OPINION OF ADVOCATE GENERAL DARMON

delivered on 13 May 1993 *

Mr President,
Members of the Court,

1. The Tribunaux du Travail (Labour Courts), Charleroi and Brussels, have referred to this Court a number of questions on the interpretation of Council Regulation No 1408/71 [1] ('the regulation') and more particularly Article 46 thereof concerning the award of old-age and death benefits.

2. The four questions submitted by the Charleroi court in the cases of Fabrizii and Neri are identical and will therefore be examined first, at the same time. The Del Grosso case, pending before the Brussels court, which raises — in particular — the delicate issue of the conformity with Community law of the national rules against overlapping will be dealt with subsequently.

3. Mr Fabrizii, an Italian national born on 13 December 1919, was a face worker in a mine in Belgium for 26 years. Pursuant to the second and third subparagraphs of Article 10(2)(1) of Belgian Royal Decree No 50 on retirement and survivors' pensions for employed persons, of 24 October 1967 [2] ('the royal decree'), he is entitled to four additional years' employment (known as 'notional years'), enabling him to receive a complete retirement pension for mineworkers in 1975 (namely 26/30ths +4/30ths = 30/30ths).

4. In view of the fact that he did his military service in Italy, in 1989 he applied for the award of an Italian old-age pension. His application was granted by decision of 4 May 1990, taking effect as from 1 January 1980.

5. The Belgian Office National des Pensions (Belgian National Pensions Office, hereinafter 'the ONP') then reviewed Mr Fabrizii's entitlement and determined his effective insurance record as 26/30ths as from 1 January 1980. By virtue of the national anti-overlapping rule contained in the last subparagraph of Article 10(2)(1) of the royal decree, the number of additional notional years is reduced by the number of years in respect of which a worker may claim a retirement pension or equivalent advantage, in particular under the scheme of a foreign country (four years in the present case, his military service in Italy being equivalent to four years under the scheme for Belgian mineworkers).

6. It is precisely that reduction applied to his insurance record for the purpose of calculating his retirement pension that Mr Fabrizii is

* Original language: French.

1 — Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6, Annex I).

2 — *Moniteur Belge* of 27 October 1967, p. 11258, amended by Article 2 of the Law of 26 June 1972 (*Moniteur Belge* of 30 June 1972, p. 7738) and by Article 1 of the Law of 28 March 1975 (*Moniteur Belge* of 8 April 1975, p. 4138).

contesting: he claims a pension of 30/30ths, without any reduction.

7. Mr Neri, who was born on 18 December 1919, worked as an employee for 30 years under the general scheme and for four years as a miner in Belgium. He was granted an employed person's retirement pension by decision of 25 September 1984, taking effect on 1 January 1985, on the basis of an incomplete insurance record amounting to 39/45ths, Article 11a of the royal decree granting him five notional years (30 +4 +5 notional years).

8. On 14 November 1990 he was granted a retirement pension by Italy on the basis of military service completed in Italy, with effect from 1 January 1980. His period of military service is equivalent to seven years under the Belgian scheme.

9. In order that the total number of years taken into account should not exceed the full insurance record, which is limited in Belgium to 45 years, the number of additional notional years granted to him was reduced from five to four (giving 34 +7 +4 = 45 years) pursuant to Article 11b of the royal decree. Furthermore, the pension was reduced by the seven years corresponding to the Italian pension, yielding a result of 38/45ths, with effect from 1 January 1985.

10. That figure is contested by Mr Neri, who claims a pension of 39/45ths, without any reduction.

11. The Charleroi court has submitted four questions concerning (1) the method of calculating the theoretical pension referred to in Article 46(2)(a) of the regulation; (2) the method of calculating the aggregation provided for in the same provision; (3) the determination of the total length of the insurance periods within the meaning of Article 46(2)(b), and (4) the application of the national rules against overlapping. [3]

12. The terms of the first question seem to me to be very different in the two cases.

13. Where an employed or self-employed person is entitled to a pension in a Member State without relying on periods of insurance completed in other States, the old-age benefit is calculated on a two-fold basis: one calculation for the *autonomous* pension and one for the *pro rata* pension. The higher of those benefits is granted to the applicant (Article 46(1), first and second subparagraphs).

14. The first is equal to the amount of the benefit corresponding to the total length of the insurance or residence periods to be taken into account under the legislation of the country where the institution awarding the benefit is located, to the exclusion of the national anti-overlapping rules (pursuant to Article 12(2) of regulation) [4] but fully taking into account the additional notional years granted by the national legislation. [5]

3 — The wording of the preliminary questions is contained in the Report for the Hearing (II).

4 — See Article 46(1), first subparagraph, and the judgments in Joined Cases 116/80, 117/80, 119/80, 120/80 and 121/80 *RWP* v *Celestre* [1981] ECR 1737, paragraph 12, and Case 296/84 *Sinatra* [1986] 1407, paragraph 21. The amount of the benefit referred to in Article 46(1) is acquired not strictly pursuant to national legislation but by application of Community law in so far as it neutralizes the effects of the national anti-overlapping provision.

5 — See the judgment in Case C-5/91 *Di Prinzio* [1992] ECR I-897, paragraph 39.

15. The second is calculated pursuant to Article 46(2) in several stages. The first stage is the calculation of the *theoretical amount* — upon which, in this case, the dispute focuses.

16. That amount is equal to the amount of the benefit which the person concerned could claim if all the insurance periods completed by him in the various States had been completed in the State where the benefit is awarded. [6]

17. A limit is imposed, however, by Article 46(2)(c) of the regulation, pursuant to which the total length of the insurance periods is subject to a ceiling, namely the maximum period prescribed for receipt of full benefit by the legislation of that State.

18. It seems to me, therefore, that the judgment in *Di Prinzio* [7] gives us the answer to the question raised in this case:

'... in a situation such as that in the main proceedings, [8] the worker is entitled to a full pension by virtue of a Member State's legislation alone, with the result that it is not necessary to take into account periods completed by the person concerned in other Member States to supplement the periods completed by the worker under the legislation of the Member State in which the award of benefits is sought, for the purpose of the acquisition of the right to benefits.

It therefore follows that, in such a situation, the theoretical amount of benefits must be determined by the competent institution whose legislation gives a right to a full pension *without taking into account insurance periods which the worker has completed in another Member State.*' [9]

19. The theoretical amount of the benefit is thus equal to that of the autonomous benefit. No more favourable result could therefore be arrived at by application of Article 46(2) of the regulation. [10]

20. Consequently, in circumstances such as those of the Fabrizii case, the question whether the insurance periods completed abroad can be taken into account under national law in order to determine the actual insurance record for pension purposes is *irrelevant*. The plaintiff in the main proceedings has a complete insurance record of 30 years in Belgium, which makes it superfluous to grant recognition in Belgium of the period of military service completed in Italy.

21. The situation is entirely different where the worker is not entitled to a complete pension under the legislation of one Member State alone. That is in fact Mr Neri's situation. The old-age benefit of a worker covered by the legislation of two or more Member States is calculated pursuant to Article 46(2), which provides for three calculations: those of the theoretical, *pro rata* and actual benefits.

6 — See Article 46(2)(a)

7 — Cited in footnote 5.

8 — These circumstances are wholly analogous: the worker concerned is entitled to a complete pension under national law alone; the autonomous benefit — no account being taken of national anti overlapping provisions — is equal to a complete pension, namely 30/30ths

9 — Paragraphs 25 and 26, emphasis added, see also paragraphs 43 and 48 of the same judgment. See, to the same effect, paragraph 19(b) of the Opinion of Advocate General Lenz in Case C 31/92 *Larsy*, pending before the Court

10 — *Di Prinzio* cited above, paragraphs 39, 44, 48 and 58.

22. As regards calculation of the theoretical amount, the national court raises the question whether it is appropriate to take account of periods of activity abroad which would not be taken into consideration by national law for calculation of the pension.

23. Pursuant to Article 46(2)(a), the theoretical amount is calculated by adding together the various insurance or residence periods completed under the legislation of the various Member States as if they had all been completed in the Member State where the institution awarding the pension is located, subject to the limit of the maximum period required by the legislation of the Member State where the benefit is awarded for receipt of a full benefit. [11]

24. There is no requirement that the insurance periods completed in the other Member States should be, as it were, 'convertible' or 'transposable' into the domestic law of the State where the institution dealing with the award of the benefit is located.

25. Even if the period of military service completed in Italy gave rise to no entitlement to any benefit under Belgian legislation, it would have to be taken into account in calculating the theoretical pension. In general, periods of insurance in a Member State which would not give rise to any entitlement if they had been completed in Belgium must also be taken into account.

26. The opposite view would run counter to the principle referred to in the seventh and eighth recitals in the preamble to the regulation, according to which the persons concerned should be entitled to all the benefits acquired.

27. A worker cannot be prevented from relying, under Article 46, on an insurance period completed in a Member State merely because, if it had been completed under the same conditions in the Member State awarding the benefit, it would not be taken into account by the law of that State. The application of Community law cannot be dependent upon national legislation which might paralyse it entirely.

28. The expression 'in accordance with the provisions of the legislation which it administers' does not mean that the periods of insurance completed in the other Member States should be such as to give rise to entitlement if Belgian legislation were applicable.

29. The insurance periods to be taken into consideration are, pursuant to Article 1(r) of Regulation No 1408/71, defined by reference to the legislation under which they were completed.

30. In so far as the legislation of a Member State recognizes military service completed by workers there as periods of insurance, [12] they must be taken into account for calculation of the theoretical amount, regardless of how such periods are viewed by the State where the authority awarding the benefit is located.

31. That is indeed the interpretation adopted by the Court in relation to Article 67 of the

11 — Article 46(2)(c).

12 — Which is incontestable — see p. 14 of the Commission's observations.

regulation in respect of the aggregation of periods of insurance or employment, even though that article is so drafted that it appears to require the periods of employment completed in another Member State to be regarded as periods of insurance in the State where the benefit is awarded.

32. Thus, the Court held in its judgment in *Frangiamore*, [13] that:

'... it is clear from Article 1(r) of the regulation that, in order to ascertain whether a period of employment may be assimilated to a period of insurance for the purposes of the application of the rule concerning aggregation set out in Article 76(1), *reference must be made to the legislation under which that period was completed*.' [14]

33. Moreover, Article 13(2)(c) of the regulation provides that 'a person called up ... for service in the armed forces ... of a Member State shall be subject to the legislation of that State ...'.

34. Finally, as the national court itself pointed out in its second question, if, in calculating the theoretical pension, account is taken only of the insurance periods regarded as such by the legislation of the Member State where the authority awarding the pension is located, that is tantamount to negating the principle of *aggregation*.

35. I conclude from this that the theoretical amount of the benefit is based on all the insurance periods which are accepted as such by the legislation under which they were completed.

36. Since I am proposing that the answer to the first question should be in the negative, the second need not be considered.

37. I now turn to the last two questions.

38. As we know, the *pro rata* pension referred to in Article 46(2)(b) is equal to the theoretical amount multiplied by the fraction A/B in which the numerator is equal to the insurance periods completed before materialization of the risk under the legislation of the State awarding the benefit, and the denominator is equal to the total of the insurance periods completed before materialization of the risk under the legislation of all the Member States involved. [15]

39. What insurance periods are to be taken into account for the denominator? Must regard be had to all insurance periods recognized as such by the legislation of all the Member States? That is the thrust of the third question.

40. The Court has already answered that question by stating that:

'the competent institution then calculates, in accordance with Article 46(2)(b) of Regu-

13 — Case 126/77 *Frangiamore* v *Office National de l'Emploi* [1978] ECR 725

14 — Paragraph 9, emphasis added. See also, with regard to Council Regulation No 3 of 25 September 1958 on social security for migrant workers, the judgment in Case 2/72 *Murru* [1972] ECR 333

15 — See my Opinion in *Di Prinzio*, cited above, paragraph 62

lation No 1408/71, the actual amount of the benefit on the basis of the theoretical amount, and in the ratio which the length of the periods of insurance completed before the risk materializes under the legislation administered by it bears to the total length of the periods of insurance completed under the legislation of *all* of the Member States concerned before the risk materialized.' [16]

41. There is thus no requirement that those periods should all be recognized as qualifying insurance periods by the legislation of the Member State awarding the benefit.

42. The issue raised by the last question is whether, in determining the ratio of the lengths of the periods completed under national legislation, the competent institution may apply its own rules against the overlapping of foreign benefits.

43. In other words, in the present case, may the institution in question, in determining the numerator, apply the relevant national rules, such as Articles 10(2) and 11b of the royal decree and thus reduce the total number of additional years of notional employment by the number of years in respect of which the worker may claim a pension in another Member State?

44. Recently, in its judgment of 11 June 1992 in *Di Crescenzo and Casagrande*, [17] the Court pointed out that:

'Pursuant to Article 12(2) of Regulation No 1408/71, *the provisions for reduction* of benefits laid down in the legislation of a Member State where a benefit overlaps with other social security benefits acquired under the legislation of another Member State are not applicable where the person concerned receives old-age benefits of the same kind paid in accordance with Article 46 of that regulation.

...

... for the purposes of determining the benefit payable under Community law, the competent institution must not take account of the national rules against overlapping pursuant to Article 12(2) of the regulation, but, if necessary, adjust the amount of the benefit payable, pursuant to Article 46(3).' [18]

45. The *ratio legis* of Article 46 compels that solution: it is not permissible for the institution of a Member State to apply national rules for the aggregation and apportionment of periods of insurance which are less favourable to the worker than the Community rules when the object of the exercise is precisely to calculate the pension in accordance with Article 46 of the regulation. [19]

46. Are Article 10(2)(1), last subparagraph, or Article 11b of the royal decree provisions for reduction within the meaning of Article 12(2) of the regulation?

16 — *Di Prinzio*, cited above, paragraph 49, emphasis added.
17 — Joined Cases C-90/91 and C-91/91 [1992] ECR I-3851.
18 — Paragraphs 18 and 35, emphasis added.
19 — See the judgment in Joined Cases 116/80 to 121/80 *RWP* v *Celestre*, cited above, paragraph 15d.

47. The case-law of the Court is consistent on this point:

'... a national provision which reduces the additional years of notional employment from which the worker may benefit by the number of years in respect of which he may claim a pension in another Member State constitutes a provision for reduction of benefit within the meaning of Article 12(2) of Regulation No 1408/71 ...'. [20]

48. It follows that the institution awarding the benefit under Article 46(2) must not take account of national anti-overlapping provisions in calculating either the theoretical pension or the pro rata pension.

49. That solution is further confirmed by the fact that Article 46 lays down Community provisions against overlapping. It is not affected in any way by the fact that part of the period allowed by national legislation comprises 'notional' years. The Court has in fact held, since the judgments in *Ruzzu* and *Romano*, [21] that aggregation is possible even where notional and actual periods are superimposed.

50. Let us now consider the *Del Grosso* case which relates principally to the compatibility of Article 10a of the royal decree with Articles 7, 48 and 51 of the Treaty.

51. Article 10a of the royal decree provides that:

'Where an employed worker is entitled to claim a retirement pension under this decree and a retirement pension or benefit in its stead under one or more other schemes and the total of the fractions expressing the size of each of those pensions exceeds one, the work record which is taken into consideration in order to calculate the retirement pension as an employed worker shall be reduced by the number of years needed in order to bring that total down to one.

...

For the purposes of the implementation of this article, the expression "other scheme" shall be deemed to be any other Belgian retirement pension and survivor's pension scheme, other than that for self-employed workers, and any other analogous scheme of a foreign country ...'. [22]

52. Mr Del Grosso, an Italian national born on 10 December 1922, worked as an employee in Belgium for 41 years. By decision of 13 July 1987, the ONP granted him an interim old-age pension calculated on the basis of 44 years of insurance, three years of 'notional' insurance being added to the actual years of insurance pursuant to Article 11a of the royal decree. Taking account of seven years of actual insurance in Italy, the ONP, by decision of 29 April 1988, reduced the amount of the pension (1) by discounting

20 — Paragraph 21 of the judgment in *Di Crescenzo and Casa grande*, cited above. See also paragraph 36 of *Di Prinzio*, cited above, citing the judgments in Case 58/84 *Romano* [1985] ECR 1679 and Case 117/84 *Ruzzu* [1985] ECR 1697

21 — Cited in footnote 20

22 — This provision was inserted in Royal Decree No 50 by Article 2 of Royal Decree No 205 of 29 August 1983

the notional years pursuant to Article 10(2)(1), last paragraph, of the royal decree, (2) by reducing the 48 years by three years in order to arrive at the figure of one pursuant to Article 10a of the royal decree, since Mr Del Grosso's insurance record could not, under Belgian law, exceed 45/45ths, and (3) by calculating the Belgian pension on the basis of an insurance record of 38/45ths (45/45ths — 7/45ths), in order to take account of the Italian pension.

53. Mr Del Grosso contests the limitation of his working record to 45 years since there is, in his case, no 'unjustified overlapping' but distinct periods of *actual* insurance which are not superimposed and must qualify for addition to each other. He claims entitlement to a Belgian pension calculated on an insurance record of 41/45ths.

54. Ostensibly, his situation is paradoxical since, because of the years he worked abroad, the Belgian State pays a pension lower than that which he would have received if he had never left Belgium.

55. Is the principle of a single insurance record therefore contrary to Articles 7, 48 and 51 of the Treaty and to Articles 12(2) and 46 of the regulation? That is what the national court wishes to know.

56. Let us bear in mind that, under Article 177, the Court has no jurisdiction to apply the rules of Community law to a specific case and to classify provisions of national law in the light of a particular rule. Its task in such circumstances is to 'provide the national court with an interpretation of all the relevant provisions of Community law which might be useful in assessing the effects of such provisions of national law'. [23]

57. How can this principle of a single insurance record be defined?

58. Does the concept of provision for reduction or a provision against overlapping within the meaning of Article 12(2) of the regulation include a provision such as Article 10a of the royal decree which imposes a ceiling on insurance periods and reduces the number of additional years of employment to which a worker may be entitled?

59. The Court has already held that such a provision is a provision against overlapping where it entails a reduction in the additional years of notional employment. [24] *A fortiori*, that must be the case where it gives rise to a reduction in actual years of insurance.

60. In an unharmonized area of the law such as social security, the actual principle of national anti-overlapping provisions and a ceiling for an insurance record is not, in itself, contrary to Community law.

61. The authority of a national legislature to limit overlapping is expressly recognized by Article 12(2) of the regulation. Article 46(2)(c) of that regulation also provides that internal legislation may impose a maximum period of insurance, which if exceeded will

23 — See paragraph 8 of the judgment in Case 37/86 *Van Gastel* [1987] ECR 3589.

24 — See the judgments in *Romano* (paragraph 15) and in *Ruzzu* (paragraph 16), cited in footnote 20.

not result in entitlement to a pension greater than the full pension.

62. Moreover, the Court has held in its judgment in *Pian* [25] that:

'... where an employed or self-employed person receives a pension by virtue of national legislation alone, the provisions of Regulation No 1408/71 do not preclude that legislation alone from being applied to him in its entirety, *including any national rules against the overlapping of benefits*, unless the application of that national legislation proves to be less favourable to him than that of the rules laid down in Article 46 of Regulation No 1408/71.' [26]

63. However, for calculation of the benefit due under Community law, the national anti-overlapping rules must be set aside where the person concerned is entitled to benefits of the same kind, [27] pursuant to the second sentence of Article 12(2) of the regulation.

64. It follows that Articles 12(2) and 46 of the regulation do not prevent the application of national anti-overlapping provisions where, in the event of overlapping benefits, the old-age pension is calculated in accordance with national legislation alone.

65. What is the position regarding the Treaty provisions cited by the national court?

66. As we know, Article 7, which prohibits any discrimination on grounds of nationality, is applicable independently only to situations governed by Community law in respect of which the Treaty does not lay down any specific rules. [28]

67. That provision was implemented by Articles 48 to 51 so far as concerns the free movement of employed persons.

68. On the basis of the interpretation of those articles to be given by the Court, the national court will have to decide whether or not Article 10a of the royal decree, which provides for reduction of the years of insurance taken into account where the total length of the periods of insurance in the various Member States exceeds a full insurance record (in this case, 45/45ths), is compatible with those articles.

69. The Court has held, with regard to those articles, that

'... although, as the Court has held, Article 51 of the Treaty leaves in being differences between the social security systems of the Member States and ... in the rights of the people working there ... it is also settled that the aim of Articles 48 to 51 of the Treaty would not be attained if, as a consequence of the exercise of their right to freedom of movement, workers were to lose the

25 — Case C-108/89 [1990] ECR I-1599.

26 — Paragraph 16, emphasis added.

27 — See the judgment in *Di Prinzio*, cited above, paragraphs 38, 46 and 55, and the judgment in *ONP v Di Crescenzo and Casagrande*, cited above, paragraphs 20 and 27. This rule was embodied in Article 46(b)(1) of Council Regulation (EEC) No 1248/92 of 30 April 1992 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1992 L 136, p. 7).

28 — Case 305/87 *Commission v Greece* [1989] ECR 1461

advantages in the field of social security guaranteed to them by the laws of a single Member State; such a consequence might discourage Community workers from exercising their right to freedom of movement and would therefore constitute an obstacle to that freedom.' [29]

70. Article 51 thus requires a person who has worked in several Member States not to be less well treated, from the social security point of view, than a person who has spent his entire working life in the same Member State. On the other hand, the former should not necessarily find himself in a more favourable situation than the latter. [30]

71. Two observations are appropriate at this stage.

72. It should be noted in the first place that the application of national law retains all its advantages with regard to the award of a migrant worker's pension since, where the worker is entitled to a pension under national legislation alone, he is entitled to whichever of the following benefits is the higher: *either* the one which he may claim under the legislation of that one State in its entirety, including any rules in that legislation against the overlapping of benefits, *or* the benefit which he could claim under the provisions of the regulation in its entirety. [31]

73. Secondly, if application of the Community scheme proves less favourable to the worker than that of the Member State in question, only national law, including its anti-overlapping provisions, must be applied. [32]

74. Consequently, the provisions of the regulation do not in principle preclude the application, where benefits paid by the competent institutions in two or more Member States overlap, of national anti-overlapping provisions where the old-age pension is calculated solely in accordance with the national legislation governing the competent institution, without recourse to Community law.

75. In addition, as I have pointed out, that law must not place the migrant worker in a position less favourable than that of someone who has remained in only one Member State.

76. What is that position as far as Article 10a of the royal decree is concerned?

77. That article displays two features: (1) it applies without distinction to national workers and to those of other Member States; (2) within the limits of the ceiling, the insurance record in the Member State awarding the benefit may be reduced by the number of years worked under another scheme, *whatever the Member State to which that scheme belongs*, including therefore the State awarding the benefit.

29 — Case C-349/87 *Paraschi* v *Landesversicherungsanstalt Württemberg* [1991] ECR I-4501. See also my Opinion in Case C-165/91 *S. J. M. Van Munster*, paragraphs 37 to 40, now pending before the Court.

30 — See, to that effect, the Opinion of Advocate General Jacobs in Case C-199/88 *Cabras* [1990] ECR I-1044.

31 — See paragraphs 15 to 17 of the judgment in *ONP* v *Di Crescenzo and Casagrande*, cited above.

32 — That is the position in the *Del Grosso* case. For another example, see the judgment in *Sinatra*, cited above, paragraph 13.

78. In other words, where the aggregated insurance periods exceed a full insurance record, they will be reduced in order to bring the total down to a full insurance record under the same conditions whether the worker is covered by several schemes in the State where the institution awarding the benefit is located or is covered by one scheme of that State and schemes of other Member States.

79. In order to determine the insurance record of the person concerned, the national court will have to decide whether the application of the anti-overlapping provision in Article 10a of the royal decree yields a result which is at least as favourable where all the years actually worked were worked in several Member States as where they were worked only in the State where the institution awarding the benefit is located.

80. In conclusion, provided that it is does not prevent a migrant worker from having an insurance record at least equal to that which he would have obtained if he had completed the same total period of work without ever leaving one of the Member States, a national anti-overlapping provision is not contrary to Articles 48 and 51 of the Treaty.

81. The Court considered it appropriate to ask the Commission a question concerning the effects of Regulation (EEC) No 1248/92 of 30 April 1992 amending Regulation No 1408/71, in particular Articles 12 and 46 to 51.

82. Regulation No 1248/92 confers no entitlement in respect of the period prior to 1 June 1992 [33] to workers who were awarded their pension before that date.

83. It is therefore for the national court, if it considers it appropriate to do so, to request an interpretation from this Court of that new provision.

84. Consequently, I suggest that the Court rule as follows:

I — *In Joined Cases C-113/92 and C-114/92*

(1) (a) The theoretical amount referred to in Article 46(2)(a) of Regulation (EEC) No 1408/71 corresponds to the aggregation of the insurance periods or residence periods recognized as such by the legislation under which they were completed, even if those periods are not recognized as insurance periods under the legislation administered by the institution awarding the pension.

33 - See Article 4 of that regulation and the new Article 95a(4) of Regulation No 1408/71

(b) However, where the person concerned is entitled to a full pension solely under the legislation governing the competent institution, the latter is not required to take account of the periods completed under the legislation of other Member States.

(2) In order to determine the actual amount of the benefit referred to in Article 46(2)(b) of the abovementioned regulation, the competent institution must take account, in the denominator, of all the insurance or residence periods completed and accepted as such by the legislation of all the Member States.

(3) A national provision which reduces the additional years of notional employment to which a worker may be entitled by reference to the number of years for which he may claim a pension in another Member State constitutes a provision for reduction within the meaning of Article 12(2) of Regulation (EEC) No 1408/71, which must be disapplied where Article 46 of the same regulation is applicable.

II — *In Case C-156/92*

(1) Articles 12(2) and 46 of Regulation (EEC) No 1408/71 do not preclude a national provision reducing the length of the working record to be taken into account in calculating a retirement pension in such a manner that the total number of years worked in the State where the institution awarding the benefit is located and in any other Member State does not exceed a specified ceiling.

(2) Articles 48 and 51 of the EEC Treaty do not preclude such a provision on condition that it applies without distinction to the years worked in the Member State awarding the benefit and the years worked in any other Member State.