40/76 (Slavica Kermaschek v. Bundesanstalt für Arbeit)	C 18a; C 361b	1976, p. 1669

Date	Case	Practical Handbook reference	Reference to Reports of cases before the Court of Justice
15 December 1976	39/76 (Bestuur der Bedrijfsvereniging voor de Metaalnijverheid, The Hague v. Mr L.J. Mouthaan)	C 9-4 C 26a C 366c	1976, p. 1901
16 December 1976	63/76 (Vito Inzirillo v. Caisse d'allocations familiales de l'arrondissement de Lyon)	C 30-9	1976, p. 2057
3 February 1977	62/76 (Josef Strehl v. Nationaal Pensioenfonds voor Mijnwerkers)	C 208a; C 256b	1977, p. 211
16 February 1977	72/76 Landesversicherungsanstalt Rheinland-Pfalz v. Mrs Töpfer, née Dontenwill)	C 408-2	1977, p. 271
17 February 1977	76/76 (Silvana di Paolo v. Office national de l'emploi (Belgium))	C 366d	1977, p. 325
10 March 1977	75/76 (Silvana Kaucic and Anna Maria Kaucic v. Institut national belge d'assurance maladie-invalidité)	C 79-6 C 213d C 256d	1977, p. 495
16 March 1977	93/76 (Fernand Liégeois v. Office national des pensions pour travailleurs salariés, Brussels)	C 63a	1977, p. 543
31 March 1977	79/76 (Carlo Fossi v. Bundesknappschaft)	C 57a; C 68a	1977, p. 667
31 March 1977	87/76 (Walter Bozzone v. Belgian Office de Sécurité sociale d'outremer)	C 33a; C 71-5	1977, p. 687

Date	Case	Practical Handbook reference	Reference to Reports of cases before the Court of Justice
5 May 1977	102/76 (Mr H.O.A.G.M. Perenboom v. Inspecteur der directe belastingen, Nijmegen)	C 87-3	1977, p. 815
5 May 1977	104/76 (Gerda Jansen v. Landesversicherungsanstalt Rheinprovinz)	C 33b; C 72a	1977, p. 829
9 June 1977	109/76 (Mrs M. Blottner v. Het Bestuur der Nieuwe Algemene Bedrijfsvereniging)	C 33c; C 213b; C 243a	1977, p. 1141
13 October 1977	112/76 (Renato Manzoni v. Fonds national de retraites des ouvriers mineurs)	C 208a; C 256b	1977, p. 1647
13 October 1977	22/77 (Fonds national de retraites des ouvriers mineurs v. Giovanni Mura) See also the Judgment of 5 October 1978 (Case 26/78)	C 79-4 C 208c	1977, p. 1699
13 October 1977	37/77 (Fernando Greco v. Fonds national de retraites des ouvriers mineurs)	C 79-4 C 208c	1977, p. 1711
20 October 1977	32/77 (Antonio Giulani v. Landesversicherungsanstalt Schwaben)	C 208a; C 256c	1977, p. 1857
9 November 1977	41/77 (The Queen v. National Insurance Commissioner, ex parte Christine Margaret Warry)	C 210b; C 268a; C 213c	1977, p. 2085

Date	Case	Practical Handbook reference	Reference to Reports of cases before the Court of Justice
29 November 1977	35/77 Elizabeth Beerens v. Rijksdienst voor Arbeidsvoorziening	C 38a; C 361c	1977, p. 2249
30 November 1977	64/77 Mario Torri v. Office national des pensions pour travailleurs salariés	C 257b	1977, p. 2299
1 December 1977	64/77 Petrus Kuyken v. Rijksdienst voor Arbeidsvoorziening	C 356a	1977, p. 2311
6 December 1977	55/77 Marguerite Maris v. Office national des pensions pour travailleurs salariés	C 412a	1977, p. 2327
19 January 1978	84/77 Caisse primaire d'assurance maladie d'Eure et Loir v. Alicia Tessier née Recq	C 9-6	1978, p. 7
14 March 1978	83/77 Giovanni Naselli v. Caisse auxilaire d'assurance maladie-invalidité	C 79-3; C 208c	1978, p. 683
14 March 1978	98/77 Max Schaap v. Bestuur van de Bedrijfsvereniging voor Bank- en Verzekeringswezen, Groothandel en Vrije Beroepen	C 79-5; C 208c	1978, p. 707
14 March 1978	105/77 Bestuur van de Sociale Verzekeringsbank v. Mrs Boerboom-Kerzjes	C 79-5	1978, p. 717
15 March 1978	126/77 Maria Frangiamore v. Office national de l'emploi	C 356b	1978, p. 725

Date	Case	Practical Handbook reference	Reference to Reports of cases before the Court of Justice
16 March 1978	115/77 Gert and Anja Laumann v. Landesversicherungsanstalt Rheinprovinz	C 400a	1978, p. 805
16 March 1978	117/77 Bestuur van het Algemeen Ziekenfonds Drenthe-Platteland v. Mrs. G. Pierik	C 164a	1978, p. 825
20 April 1978	134/77 Silvio Ragazzoni v. Caisse de compensation pour allocations familiales "Assubel"	C 384a	1978, p. 963
28 June 1978	1/78 Patrick Christopher Kenny v. Insurance Officer	C 57b	1978, p. 1489
6 July 1978	9/78 Directeur régional de la sécurité sociale de Nancy v. Gillard and Caisse régionale d'assurance maladie du Nord-Est	C 26b; C 276c	1978, p. 1661
5 October 1978	26/78 Institut national d'assurance maladie v. Antonio Viola	C 79-6	
12 October 1978	10/78 Tayeb Belbouab v. Bundesknappschaft	C 22a; C 52a	

Decisions of the Administrative Commission for the Social Security of Migrant Workers

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72	1.10.1972	L 261 of 20.11.1972	Adoption of forms concerning various benefits and situations	Introduction p. II	
73	11. 1.1973	L 46 of 19.2.1973	Model of form E 111 to be used with effect from 1.4.1973		
74	22. 2.1973	C 75 of 19.9.1973	Award of medical treatment during a temporary stay — art. 22, para. 1, of reg. 1408/71 and 21 of reg. 574/72	C 165	No 21 of 19.5.1960 OJ EC of 26.7.1960
75	22. 2.1973	C 75 of 19.9.1973	Investigation of requests for review submitted on the basis of art. 94,para. 5,of reg. 1408/71 by invalidity pensioners	C 255	No 2 of 12.3.1959 OJ EC of 17.12.1959
76	22. 2.1973	C 75 of 19.9.1973	Use of forms E 402, E 403 and E 404	C 376-3	No 20 of 19.5.1960 OJ EC of 16.7.1960
77	22. 2.1973	C 75 of 19.9.1973	Calculation of family allowances — art. 73, para. 2 and 74, para. 2 of reg. 1408/71	C 381	No 25 of 22.9.1960 OJ EC of 17.2.1961
78	22. 2.1973	C 75 of 19.9.1973	Interpretation of art. 7, para. 1 a, of reg. 574/72 relating to procedures for applying reduction and suspension clauses	C 74 and C 258	No 31 of 27.10.1960 OJ EC of 17.2.1961
79	22. 2.1973	C 75 of 19.9.1973	Interpretation of art. 48, para. 2, of reg. 1408/71 relating to aggregation of insurance periods and credited periods for invalidity, retirement and death insurance	C 213 and C 233	No 34 of 21.12.1960 OJ EC of 17.2.1961

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80	22. 2.1973	C 75 of 19.9.1973	Interpretation of art. 45 (2) of reg. 1408/71 relating to aggregation of insurance periods in an occupation subject to a special scheme in one or more Member States	C 238	No 50 of 20.12.1963 OJ EC of 28.3.1964
81	22. 2.1973	C 75 of 19.9.1973	Aggregation of insurance periods completed in a prescribed employment — art. 45, para. 2, of reg. 1408/71	C 238	No 51 of 20.12.1963 OJ EC of 28.3.1964
82	22. 2.1973	C 75 of 19.9.1973	Interpretation of art. 17, para. 7, of reg. 574/72 relating to award of prostheses, major appliances and other substantial benefits in kind	C 145	No 56 of 7.10.1964 OJ EC of 31.3.1965
83	22. 2.1973	C 75 of 19.9.1973	Interpretation of art. 68, para. 2, of reg. 1408/71 and art. 82 of reg. 574/72 relating to increases of unemployment benefit for dependent family	C 357	No 57 of 27.10.1964 OJ EC of 31.3.1965
84	22. 2.1973	C 75 of 19.9.1973	Interpretation of art. 76 and 79, para. 3 of reg. 1408/71 relating to overlap of family allowances	C 383	No 61 of 7.4.1967 OJ EC of 21.6.1967
85	22. 2.1973	C 75 of 19.9.1973	Interpretation of art. 57, para. 1, of reg. 1408/71 and art. 67 para. 3 of reg. 574/72 relating to determination of applicable legislation and institution competent to award occupational disease benefit	C 333	No 62 of 5.7.1967 OJ EC of 6.12.1967

Decision number	Date	Publication in OJ EEC	Subject	Reference in Practical Handbook	Former decision amended or adapted
86	24. 9.1973	C 96 13.11.1973	Working methods and composition of audit board amended by Decision 106 of 8 July 1976	C 121	No 24,25 .11.1960 OJ EC of 21.12.1960
87	20. 3.1973	C 86 20.7.1974	Application of article 14 § 1 (a) of Regulation 1408/71 relating to legislation applicable to workers posted away	C 88	No 12 OJ EC No 64 of 17.12.1959
88	12. 7.1973	L 363 30.12.1973	Adaptation of models of the forms necessary for the application of EEC regulations No 1408/71 and No 574/72 for their utilization in the enlarged Community	C 119a	No 72, 1.10.1972 OJ EC L 261 of 20.11.1972
89	20. 3.1973	C 86 20.7.1974	Interpretation of article 16 § 1 and 2 of Regulation 1408/71 in relation to members of service personnel in diplomatic missions or in Consular posts	C 96a	
90	24. 5.1974	C 131 25.10.1974	Establishment of inventories laid down in article 94 § 4 and 95 § 4 of Regulation No 574/72	C 152 C 200a	No 53, 24.3.1964 OJ EC No 107 of 6.7.1964
91	12. 7.1973	C 86 20.7.1974	Interpretation of article 46 § 3 of Regulation 1408/71 relating to the settlement of pensions	C 254	
92	22.11.1973	C 99 23.8.1974	Concerning the concept of benefits in kind and the assessment of the totals for repayment in view of articles 93 to 95 of Regulation 574/72 as well as the advances for payment in the application of § 4 of article 102 of the same regulation This Decision was amended by Decision 109 of 30 November 1977	C 139a C 200b C 426a	No 69, 10.5.1970 OJ EC C 90 of 16.7.1970

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93	24. 1.1974	C 105 14.9.1974	Artificial limbs award of major appliances and other substantial benefits in kind	C 142	No 45, 28.11.1963 OJ EC No 14 of 29.1.1964
94	24. 1.1974	C 126 17.10.1974	The significance of article 71 § 1, subpara. B (ii) of Regulation 1408/71 relating to the entitlement to benefits for unemployment for workers other than those workers on border areas who, during their last period of employment, resided on the territory of a Member State other than the competent State	C 366a	
95	24. 1.1974	C 99 23.8.1974	Interpretation of article 46 § 2 (nominal periods) of regulation 1408/71 relating to calculation *prorata temporis* of pensions	C 251a	
96	15. 3.1974	C 126 17.10.1974	Review of the entitlements to benefits conforming with article 49 § 2 of Regulation 1408/71	C 268	No 41, 15.11.1962 OJ EC No 32 of 4.3.1963
97	15. 3.1974	C 126 17.10.1974	Utilization of the certificate for being posted away (E 101) for a posting not exceeding three months	C 90	No 15, 18.12.1959 OJ EC No 494/60 of 27.2.1960
98	4. 2.1975	C 88 19.4.1975	Issuing of the certificate of posting after the worker has already been posted	C 90a	
99	13. 3.1975	C 150 5.7.1975	Interpretation of Article 107(1) of Regulation (EEC) No 574/72 with regard to the obligation to recalculate current benefits	C 432	

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100	23. 1.1975	C 150 5.7.1975	Refund of cash benefits provided by the institution of the place of stay or of residence on behalf of the competent institution and the details of refunding these benefits	C 161a, C 170a, C 176a, C 309a, C 363a, C 366b, C 387a	No 17, 18.2.1960 OJ EC 30 of 3.5.1960
101	29. 5.1975	C 44 26.2.1976	Date to be taken into consideration when determining the rates of conversion to be applied when calculating certain benefits	C 191a 652 C 432	No 14, 20.11.1959 OJ EC 13 of 27.2.1960
102	29. 5.1975	C 288 16.12.1975	Reduction to be applied to lump sum payments for the year 1972 when implementing Articles 74 and 75 of Regulation No 74 and Articles 94 and 95 of Regulation No 574/72	C 200b	Nos 69 and 70, 10.5.1970 OJ EC C 90 of 16.7.1970
103	29. 5.1975	C 294 22.12.1975	Implementation of Article 50(1) (a) of Regulation (EEC) No 574/72 (E 501 and E 502)	C 294	
104	29. 5.1975	C 294 22.12.1975	Implementation of Article 50(1) (b) of Regulation (EEC) No 574/72 (E 503)	C 294a	
105	19.12.1975	C 117 26.5.1976	Implementation of Article 50 of Regulation (EEC) No 1408/71	C 257a C 269a	
106	8. 7.1976	C 190 13.8.1976	Amendment of Decision No 87 of 24 September 1973 concerning the methods of operation and the composition of the Audit Board	C 121	No 86, 24.9.1973 OJ EC C 96 of 13.11.1973
107	25. 9.1975	C 221 21.9.1976	Amendments to be made to Forms E 303/0, E 303/1, E 303/2, E 303/3 and E 303/4	535	

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109	31.11.1977	C 125 30.5.1978	Amending Decision No 92 of 22 November 1973	C 139a, C 200b, C 420a	No 92, 22.11.1973 OJ EC C 99 of 23.8.1974
110	16.12.1977	C 125 30.5.1978	Amending Decision No 87 of 20 March 1973 concerning the application of Article 14 (1) (a) of Regulation No 1408/71 to the legislation applicable to workers posted elsewhere	C 88	

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