OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 16 April 1991 *

Mr President,
Members of the Court,

1. The applicant in the main proceedings is a British national who worked in Ireland between January 1981 and August 1982. In October 1983 he left his son in Ireland and returned to the United Kingdom, where he was employed from 15 November 1983 to 13 April 1984. Following a period of unemployment between 16 and 29 April 1984, he was self-employed from 30 April to 29 July of that year.

2. The competent national authorities refused to award him child benefit in respect of his son for that period, on the ground that the child was not in the United Kingdom at that time. The matter was finally brought before the Court of Appeal in London, which has referred three questions to the Court of Justice for a preliminary ruling.

3. I would refer to the Report for the Hearing for details of the relevant national and Community law.

The first question

4. The first question is worded as follows:

'Where

(1) a person is self-employed, and

(2) is entitled (under national law) to unemployment benefit upon the involuntary cessation of such self-employment, and

(3) is so entitled by reason of contributions paid or credited as an employed person, is that person to be regarded as an employed person for the purpose of Article 73 read together with Article 1 of Council Regulation No 1408/71 of 14 June 1971 on the application of social security schemes?'

5. The problem raised has its origin in Article 73(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416), which, in the version applicable at the relevant time,[1] provides that

'an employed person subject to the legislation of a Member State other than France shall be entitled to the family benefits provided for by the legislation of the first Member State for members of his family residing in the territory of another Member State, as though they were residing in the territory of the first State'.

6. It is therefore clear that if the applicant in the main proceedings had been an employed person between 30 April and 29

* Original language: French.

1 — See Council Regulation (EEC) No 1390/81 of 12 May 1981 extending to self-employed persons and members of their families Regulation (EEC) No 1408/71 (OJ 1981 L 143, p. 1).

July 1984, the fact that his son was not residing in the territory of the United Kingdom could not be relied on as a reason for refusing to pay him family benefits in respect of that period.

7. It is, however, not disputed that Mr Middleburgh was, during the period in question, a self-employed person within the meaning of the relevant national law. He would nevertheless have been entitled to receive unemployment benefit, had he found himself out of work, not by virtue of his status as a self-employed person, since such persons were not so entitled, but by virtue of contributions which he had previously made as an employed person.

8. The question to be addressed is therefore whether that circumstance is sufficient to enable the applicant in the main proceedings to be regarded as an employed person within the meaning of Article 73.

9. The applicant relies first on two arguments based on the wording of Article 1 of Regulation No 1408/71, since he believes that the general definitions given there are applicable to the rest of the regulation and therefore, in particular, to Article 73.

10. The applicant considers that he comes within the category defined in Article 1(a)(ii) inasmuch as he was compulsorily insured under a generally applicable scheme and could 'be identified as an employed or self-employed person by virtue of the manner in which such scheme is administered or financed' While this provision, in view of its wording and the facts of the case, enables us undoubtedly to conclude that Mr Middleburgh is a worker, it does not constitute proof that he is to be regarded as an employed person.

11. During the period in question, the applicant was insured as a self-employed person, and this is borne out by the fact that he paid his contributions as a self-employed person, quite irrespective of the fact that he also had certain rights by virtue of his previous status as an employed person. It is thus not possible to conclude that he was, during the relevant period, insured under a scheme administered or financed in such a way as to identify him as an employed person.

12. The applicant's second textual argument comes up against a similar objection. He contends that if he does not come under subparagraph (ii) of Article 1(a) of Regulation No 1408/71 he must come under subparagraph (i), which states that 'employed person' and 'self-employed person' mean any person

'who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed or self-employed persons'.

13. Like subparagraph (ii), that provision provides no indication that the applicant ought to be regarded as an employed person in respect of the period when he was insured as a self-employed person, even though he was at the same time insured against the risk of unemployment by virtue of compulsory contributions which he had previously made in his former capacity as an employed person.

14. The applicant also relies on the judgment in *Brack*, in which the Court gave a broad interpretation of the concept of a worker within the meaning of Article 1 of Regulation No 1408/71. It must be recalled, however, that that case differed from the present one in several respects.

15. In the first place, that case did not concern a distinction within the scope of Article 1, but rather the demarcation of that scope in relation to persons who are not entitled to claim benefits under the regulation. Furthermore, the Court explicitly stated that its interpretation of Article 1 was valid for the purposes of the application of Article 22 of the regulation, which deals with sickness insurance, a benefit linked to contributions which Mr Brack had paid but the benefit of which he risked losing by virtue solely of the place in which the risk materialized. In contrast, the family benefit at issue in the present case is not linked to such contributions.

16. Finally, the applicant in the main proceedings relies on a combined reading of Articles 73 and 74 of Regulation No 1408/71. In his opinion, those articles show that an applicant ought to be entitled to family benefit if he is employed and pays the appropriate contributions, or if he is unemployed but entitled to benefits paid on the basis of such contributions. In those circumstances, he says, it is unreasonable to refuse such benefit to an applicant who satisfies one condition under the former supposition, namely, that he has work, and another under the latter supposition, namely, that he is entitled to draw unemployment benefit.

17. It is, however, inconceivable that a person may, during one and the same period, be both a self-employed person and an unemployed person. Since Mr Middleburgh was clearly not unemployed, he cannot rely on Article 74. Furthermore, he cannot rely on Article 73 either, since that article applied only to employed persons, as the Court expressly confirmed at paragraph 8 of its judgment in *Delbar*.[2] I have just shown that the applicant was a self-employed person, even though he was insured against the risk of unemployment by virtue of contributions which he had paid earlier as an employed person.

18. I would therefore suggest that the Court answer the first question as follows:

'Where a person is self-employed and is entitled (under national law) to unemployment benefit upon the involuntary cessation of such self-employment, and is so entitled by reason of contributions paid or credited as an employed person, that person is not to be regarded as an employed person for the purpose of Article 73 read together with Article 1 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes.'

The second question

19. The second question is worded as follows:

2 — Judgment of 5 December 1989 in Case C-114/88 *Delbar* v *Caisse d'Allocations Familiales de Roubaix-Tourcoing* [1989] ECR 4067.

'If a national of Member State A resides in Member State B for a period and, whilst there, (a) works as an employed person and (b) co-habits with and has a child by a national of Member State B, is it a breach of either Article 48 or Article 52 of the Treaty for Member State A to refuse to pay family benefit in respect of the child on the sole ground of the child's absence from Member State A during a period when the national has returned to Member State A and is self-employed there, but the child remains in Member State B?'

20. I share the view taken by the Commission and the defendant in the main proceedings that since the question referred makes it clear that the applicant returned to the United Kingdom in a self-employed capacity, it is not necessary to examine the problem with particular reference to Article 48.

21. It became apparent during the proceedings that Mr Middleburgh's basic premiss is that a national of another Member State who establishes himself in the United Kingdom can, by virtue of the direct effect of Article 52, obtain family benefit in respect of his children who remain in his own State of origin; Mr Middleburgh therefore wishes to be treated in the same way as such non-nationals. I shall first of all examine this theory (part 1), and then go on to examine the question whether the problem arises in a different way in the case where the worker is a national of the State in which he settles after having worked in another Member State (part 2).

Part 1

22. In *Delbar*, which I have just cited, the Court was faced with the situation of a Belgian lawyer who carried on his profession in France but whose children remained in Belgium and were, for that reason, refused French family benefits. The national court asked whether that was compatible with Article 51 of the Treaty. The Court replied to that question in the affirmative, on the ground that Article 51 applies only to employed persons. Although the national court had made no mention of Regulation No 1408/71, the Court of Justice felt obliged to point out that although Regulation No 1408/71 had been extended to cover self-employed persons, the scope of Article 73 of that regulation had not yet been amended at the time of the relevant facts and it remained applicable to employed persons alone. Since the judgment in *Delbar* is more recent than the two *Pinna* judgments,[3] if the Court had had any doubts regarding the compatibility of Article 73 of the regulation in its previous form with Article 52 of the Treaty (since the applicant was a self-employed person) it would certainly have made any such doubt apparent in an obiter dictum, in order to prompt the national court to refer a further question. By remaining silent, the Court instead created the impression that it agreed with the view expressed by Advocate General Tesauro, namely that unfortunately

'as Community law stands at present, there is no foundation for Mr Delbar's claim that he has discovered a legal basis in the EEC Treaty or in the secondary legislation to overcome the obstacle represented by the lack of any obligation to pay him family

3 — Judgment of 15 January 1986 in Case 41/84 *Pinna* v *Caisse d'Allocations Familiales de la Savoie* [1986] ECR 1, and judgment of 2 March 1989 in Case 359/87 *Pinna* v *Caisse d'Allocations Familiales de la Savoie* [1989] ECR 585.

allowances by reason of the fact that his children reside in a country other than that in which he works as a self-employed person. Indeed, the applicable legislation leaves no room for any doubt, regarding either interpretation or possible illegality' (paragraph 4 of the Opinion, [1989] ECR 4067, at p. 4073).

23. I believe that this view of the matter was and remains correct in every respect. In view of the fact that Article 51 applies only to employed persons and there is no parallel provision with regard to self-employed persons, the measures which the Council was required to adopt by virtue of that article, which became the subject in turn of Regulations No 3/58 and No 1408/71, could deal only with employed persons. The situation did not change until the Council observed that it was necessary to coordinate social security schemes applicable to self-employed persons in order to attain one of the objectives of the Community, and that it could therefore invoke Article 235 in order to extend Regulation No 1408/71 to self-employed persons.

24. The view put forward by Mr Middleburgh is in substance that the abovementioned regulations are merely declaratory in nature: they do no more than define rights which in any case are derived directly and immediately from the prohibitions of discrimination in Articles 48 and 52. This, in his opinion, is in particular also the case with regard to a migrant worker's right to receive family benefits in respect of his children who have remained in the country of origin. For that reason, these two articles are not only directly effective in so far as they confer an entitlement to 'equal treatment with nationals', but they may also be directly relied on by individuals in order to obtain an advantage which the Member State of establishment does not grant to its own nationals, in the present case that of 'exporting' family benefits. I think we can use this expression with regard to family benefits granted to a worker in respect of his child residing in another State. Since family benefits are intended to be used for the maintenance of the child, they must be transferred to the State in which that child resides. We thus find ourselves in the type of situation referred to in Article 51(b) of the Treaty, which requires the Council to adopt measures to secure

'payment of benefits to persons resident in the territories of Member States'.

25. I cannot believe that Articles 48 and 52, in the context of a problem as complicated as that of the 'exportation' of social security benefits, can be regarded as precise and unconditional provisions. Admittedly, they do lay down the rule that nationals of other Member States must be treated in the same way as nationals of the host State, which

'is one of the fundamental legal provisions of the Community. As a reference to a set of legislative provisions *effectively applied* by the country of establishment to its own nationals, this rule is, by its essence, capable of being directly invoked by nationals of all the other Member States'.[4]

On the other hand,

4 — Judgment of 7 February 1979 in Case 136/78 *Ministère Public* v *Auer* [1979] ECR 437, at p. 449.

'it may be seen from the provisions of Articles 54 and 57 of the Treaty that freedom of establishment is not completely ensured by the mere application of the rule of national treatment, as such application retains all obstacles other than those resulting from the non-possession of the nationality of the host State and, in particular, those resulting from the disparity of the conditions laid down by the different national laws for the acquisition of an appropriate professional qualification... With a view to ensuring complete freedom of establishment, Article 54 of the Treaty provides that the Council shall draw up a general programme for the abolition of existing restrictions on such freedom and Article 57 provides that the Council shall issue directives for the mutual recognition of diplomas, certificates and other evidence of qualifications'. [5]

26. I believe that Regulation No 1408/71 plays the same role in relation to the obstacles arising from differences in national social security legislation as directives on the mutual recognition of diplomas play in respect of differences in national law regarding the acquisition of professional qualifications.

27. Counsel for the United Kingdom was quite correct in pointing to the complex problems posed by the 'exportation' of family benefits. Regulation No 1408/71 and Regulation No 574/72, which lays down the procedure for implementing the former, provide a concrete illustration of this.

28. It thus proved necessary to adopt measures in order to ensure that family benefits are in fact applied for the maintenance of the members of the family intended to benefit from them (Article 75(1)(b) of Regulation No 1408/71) and to avoid overlapping family benefits in the case where, by virtue of the pursuit of an occupational activity by the mother, who has remained in the worker's State of origin, family benefits are also payable by virtue of the legislation of the Member State on whose territory the children are residing (Article 76). Where a worker becomes entitled at a particular moment to a pension under the legislation of a number of Member States, it is necessary to determine under which State's legislation family benefits are to be paid (Article 77 of the regulation). Similar problems arise after the death of the worker or person entitled to a pension (Article 78 of the regulation). Indeed, the problem of aggregation of periods completed under the legislation of two or more States may arise even in the sphere of family benefits. The law of the State of establishment may make the acquisition of the right to benefits subject to the completion of periods of insurance, employment or self-employment, and it may be vital to provide for a system which permits account to be taken in a reliable way of periods completed in another Member State (Article 72 of Regulation No 1408/71).

29. It was without a doubt for these reasons that the persons who drafted the Treaty included, alongside Article 48, establishing the principle that all discrimination based on nationality should be abolished, Article 51, which provides for the adoption of 'such measures... as are necessary to provide freedom of movement for workers... [by making] arrangements to secure for migrant workers and their dependents' the aggregation of periods and the payment of

5 — Judgment of 28 June 1977 in Case 11/77 *Patrick* v *Ministre des Affaires Culturelles* [1977] ECR 1199, at paragraph 1 of the summary.

benefits in the territory of other Member States.

30. Just as an employed person cannot derive direct rights from Article 48 where the social security legislation of several Member States is involved or where benefits have to be exported, a self-employed person cannot derive such rights from Article 52.

31. The judgment in *Pinna I*, on which Mr Middleburgh has placed particular reliance, does not justify any different conclusion. In that judgment the Court ruled that Article 73(2) of Regulation No 1408/71 was invalid because it provided that employed persons from other Member States employed in France could receive benefit from the French authorities only in the amount granted under the legislation of the State in which the children were resident. The Court did take the view that such a rule constituted covert discrimination because

'the problem of members of the family residing outside France arises essentially for migrant workers'.

32. However, it was not the French legislation that the Court was criticizing. On the contrary, it held that

'Article 51 of the Treaty provides for the coordination, not the harmonization, of the legislation of the Member States. As a result, Article 51 leaves in being differences between the Member States' social security systems and, consequently, in the rights of persons working in the Member States. It follows that substantive and procedural differences between the social security systems of individual Member States, and hence in the rights of persons working in the Member States, are unaffected by Article 51 of the Treaty'. (paragraph 20 of the judgment)

33. On the contrary, what the Court wished to censure was the fact that

'Article 73 of Regulation No 1408/71 creates two different systems for migrant workers depending on whether they are subject to French legislation or to the legislation of another Member State. Accordingly, *it adds to the disparities caused by national legislation* and, as a result, impedes the achievement of the aims set out in Articles 48 to 51 of the Treaty'

34. Consequently, the Court merely concluded that the criterion set out in Article 73(2), which provides for payment of benefits at the rate in force in the State of residence of the children and is not of such a nature as to secure equal treatment as required by Article 48,

'therefore may not be employed *within the context of the coordination of national legislation which is laid down in Article 51* of the Treaty with a view to promoting the free movement of workers within the Community in accordance with Article 48'. (paragraph 24)

35. Similarly, the judgments in *Bronzino* and *Gatto* (judgments of 22 February 1990 in Cases C-228/88 and C-12/89, [1990] ECR I-531 and I-557) fall quite expressly (see paragraph 15 of both judgments) within the exclusive context of Article 73 of Regulation No 1408/71.

36. The Commission has also attached a great deal of importance to the judgment in *Segers* [6] and to those in *Stanton* and in *Wolf*. [7] However, I do not believe that these judgments have any value as precedents with regard to the case now before the Court. The *Segers* case concerned a simple *request for admission* to the general scheme of sickness insurance in the State of establishment. In the *Stanton* and *Wolf* cases the applicants sought, on the contrary, to be *exempted* from the insurance scheme for self-employed persons in the State concerned. In none of those cases was there a problem concerning the 'exportation' of social security benefits, aggregation of periods, etc.

37. It remains for me to say a few words concerning the argument which Mr Middleburgh draws from Article 53 of the Treaty, which provides that Member States shall not introduce any new restrictions on the right of establishment in their territories of nationals of other Member States. In my view that provision is not applicable to the present case, since the British measure falls within the sphere of social legislation. This is not a sphere in which harmonization is prescribed by the Treaty, and the Member States are therefore free to amend their legislation so long as they comply with coordination measures adopted at Community level. With regard to the problem at present before the Court, the legislation was coordinated only in 1989, [8] that is to say, after the amendment to the British legislation.

38. For those reasons, I am of the opinion that during the material period Article 52 of the Treaty did not require the British authorities to grant to a national of another Member State who had established himself in the United Kingdom or, *a fortiori*, to a British national returning to his country child benefit in respect of a child residing in another Member State.

Part 2

39. The Court will now of course have realized that in my view the concept of covert discrimination, which it has applied in a number of other contexts, cannot play any role with regard to a problem of 'exportation' of social security benefits.

40. The applicant and the Commission nevertheless rely on the Court's case-law to the effect that Article 52, as a specific expression of the principle of equal treatment,

'prohibits not only overt discrimination by reason of nationality but also covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result' (judgment of 5 December 1989 in Case C-3/88, *Commission* v *Italy* [1989] ECR 4035, at paragraph 8).

41. In case the Court may nevertheless be tempted to adopt the point of view of the applicant and the Commission, I should therefore examine, in the alternative, whether the principle in question is also applicable where the person relying on

6 — Judgment of 10 July 1986 in Case 79/85 *Segers* v *Bedrijfsvereniging voor Bank- en Verzekeringswezen, Groothandel en Vrije Beroepen* [1986] ECR 2375.

7 — Judgments of 7 July 1988 in Case 143/87 *Stanton* v *INASTI* [1988] ECR 3877, and in Joined Cases 154 and 155/87 *RSVZ* v *Wolf and Others* [1988] ECR 3987.

8 — Council Regulation (EEC) No 3427/89 of 30 October 1989 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 (OJ 1989 L 331, p. 1).

Article 52 is a national of the State in which he or she settles after having worked abroad.

42. It is true that in its judgment of 3 October 1990 in Case C-61/89, *Bouchoucha*, at paragraph 13, the Court reiterated that

'the scope of Article 52 of the EEC Treaty cannot be interpreted in such a way as to exclude from the benefit of Community law the nationals of a given Member State where the latter, owing to the fact that they have lawfully resided on the territory of another Member State and have there acquired an occupational qualification which is recognized by the provisions of Community law, are, with regard to their Member State of origin, in a situation which may be regarded as equivalent to that of any other persons enjoying the rights and liberties guaranteed by the Treaty'.[9]

43. Mr Middleburgh has 'availed himself of the rights to freedom of movement and establishment' (see paragraphs 20 of the judgments in *Knoors* and *Broekmeulen*). Has he thereby become entitled to receive child benefit in his State of origin irrespective of where his child is residing?

44. It may first be observed that what, in the context of Article 52 of the Treaty, ought to form the basis of Mr Middleburgh's entitlement to British family benefits is not the fact that he went, as a British national, to work in another Member State, but rather the fact that on completion of his work in Ireland, he returned to his State of origin: it is in that State that he intends to exercise his right of establishment which forms the basis for his claim. It is not obvious that the right of a national of a Member State to return to his or her State of origin after having worked in another Member State is one which derives from the rules of Community law relating to freedom of movement; nor is it evident that the conditions under which such a right must be exercised are governed by those rules.

45. In any case, the Court, in the *Knoors*, *Broekmeulen* and *Bouchoucha* cases, made the right of a national to be treated in the same way as any other person enjoying the rights and liberties guaranteed by the Treaty subject to the condition not only that the national had resided in the territory of another Member State, but also that he or she had there acquired rights recognized by the provisions of Community law: the persons involved in those cases wished to make use in their State of origin of rights thus acquired in another Member State as a result of the exercise of their right to freedom of movement.

46. In order to come within the ambit of the *Knoors*, *Broekmeulen* and *Bouchoucha* cases, Mr Middleburgh must therefore be in a position to assert within the United Kingdom, the State in which he is established and in which he contends that he is the victim of discrimination contrary to Article 52 of the Treaty, rights acquired by him in Ireland while residing and working there which are recognized by Community law.

47. Mr Middleburgh is asserting in the United Kingdom a right which he could not have acquired in Ireland merely by virtue of being employed there: in the United Kingdom he is claiming British family

9 — See also the judgment of 7 February 1979 in Case 115/78 *Knoors* v *Secretary of State for Economic Affairs* [1979] ECR 399, at paragraph 24, and that of 6 October 1981 in Case 246/80 *Broekmeulen* v *Huisarts Registratie Commissie* [1981] ECR 2311, at paragraph 20.

benefits, whereas in Ireland he was entitled at most to Irish family benefits. The position would more closely resemble that in the *Knoors*, *Broekmeulen* and *Bouchoucha* cases if he were claiming the continuation, in the United Kingdom, of entitlement to Irish family benefits to which he was entitled in Ireland by virtue of the exercise of his right of freedom of movement.

48. In view of the foregoing, I do not believe that Community law requires a Member State to make the grant of family benefits to those of its nationals who have worked in another Member State subject to the same conditions as apply to the nationals of other Member States.

49. In its judgment in *Stanton*, which I have already cited, the Court held that national legislation which is applicable without distinction to all self-employed persons in a Member State but places at a disadvantage those of such persons whose principal occupation is employment in another Member State does not result in indirect discrimination on grounds of nationality and is therefore not in breach of Article 7 of the Treaty, provided it has not been established that the persons disadvantaged are exclusively or mainly foreign nationals.

50. This, however, did not prevent the Court from ruling that such legislation is contrary to Articles 48 and 52 of the Treaty, since its effect is to place at a disadvantage the pursuit of occupational activities outside the territory of the Member State in question (paragraph 14).

51. That judgment, in so far as it implies that Articles 48 and 52 apply to barriers to freedom of movement which the legislation of a Member State places on the pursuit of occupational activities in another Member State, appears thus to anticipate the judgment of 27 September 1988 in Case 81/87 *The Queen* v *HM Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust PLC* [1988] ECR 5483, in which the Court expressly held that

'Even though those provisions [on freedom of establishment] are directed mainly to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals . . .' (paragraph 16).

52. Is the British legislation likely to hinder the pursuit of occupational activities outside British territory? In other words, might a British national forgo his right to pursue an occupational activity in another Member State by reason of the fact that when he returns to his country he will not be entitled to British child benefit if the child born during his period of residence abroad does not return with him?

53. It seems to me that if that were the case, the resultant impediment to the pursuit of occupational activities outside the United Kingdom would be so indirect and hypothetical that it could only with great difficulty amount to a restriction on the freedom of movement prohibited under Community law. It would depend on the occurrence of events following the exercise of the right of freedom of movement,

namely the birth of a child and the return of the person concerned to his State of origin; his return, moreover, without the child born in the intervening period.

54. I would suggest therefore, again in the alternative, that the Court should reply to the second question that in the circumstances referred to the refusal to pay family benefit was compatible with Article 52.

The third question

55. The third question is worded as follows:

'the answer to the second question is in the affirmative does Article 48 or Article 52 have direct effect in the circumstances of the present case?'

56. As I have already proposed that the Court should answer the second question in the negative, the third question, in my opinion, no longer serves any purpose.

57. In order to clarify matters I would, however, like to reiterate that in my view neither Article 48 nor Article 52 can give rise to direct effects in a case involving the 'exportation' of benefits or where the legislation of more than one State is involved.

Conclusion

58. For all the reasons set out above, I propose that the Court reply as follows to the questions referred by the Court of Appeal, London:

'1. Where a person is self-employed and is entitled (under national law) to unemployment benefit upon the involuntary cessation of such self-employment, and is so entitled by reason of contributions paid or credited as an employed person, that person is not to be regarded as an employed person for the purpose of Article 73 read together with Article 1 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes.

2. If a worker from Member State A resides in Member State B for a period and during that period (a) works as an employed person and (b) lives with and has a child by a national of Member State B, it is not a breach of Article 52 of the Treaty for Member State A to refuse to pay family benefit in respect of the child on the sole ground of the child's absence from Member State A during a

period when the national has returned to Member State A and is self-employed there, but the child remains in Member State B.

3. In view of the answer to the second question, the third question no longer serves any purpose.'