In Case 242/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour de Cassation du Royaume de Belgique [Court of Cassation of the Kingdom of Belgium] for a preliminary ruling in the proceedings pending before that court between

CAISSE DE COMPENSATION POUR ALLOCATIONS FAMILIALES DU BÂTIMENT, DE L'INDUSTRIE ET DU COMMERCE DU HAINAUT [Family Allowances Compensation Fund for the Building Trade, Industry and Commerce, Hainaut]

and

SALVATORE PATTERI

on the interpretation to be given to Article 51 of the EEC Treaty and Article 77 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 (Official Journal, English Special Edition 1971 (II), p. 416), and, in the alternative, on the validity of Article 77 (2) (b) (i) of that Regulation,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, G. Bosco and R. Joliet, Judges,

Advocate General: M. Darmon
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Salvatore Patteri, an Italian national, having been employed as a miner in Belgium from 28 June 1956 to 31 July 1971, is in receipt of an invalidity

pension granted under the Belgian retirement scheme for miners; he also receives a proportional invalidity pension from the competent Italian institution as a result of his having worked in Italy from 1942 to 1956. Until 9 August 1979, when he returned to Italy permanently, he received family allowances in Belgium for his three children who live with him.

By letter of 21 September 1979, the Caisse de Compensation pour Allocations Familiales du Bâtiment, de l'Industrie et du Commerce du Hainaut (hereinafter referred to as "the Fund") informed Mr Patteri that, as from 9 August 1979, payment of the family allowances was to be the responsibility of Italy, by virtue of Article 77 (2) (b) (i) 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 (Official Journal, English Special Edition 1971 (II), p. 416). In addition the Fund rejected Mr Patteri's request for payment, in any event, of the difference between the family allowances payable in Belgium and the lower amount payable in Italy.

Mr Patteri reacted by bringing an action against the Fund before the Tribunal de Travail [Labour Tribunal], Charleroi, for payment of the difference between the Belgian and the Italian family allowances. The Tribunal, in a judgment of 18 June 1980, declared the action to be without foundation, on the ground that the purpose of Article 77 (2) (b) (i) of Regulation No 1408/71 is confined to determining the applicable legislation and that no entitlement exists to family allowances in respect of children brought up outside Belgium under the relevant Belgian legislation, namely Article 51 (3) of the Lois relatives aux allocations familiales pour travailleurs salariés coordonnées par l'arrêté royal du 19 décembre 1939 [Laws on family allowances for employed persons, consolidated by Royal Decree of 19 December 1939, hereinafter referred to as "the Consolidated Laws"].

On an appeal brought by Mr Patteri, the Cour de Travail [Labour Court], Mons, held, on 25 September 1981, that the appellant was entitled to payment by the Fund of a sum equal to the difference between the family allowances which would have been payable to the appellant under Belgian law had he continued to reside in Belgium and the family benefits which he had actually received in Italy as from 9 August 1979. The basis of that decision was that the appellant's right to Belgian family allowances arose before he transferred his residence. In the view of the Cour de Travail, Community law, in pursuance of the aim laid down in Article 51 of the Treaty, could not have the effect of depriving a worker who availed himself of his right to free movement of the social security benefits that he enjoyed under the legislation of a single Member State. This was because Regulation No 1408/71 was guided by the fundamental principle that workers who moved within the Community were guaranteed all the benefits which had accrued to them in the various Member States within the limit of the greatest amount of such benefits. Lastly, the Cour de Travail considered that, as a result of the interpretation given to Article 77 (2) (b) (i) of Regulation No 1408/71 in the preliminary ruling of the Court of Justice of the European Communities of 12 June 1980 (Case 733/79, *Caisse de Compensation des Allocations Familiales de Charleroi et de Namur* v *Laterza*, [1980] ECR 1915), "entitlement to family benefits from the State in whose territory the recipient of an invalidity pension resides does not take away the right to higher benefits awarded previously by

another Member State. If the amount of family benefits actually received by the worker in the Member State in which he resides is less than the amount of the benefits provided for by the legislation of the other Member State, he is entitled to a supplement to the benefits from the competent institution of the latter State equal to the difference between the two amounts."

The Fund appealed to the Cour de Cassation against the judgment of the Cour de Travail, relying upon a twofold ground of appeal. It argued, first, that whereas the provisions of the Belgian Consolidated Laws were, in fact, effective only in so far as they were not rendered inoperative by directly applicable provisions of Community law, it was necessary, in order to override the internal law, to establish that it was indeed rendered inoperative by one or more provisions of Community law producing direct effects. Yet, according to the Fund, Article 51 of the EEC Treaty does nothing more than empower the Council to adopt such measures in the field of social security as are necessary to ensure freedom of movement for workers, in particular by making arrangements to secure for migrant workers payment of benefits to persons resident in the territories of Member States. Article 51, it is argued, does not authorize the Council to set up a common social security scheme but only to adopt such measures as are necessary to secure for migrant workers the actual payment of social security benefits, the said benefits continuing to be governed, as regards the principle and the amount thereof, exclusively by separate bodies of rules giving rise to separate claims against separate institutions. Therefore, according to the Fund, it is appropriate to interpret the provisions of Regulation No 1408/71, and in particular Article 77 thereof, as conferring a direct right upon individuals only to the extent that it is necessary to *secure* the actual payment of benefits, the principle and the amount of which continue to be governed exclusively by the various national laws. Consequently, Article 77 of Regulation No 1408/71 cannot create for migrant workers direct entitlement to payment by the authorities of a Member State of family allowances which are not *payable* under the national law of that Member State.

The second part of the single ground of appeal is as follows. If it is necessary to interpret Article 77 (2) (b) (i) of Regulation No 1408/71 as meaning that entitlement to the payment of family benefits by the Member State in whose territory the recipient of an invalidity pension resides does not take away a previously acquired right to higher family benefits payable by another Member State or, at least, to a supplement equal to the difference between the two amounts, it must be acknowledged that the regulation *created* for the recipient a right which was provided for by the law of neither country and that, as a result, Regulation No 1408/71 constitutes the exercise by the Council of powers more extensive than and different from those conferred on it by Article 51 of the EEC Treaty and so infringes Article 51 and is void by virtue of Articles 145, 173 and 189 of the EEC Treaty.

In its submissions to the Cour de Cassation, the Fund acknowledged

that its appeal called in question the interpretation given by the contested judgment to Article 77 (2) (b) (i) of Regulation No 1408/71, which was in conformity with the interpretation given thereto by the earlier judgment of the Court of Justice in *Laterza* (cited above).

However, the Fund contended that new factors warranted a further reference to the Court of Justice under Article 177 of the EEC Treaty. In the Fund's view, those new factors were: first, that the judgment in *Laterza* (and others dealing with similar cases) had interpreted the provision at issue (or provisions concerning similar circumstances) without considering the validity of the provision itself, and, furthermore, that Article 51 of the EEC Treaty conferred on the Council the power to issue regulations capable of giving rise to direct rights only (a) for the purpose of granting social benefits based on the aggregation of successive reference periods taken into account under the laws of the Member States (Article 51 (a)) and (b)) in order to secure the actual payment of benefits due under the legislation of one Member State to persons residing in the territory of another Member State (Article 51 (b)).

In its judgment of 3 October 1983, the Belgian Court of Cassation considered that the above argument raised questions of interpretation of Community law which did not appear to have been submitted to the Court of Justice of the European Communities, and that the questions should be settled before the Court of Cassation could give judgment. Accordingly, the Court of Cassation decided to stay the proceedings until the Court of Justice of the European Communities had given a preliminary ruling on the following questions:

1. Does Article 51 of the Treaty of Rome authorize the Council of Ministers only to adopt such measures as are necessary to secure for migrant workers the actual payment of social security benefits, the said benefits continuing to be governed, as regards the principle and the amount thereof, exclusively by separate bodies of rules giving rise to separate claims against separate institutions, and is it therefore appropriate to interpret the provisions of Regulation No 1408/71, and in particular Article 77 thereof, as conferring a direct right upon individuals only to the extent necessary to secure the actual payment of benefits, the principle and the amount of which continue to be governed exclusively by the various national laws, so that the said provision cannot create for migrant workers direct entitlement to payment by the authorities of a Member State of family allowances which are not payable under the national law of that Member State?

2. If it is necessary to interpret Article 77 (2) (b) (i) of Regulation No 1408/71 as meaning that entitlement to the payment of family benefits by the Member State in whose territory the recipient of an invalidity pension resides does not take away a previously acquired right to higher benefits payable by another Member State, or at least to a supplement equal to the difference between the two amounts, establishing for the recipient a right which was not created by the legislation of either Member State, is Regulation No

1408/71 valid in the light of Article 51 of the Treaty of Rome?

The order making the reference was received at the Court Registry on 25 October 1983.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the appellant Fund, represented by Antoine de Bruyn, Avocat with right of audience before the Court of Cassation of the Kingdom of Belgium, and Michel Mahieu of the Brussels Bar, by Salvatore Patteri, the respondent, represented by D. Rossini, a trade union representative, by the Commission of the European Communities, represented by J. Griesmar, a member of its Legal Department, acting as Agent, assisted by F. Herbert of the Brussels Bar, by the Council of the European Communities, represented by John Carbery, adviser in the Legal Department of the General Secretariat of the Council, Brussels, acting as Agent, by the Government of the Federal Republic of Germany, represented by M. Seidel and E. Röder, acting as Agents, and by the Government of the Italian Republic, represented by P. G. Ferri, Avvocato dello Stato, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

Pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court assigned the case to the First Chamber.

II — Written observations submitted to the Court pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

In its observations, the *Fund* starts from the premise that, although the two questions purport to deal with separate subjects, only one issue is raised. That issue is simply whether Article 51 of the EEC Treaty empowered the Council to issue regulations which have the effect of conferring upon migrant workers, at the expense of the authorities of a Member State, direct entitlement to family allowances which are not payable under the law of that Member State. The essential question, therefore, concerns the extent of the powers conferred on the Council by Article 51 of the EEC Treaty.

The first part of the Fund's observations explains in detail precisely what is new about the factors upon which the Fund — followed cautiously by the Cour de Cassation — relies as the basis for asking the Court of Justice to reconsider an earlier preliminary ruling and to depart from its previous decision. In the Fund's view, the new and decisive aspect of the circumstances of this case is to be seen in the light of earlier judgments of the Court of Justice on the matter at issue. According to the Fund, the judgment in *Laterza*, to which the judgment of 25 September 1981 of the Cour de Travail, Mons, expressly refers, is the only ruling of the Court of Justice on the interpretation of Article 77 (2) (b) (i) of Regulation No 1408/71; that judgment merely interprets that provision in the light, first, of the aims of the EEC Treaty and, secondly, of the recitals in the preamble to Regulation No 1408/71 and, more specifically, of the seventh and eighth recitals. In the Fund's view that judgment does *not* consider the question of the limits to which the powers conferred on the Council by

Article 51 of the EEC Treaty are subject or the possibility that the provision at issue might be invalid if the interpretation given to it disregarded those limits. Subsequently, the Fund reviews the decisions of the Court relating to Regulation No 3/58, as amended by Regulation No 1/64, although it acknowledges that any reference to the various solutions adopted in conformity with those instruments must be made with caution. Perusal of the judgments of 17 June 1970 in Case 3/70 *(Beninato (née Di Bella)*, [1970] ECR 415), of 13 July 1976 in Case 19/76 *(Triches*, [1976] ECR 1243) and of 13 October 1976 in Case 32/76 *(Saieva*, [1976] ECR 1523) does not provide a clear answer to the question raised in this case. Finally, the Fund reviews the judgments relating to the implementation of Regulation No 1408/71, that is to say, first, the judgment of 6 May 1979 in Case 100/78 *(Rossi*, [1979] ECR 831), and then the judgments of 22 May 1980 in Case 143/79 *(Walsh*, [1980] ECR 1639), 9 July 1980 in Case 807/79 *(Gravina*, [1980] ECR 2205) and 15 September 1983 in Case 279/82 *(Jerzak*, [1983] ECR 2603), and concludes that those judgments also fail to clarify the extent of the powers conferred on the Council by Article 51 of the EEC Treaty. As far as the Fund is concerned, no doubt can remain that new factors have emerged justifying a re-examination of the interpretation of Article 77 (2) (b) (i) of Regulation No 1408/71.

As regards the substance of the question concerning the extent of the powers conferred on the Council by Article 51 of the EEC Treaty, the Fund starts from the premise that Article 51 is intended essentially to empower the Council to make arrangements to secure for migrant workers and their dependants aggregation, for the purpose of acquiring and retaining the right to national social security benefits, of insurance periods (Article 51 (a)) and the payment of benefits to persons resident in the territories of Member States (Article 51 (b)). Furthermore, the arrangements to be made pursuant to Article 51 of the EEC Treaty are left to the Council's discretion, subject solely to the proviso that the Council may not replace the national schemes by a single system and should (and hence certainly may) depart from national law with regard to two specific matters, namely: (a) the calculation of insurance periods and (b) the actual payment of benefits in the territories of all the Member States. In the Fund's view, any regulation which fails to comply with these requirements should be regarded as invalid.

Accordingly, the Fund considers it appropriate to examine the following two questions:

(1) Does Article 51 of the EEC Treaty *require* the Council to adopt rules whereby a recipient who is not resident in the territory of a Member State retains entitlement to benefits payable under the legislation of that State, even if that legislation imposes, as a condition for payment, the requirement that recipients are to be resident in the territory of that State and even if the legislation of the State in which the recipient is resident also entitles him to similar benefits?

(2) Does Article 51 of the EEC Treaty *authorize* the Council to adopt such rules?

As regards the *first* question, the Fund observes that the Court has held that the aims of Articles 48 to 51 of the EEC Treaty included the (negative) objective of not depriving migrant workers or their dependants of the benefit of a part of the legislation of a Member State, a finding which led the Court to decide that the rule against overlapping benefits should be applied only partially, that is to say, where an allowance which ceases to be paid in one Member State is greater than the allowance that is payable in another. It is on this precise point that the Fund asks the Court to reconsider its position on the ground that, where an instrument confers powers and itself enumerates the aims that the legislative authority concerned (the Council in this instance) is required to pursue, those aims alone, as they are set out, should be taken into account for the purpose of interpreting the instrument in question. Accordingly, the only aims which the Council is *required* to pursue are the two set out in Article 51 (b), which is the relevant provision in this case, the only aim that it *requires* the Council to pursue is that of making arrangements whereby migrant workers and their dependants retain entitlement to the payment of benefits payable under the national legislation, even though the recipients reside in the territory of another Member State.

The Fund goes on to draw attention to the differences between the separate circumstances intended to be covered by Article 77 (2) (a) and Article 77 (2) (b) of Regulation No 1408/71. The first of those provisions, which is not criticized by the Fund, embodies the Council's logical reaction to its *duty* to make sure that where entitlement to a benefit exists under the legislation of only one Member State, it cannot be jeopardized (as a result of its being suppressed or suspended) merely because the recipient transfers his residence to the territory of another Member State — even where the legislation of the recipient's Member State of origin provides, as a pre-condition for entitlement to, or for the actual payment of, benefits, that the recipient must be resident in its own territory. However, as far as Article 77 (2) (b) is concerned, the Fund maintains that, whilst it is true that the *general* aims of Article 48 to 51 of the EEC Treaty certainly include the desire to ensure that migrant worker's rights are retained, *as a matter of principle,* irrespective of the workers' movements within the Community, it is none the less true that Article 51 *(b)* defined the aim that the Council is required to pursue in precise terms. That aim consists solely in securing the actual payment of benefits where they are payable under the legislation of a given Member State and would, in principle, be lost in the event of the recipient's moving within the Community. Where two bodies of legislation apply and a choice is to be made between them to avoid overlapping benefits, Article 51 (b) in no way precludes the Council from making a straightforward election. So the Fund's first question must definitely be answered in the negative, since Article 51 (b) of the EEC Treaty certainly does not require the Council to make a choice combining two bodies of legislation so as to enable workers to continue to enjoy

the benefit of the most favourable legislation. By providing for the actual payment of the benefits payable by the Member State in which the worker resides — and the Council did no more than that according to the Fund's interpretation of Article 77 (2) (b) (i) of Regulation No 1408/71 — the Council has not therefore failed to comply with the precise objectives that it is required to pursue under Article 51 (b) of the EEC Treaty.

As regards its *second* question, the Fund starts by expressing doubts about the proposition that the Council — which is expressly authorized to waive a residence clause where its implementation would have the effect of removing entitlement to social security benefits payable in a Member State and, in the absence of any entitlement in another Member State, of totally removing any entitlement to the social security benefits in question — has sufficient discretion to decide that where the legislation of more than one State applies concurrently the provision against overlapping benefits will be put into effect partially and the right to the "difference" at issue in this case will be left intact. The Fund considers that the provisions of Article 51 of the EEC Treaty essentially constitute a device — as the Court has already pointed out — for identifying the applicable national law, a kind of rule of private international law within the Community legal order. So once the legislation of a particular Member State has been declared to be applicable as a result of the application of the "renvoi rule" embodied in the Community regulation adopted pursuant to Article 51 of the EEC Treaty, that legislation should be applied as it stands, together with all the conditions for its implementation, including the residence requirement. Accordingly, the Council is authorized to waive a residence clause laid down by national law solely in the eventuality expressly provided for in Article 51 of the EEC Treaty (to secure actual payment of benefits that would otherwise be forfeited as a result of the recipient's moving within the Community) and not in other circumstances (concurrent application of laws providing for benefits of differing amounts). In conclusion, the Fund considers that, as worded at present, Article 77 (2) (b) (i) of Regulation No 1408/71 is not intended to ensure that rights arising in the State of origin are retained as regards the portion of benefits in excess of the level of benefits payable in the State of residence, in the absence of a provision to that effect in the relevant national legislation. It would be appropriate to construe Article 77 (2) (b) (i) in that way, contrary to its literal meaning, only if it were considered that Article 51 (b) of the EEC Treaty required the Council to ensure that that objective was achieved and if it were therefore considered that the provision in question had to be interpreted in that way in order to preserve its validity under Article 51 (b) of the Treaty. The Fund does not consider that Article 51 of the EEC Treaty lays down any such requirement.

The Fund considers that Article 77 (2) (b) (i) of Regulation No 1408/71 must be construed in accordance with the natural meaning of its wording, and therefore to the effect that once the right to the benefits provided for in Article 77 (1) arises under the laws of several Member States, the benefits are to be granted in accordance with the legislation of the State in whose territory the recipient resides and in accordance with that legislation alone. Moreover, if there is no provision to that effect in that legislation there is no right to the difference between the benefit paid in this way and the — *ex hypothesi* — higher benefit payable under the law of another Member State.

Consequently, Article 77 (2) (b) (i) of Regulation No 1408/71 should, despite its express terms, be interpreted as having the effect of maintaining the application of part of the legislation of a Member State other than that in which the recipient resides only if it is held that Article 51 (b) of the EEC Treaty requires such an interpretation, and this, in the Fund's view, is manifestly not the case.

As regards the validity of Article 77 (2) (b) (i) of Regulation No 1408//71, the Fund considers that, if it is accepted that Article 51 (b) of the EEC Treaty merely authorizes the Council to make arrangements to secure actual payment of the benefits, it inevitably follows that, where entitlement to benefits arises under the legislation of several Member States, the Council has no power other than that of designating, by means of a provision designed to prevent the overlapping of benefits, the national legislation which will be exclusively applicable. It also follows that the Council may designate the legislation of a particular Member State as applicable, even if the residence clause contained therein is not satisfied, only in the event that, were that national legislation not applied, the recipient would be completely deprived of any benefit. Although the opposite interpretation has previously been adopted by the Court, the effect of that interpretation is, in the Fund's view, to render Article 77 (2) (b) (i) of Regulation No 1408/71 invalid under Article 51 (b) of the Treaty.

In conclusion, the Fund proposes that the questions submitted by the Court of Cassation of the Kingdom of Belgium should be answered as follows:

First question

"Article 51 (b) of the Treaty must be interpreted as merely requiring the Council of Ministers to make arrangements to secure the actual payment of benefits to persons resident in the territories of the Member States and, exclusively for that purpose, to override the laws of Member States which have the effect of depriving of those benefits persons resident in the territory of another Member State. Consequently, Article 77 (2) (b) (i) of Regulation No 1408/71 must be interpreted as meaning that, where a worker receives pensions under the laws of several Member States, the benefits are to be granted in accordance with the legislation of the State within whose territory he resides, irrespective of which State that is — provided that entitlement to one of the benefits arises under the legislation of that State — and to the exclusion of any benefit or part of a benefit that is payable by virtue of the legislation of another State."

Second question

"Article 51 (b) of the Treaty must be interpreted as not authorizing the Council of Ministers to establish a system whereby entitlement to family benefits payable by the State in whose territory the recipient of an invalidity pension resides does not take away the right to higher benefits awarded previously by another Member State or at least to a supplement equal to the difference between the two amounts, thus causing a right to accrue to the recipient which was not created by the legislation of either of the Member States. Consequently, if it were necessary to interpret Article 77 (2) (b) (i) of Regulation No 1408/71 in such a way as to create such a system, that Article would not be valid in the light of Article 51 (b) of the Treaty."

In his observations submitted to the Court, *Salvatore Patteri* maintains that by

transferring his residence to Italy he has not forfeited his entitlement to family benefits previously awarded in Belgium, and that he ought to receive — in accordance with the case-law of the Court of Justice — the difference between the benefits paid under the Belgian scheme and those paid under the Italian scheme. In his view, Article 77 of Regulation No 1408/71 governs the grant of family benefits as follows:

(a) Where the migrant worker is the recipient of a pension from one Member State alone, family benefits are to be granted to him in accordance with the legislation of that State (Article 77 (2) (a));

(b) Where the migrant worker is the recipient of pensions from several Member States, family benefits are to be granted to him, in order of priority, in accordance with the legislation of the Member State in which he resides (Article 77 (2) (b) (i)) or, in the alternative, in accordance with the national legislation under which he has completed the longest period of insurance (Article 77 (2) (b) (ii)).

To determine which law is applicable and, hence, the institution responsible for payment of the benefits, regard should be had to the situation of the insured person when the event which created the right to the benefits occurred (in this case, award of the invalidity pension). A change of residence merely creates a conflict of laws which must be settled in accordance with the relevant case-law of the Court of Justice (judgments in Case 733/79, *Laterza*, Case 807/79, *Gravina*, and Case 320/82, *D'Amario*), and provisions for that purpose have since been laid down in Decision No 122 of 20 April 1983 of the Administrative Commission of the European Communities on Social Security for Migrant Workers (Official Journal No C 295 of 2. 11. 1983).

Moreover, Mr Patteri points out that Article 90 (1) of Regulation No 574/72 provides that, in order to receive benefits under Article 77 or 78 of Regulation No 1408/71, the claimant must submit a claim to the institution of his place of residence, in accordance with the procedure laid down by the legislation administered by that institution. It seems obvious that that formality ought to be completed when the right is recognized. Furthermore, Article 92 of Regulation No 574/72 requires any person to whom benefits are paid under Article 77 or 78 of Regulation No 1408/71 to inform the institution responsible for the payment of such benefits, *inter alia*, of any transfer of residence leading to the loss of a right to benefits already acquired. Lastly, in Mr Patteri's view, account must be taken of the fact that the question of family benefits granted under the Belgian scheme overlapping with benefits of the same nature payable under some other legislation or rules is governed in Belgian law by Article 60 of the Consolidated Laws as amended by the Royal Decree of 15 July 1982, published in the *Moniteur Belge* of 20 July 1982, p. 8393.

As regards the Fund's claim that the Belgian legislation does not give rise to any entitlement to family allowances for children brought up outside Belgian territory (last paragraph of Article 51 of the Consolidated Laws of 19 December 1939), Mr Patteri points out that a territorial clause of that kind is rendered completely inoperative by Article 51 (b) of the EEC Treaty. He refers to the judgment of the Court of 20 October 1977 in Case 32/77 *Giuliani* and points

out that Article 51 of the Treaty sets out two separate aims. Article 51 (b) secures the payment of social security benefits in the territories of all the Member States — irrespective of the rules on aggregation and apportionment. The conditions as to residence contained in the last paragraph of Article 51 of the Belgian Consolidated Laws is therefore overruled expressly by Article 51 (b) of the EEC Treaty and by implication by Article 10 of Regulation No 1408/71, since the grant of family allowances at the higher rate for invalids provided for under the Belgian legislation is conditional upon qualifying for a pension (Article 56 (2) (1) (b) of the Consolidated Laws). It follows that a migrant worker may freely export to the territory of any other Member State the pension of which he is the recipient, together with related benefits. Finally, Mr Patteri takes the view that the Fund should apply Article 60 of the Belgian Consolidated Laws and deduct from the amount of family benefits payable under the Belgian scheme the amount of family benefits payable under the Italian scheme. He therefore asks the Court to confirm its decisions in Case 733/79 *(Laterza)*, Case 807/79 *(Gravina)* and Case 320/82 *(D'Amario)* and to state, in addition, that to interpret Article 77 in that way is not contrary to Article 51 of the EEC Treaty.

The *Council of the European Communities* has submitted observations affirming the validity of Article 77 (2) (b) (i) of Council Regulation No 1408/71. Referring to the measures mentioned in Article 3 of the EEC Treaty and to the aims of Articles 48 to 51 thereof, the Council considers that the wording of Article 51, together with the fact that it is included in the chapter dealing with the free movement of workers — a fundamental principle of the Community — clearly shows that the adoption of measures in the field of social securtiy is secondary to the need to attain freedom of movement. The Council acknowledges that, apart from the measures necessary to secure the aggregation of all periods that may be taken into account by the various national laws and to enable the migrant worker to receive benefits regardless of his place of residence in the territories of the Member States, no other details are given in Article 51 as to the manner in which the general objective laid down therein should be achieved by the Council. It points out that the aim of Article 51 of the EEC Treaty is the adoption of measures "necessary to provide freedom of movement for workers" and, on the basis of the interpretation given by the Court to Article 51 in *Laterza*, cited above, the Council considers that that article not only authorized it, but also obliged it, to take measures to safeguard in all circumstances the rights acquired by migrant workers under national law. The Council shares the views expressed by the Court in *Rossi* and *Laterza*, cited above, and points out that in Decision No 122 of 20 April 1983 the Administrative Commission of the European Communities on Social Security for Migrant Workers confirmed that view by deciding that it was not permissible for migrant workers' rights under national law to be diminished (Official Journal C 295 of 2. 11. 1983).

In conclusion, the Council asks the Court to declare that, in so far as it grants workers rights other than those deriving solely from national law, Article 77 (2) (b) (i) is valid, and to re-affirm its judgment in Case 733/79 *(Laterza).*

The observations lodged by the *Commission of the European Communities* concentrate, in the first place, on the interpretation to be given to Article 51 of the EEC Treaty, since it appears that the problem of validity which is the subject of the second question referred to the Court for a preliminary ruling arises only if Article 51 has the more restrictive scope attributed to it by the Fund. However, the Commission is unable to accept the Fund's interpretation of that article. It states that the scope of Article 51 was established by the Court in its first judgments in the field of social security to the effect that the "establishment of as complete a freedom of movement for workers as possible, which thus forms part of the 'foundations' of the Community, therefore constitutes the principal objective of Article 51 and thereby conditions the interpretation of the regulations adopted in implementation of that Article" (judgments of 19. 3. 1964 in Case 75/63, *Hoekstra (née Unger),* [1964] ECR 177 at p. 184, and 9. 6. 1964 in Case 92/63, *Nonnenmacher,* [1964] ECR 281 at p. 288). The Commission considers that it was on that basis that the Court formulated one of the basic principles for the interpretation of social security regulations in the light of the aims of Article 51, that is to say the principle that acquired rights should be maintained: "The aim of Articles 48 to 51 of the Treaty would not be attained but disregarded if the worker were obliged, in order to avail himself of the freedom of movement which is guaranteed to him, to find himself subjected to the loss of rights already acquired in one of the Member States without having them replaced by at least equivalent benefits" (Case 100/63, *Kalsbeek (née van der Veen),* [1964] ECR 565 at p. 574).

Accordingly, the Commission considers that it is clear that Article 51 may not be reduced — as the Fund claims it can — to a provision which merely provides for the establishment of arrangements for aggregating insurance periods and of arrangements for exporting benefits. In support of this view the Commission refers to Mr Advocate General Reischl's Opinion of 21 February 1979 in Case 139/78 *(Coccioli,* [1979] ECR 991 at p. 1003), where it is pointed out that the key factor in interpreting Article 51 is the reference in the first paragraph of that article to "such measures in the field of social security as are necessary to provide freedom of movement for workers". The Commission considers that the powers of the Council are defined and circumscribed, likewise in the sphere of social security, by the need to guarantee effective free movement.

The Fund's reference to Article 51 (b), that is to say to arrangements to secure the actual payment of social benefits to migrant workers, covers only one of the *means of action* which can be used. In the Commission's view, this emerges from the actual wording of Article 51 ["notamment", that is to say "in particular", being included in the French version of the Clause: "to this end, it shall make arrangements, *[in particular,]* to secure ... dependants"]. Therefore, Regulation No 1408/71, which was issued pursuant to Article 51, includes, alongside provisions concerning the aggregation of insurance periods and the exporting of benefits — matters mentioned in Article 51 — several provisions which are intended to secure the free movement of workers by dealing with the very existence of entitlement to

benefits. The Commission provides two examples, one concerning unemployment benefit (judgment of 20. 3. 1979 in Case 139/78, *Coccioli*, [1979] ECR 991), the other concerning invalidity benefits (Case 181/83, *Weber*, observations of the Commission). The aggregation of insurance periods (Article 51 (a)) and the exporting of benefits (Article 51 (b)) are not the *aims* of Article 51 but merely two *measures* that are necessary to attain its objective, which is the free movement of workers. It follows that there is confusion on the part of the Fund between the aims and the means of attaining those aims. In the Commission's view, Article 51 of the EEC Treaty authorizes the Council to take all necessary measures with a view to securing the *effective* free movement of workers. It follows from this that a worker may not be disadvantaged by the very exercise of the right of free movement which is guaranteed to him. The reason for which the Court has consistently stressed, since its earliest decisions on social security, that the regulations on social security for migrant workers did not create a common social security scheme but allowed separate systems to continue to exist, giving rise to separate claims against separate institutions, is precisely, in the Commission's view, that it was necessary to ensure that the migrant worker's working record was not seen as an undifferentiated whole, resulting in the loss of rights acquired either under national law alone or under national law supplemented by Community law. The Commission refers to the judgment of 21 October 1975 in Case 24/75 *(Petroni*, [1975] ECR 1149).

As regards the interpretation given to Article 77 (2) (b) (i) of Regulation No 1408/71 in the judgment in *Laterza*, the Commission considers it to be in keeping with Article 51 of the EEC Treaty. The Court confirmed that the interpretation of Articles 77 to 79 of Regulation No 1408/71 should also be based on Articles 40 to 51 of the EEC Treaty. Thus the Court referred to the principle of acquired rights, according to which the Community rules cannot, in the absence of an express exception consistent with the aims of the EEC Treaty, be applied in such a way as to deprive a migrant worker or his dependants of the benefits of a part of the legislation of a Member State (judgment of 6. 3. 1979 in Case 100/78, *Rossi*, [1979] ECR 831, to which the judgment in *Laterza*, cited above, refers). The Commission points out that, in the case of *Rossi*, Mr Advocate General Capotorti took the view (at p. 851) that entitlement to the supplementary family allowance had to be recognized *independently of the national law* in question and that, in accordance with the general principles underlying Article 51 of the EEC Treaty, the Community legislation was indeed the direct source of entitlement to the supplementary allowance. The Court confirmed that this view was well founded by referring in its judgment in *Rossi* to the claimant's direct rights " by virtue either of national law alone or of national law supplemented, if necessary, by Community law". The Commission considers that the character of Article 77 of Regulation No 1408/71 as a conflict-of-laws provision and its validity as such place no obstacle in the way of compliance with the general principles derived from Article 51 of the Treaty by the Court's numerous decisions on the matter, as Mrs Advocate General Rozès noted in her Opinion in Case 320/82 *(D'Amario)* (judgment of 24. 11. 1983 confirming, once again, the principle that the most favourable benefit should be granted).

Finally, the Commission emphasizes that it is certain that Mr Patteri was entitled to Belgian family allowances before he transferred his and his family's residence to Italy on 9 August 1979. Hence it was the very exercise of his right of free movement which caused him to forfeit a benefit that he had acquired under national law alone. In the Commission's view, this is a further reason for interpreting Article 77 (2) (b) (i) in the present instance in conformity with the judgment in *Laterza*.

In conclusion, the Commission considers that it is to be established that Article 51 (3) of the Belgian Consolidated Laws conflicts with the aims pursued by the provisions of Articles 48 to 51 of the EEC Treaty in so far as it is applied to the persons covered by Regulation No 1408/71. The direct applicability of provisions of the EEC Treaty and implementing regulations waiving residence clauses does not release the Member States from the obligation imposed on them by the Treaty to adapt their national law so as to conform with the Community legal order (judgment of 4. 4. 1974 in Cae 167/73, *Commission of the European Communities* v *French Republic*, [1974] ECR 359). The Commission therefore takes the view that the Belgian institutions cannot validly apply to Community nationals a national provision that should have been amended.

In the Commission's view, the questions should be answered as follows:

(1) Article 51 of the EEC Treaty is intended to provide and secure the utmost freedom of movement for workers. That aim would not be attained but disregarded if the worker were obliged, in order to avail himself of the freedom of movement which is guaranteed to him, to suffer the loss of rights acquired either under internal law alone or under internal law supplemented by Community law. Thus, Regulation No 1408/71, in laying down and developing rules for coordinating national laws, must guarantee to workers who move within the Community all the benefits which have accrued to them in the various Member States whilst limiting them to the highest amount of such benefits.

(2) Article 77 (2) (b) (i) of Regulation No 1408/71 must be interpreted as meaning that entitlement to family benefits from the State in whose territory the recipient of an invalidity pension resides does not take away the right to higher benefits previously awarded by another Member State. If the amount of family benefits actually received by the worker, in the Member State in which he resides is less than the amount of the benefits provided for by the legislation of the other Member State, he is entitled to a supplement to the benefits from the competent institution of the latter State equal to the difference between the two amounts.

(3) Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of the provisions of Regulation No 1408/71.

In its observations submitted to the Court, the *Government of the Federal Republic of Germany* bases its interpretation of Article 77 (2) (b) (i) of Regulation No 1408/71 on the wording of that provision, on the scheme of Chapter 8 thereof and on a comparison between

the latter and the scheme of Chapter 7. In the German Government's view, the wording of the provision indicates that entitlement exists only *vis-à-vis* the State in which the recipient resides and not *vis-à-vis* another Member State. The other rules set out in Chapter 8 of the Regulation are also formulated so that one Member State only is obliged to grant benefits in respect of pensioners' dependent children or orphans, as the case may be. Chapter 7 of the Regulation is also based on the principle that, in each case, only one Member State is required to grant family benefits and allowances. By virtue of that chapter, the Member State responsible for paying the benefit is, as a matter of principle, the State in which the recipient resides (Article 73 (2)). The drafters of the regulations, therefore, did not infer from Article 51 of the EEC Treaty that the highest benefit invariably has to be granted or that benefits from two Member States may be aggregated. Otherwise, there would have been no need to include Articles 73 (2) and 74 (2) in the Regulation, which provide for the payment of family allowances under the legislation of the State in whose territory the members of the family reside (such benefits are generally lower than those prescribed by the legislation of the State in which the worker is employed).

If, under the Belgian legislation, Mr Patteri were entitled to those benefits, that entitlement could be suspended only if corresponding benefits were payable under the legislation of the State of residence. In that case the rule against overlapping benefits would be only partly applied and any difference would have to be granted in the form of a supplement. The Court of Cassation of the Kingdom of Belgium has however, drawn attention to the fact that Article 51 (3) of the Consolidated Laws provides that family allowances are not payable in respect of children brought up outside Belgium. Consequently the German Government considers that the respondent has no entitlement under the relevant Belgian legislation to family allowances. In the German Government's view, the benefits provided for in Article 77 of Regulation No 1408/71 are intended to be used towards the children's maintenance. Since the costs of maintenance vary depending on the cost of living in the State of residence, it seems reasonable from the social point of view that family allowances in respect of children who are resident in Italy should be granted in accordance with the relevant Italian legislation.

In conclusion, the German Government considers that, having regard to Community law, no entitlement to Belgian family allowances arises in the present instance.

The *Government of the Italian Republic* expresses doubts in its observations, as to how accurately and strictly the court making the reference has defined the measures that may be laid down by Regulation No 1408/71, namely "such measures as are necessary to secure for migrant workers the actual payment of social security benefits, the said benefits continuing to be governed, as regards the principle and the amount thereof, exclusively by separate bodies of rules giving rise to separate claims against separate institutions". The Italian Government's view is that the above wording stresses aspects concerned exclusively with *means*, that is to say substantially with the technique of Community legislation, and not with the *aims* with which the regulation provided for in Article 51 of the EEC Treaty must strictly conform. The Italian Government considers that although there is no doubt that in the territory of the Community workers' social security is provided for by the various national laws and institutions, which lay down, in complete independence, the premises,

conditions and basic rules for determining workers' entitlement to social security benefits, by contrast the function of the Community rules is to coordinate the national systems with a view to securing complete and satisfactory cover for migrant workers. In this regard, it is not sufficient merely to consider Article 51 (a) and (b) of the EEC Treaty, to which the question seems to be confined. The Court's decisions have, in fact, already indicated a broader approach on the basis of the idea that "the regulations in the field of social security for migrant workers have as their basis, their framework and their bounds Articles 48 to 51 of the Treaty" (judgment of 21. 10. 1975 in Case 24/75, *Petroni*, cited above). The provisions of Regulation No 1408/71 should be interpreted by inferring therefrom the basic rules and the effects corresponding to the aims of the Treaty with regard to the free movement of workers; by definition, an interpretation following that procedure cannot give rise to the conclusion that the provision at issue, thus viewed, infringes Article 51 of the Treaty. The Italian Government considers that the Court has on many occasions held it to be incompatible with the principles of the free movement of workers to apply the Community rule so as to cause a worker to forfeit social security benefits to which he has become entitled by virtue of the legislation of a Member State, because he moved within the Community (in exercise of a right guaranteed by the EEC Treaty).

In the Italian Government's opinion, the present structure of social security in the Community is such that a worker is wholly and solely subject to the laws governing social security in his country of origin as long as he remains there. But once he moves within the Community, his social security cover automatically becomes a matter of Community law, which, in pursuance of the aims embodied in Articles 48 to 51 of the EEC Treaty, deals with the effects of the free movement of workers on the conditions and procedures laid down for entitlement to social benefits. As a result, Community legislation cannot but play a part, together with the national provisions relevant to each case, in determining the social security status of the migrant worker. It can therefore be said that each specific individual legal situation depends on a combination of national provisions and the provisions of Regulation No 1408/71. The contribution made in that respect by Community legislation consists of certain changes to the effects that the national provisions alone would otherwise have. Those changes may legitimately be all those necessary for the purpose of guaranteeing implementation of the principles of the EEC Treaty which concern the free movement of workers. From that point of view, the last paragraph of Article 51 of the Belgian Consolidated Laws can be taken into account only for the purpose of establishing whether *entitlement* to migrant workers' benefits *exists*, to the extent allowed by Regulation No 1408/71. Once that provision of Belgian law attaches certain legal effects to a worker's moving within the Community, it enters the sphere of the Community regulation.

According to the Italian Government, it is pointless to plead insurmountable administrative difficulties in

implementing the decision in *Laterza.* That would be tantamount to attaching greater importance to administrative efficiency than to rights firmly based on genuine legal principles underlying the Community legal order.

Since there is a logical link between the two questions, in so far as the first introduces the second, the Italian Government proposes the following single answer:

"The fact that, by applying one of the provisions of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 and, in particular, Article 77 (2) (b) (i) thereof, the competent institution of a Member State is obliged to pay a migrant worker an amount equal to the difference between a benefit provided for under the legislation of that Member State and a benefit of identical name, purpose and nature provided for by the legislation of another Member State does not invalidate the said Regulation No 1408/71 where that obligation is necessary, in relation to the movement of the beneficiary or members of his family within the Community, in order to implement the objectives laid down in Articles 48 to 51 of the EEC Treaty."

III — Oral procedure

At the sitting on 30 May 1984 oral argument was presented by the appellants in the main proceedings, represented by M. Mahieu, the Italian Government, represented by P. G. Ferri, acting as Agent, the Council of the European Communities, represented by J. Carbery, acting as Agent, and the Commission of the European Communities, represented by F. Herbert, Avocat.

The Advocate General delivered his opinion at the sitting on 21 June 1984.

Decision

1 By judgment of 3 October 1983, which was received at the Court on 25 October 1983, the Cour de Cassation du Royaume de Belgique [Court of Cassation of the Kingdom of Belgium] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 51 of the EEC Treaty and Article 77 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 (Official Journal, English Special Edition 1971 (II), p. 416) and, in the alternative, on the validity of Article 77 (2) (b) (i) of the aforesaid regulation.

2 The questions were raised in proceedings relating to a decision taken by the competent Belgian social security institution not to allow an Italian worker, who was in receipt of an invalidity pension both in Belgium and in Italy and who was resident in Italy, a supplement to family allowances as from 9 August 1979 in respect of dependent children, equal to the difference

between the Belgian allowances and the lesser amount of the Italian allowances.

3 It appears from the documents forwarded by the national court that the worker in question, who was employed in Belgium from 28 June 1956 to 31 July 1971, received family allowances in respect of his dependent children under Belgian legislation until he returned to Italy permanently on 9 August 1979. After that date, the Belgian social security institution refused to pay him the difference between the amount of the Belgian family allowances which he had received until then and the lesser amount of family allowances which he subsequently received in Italy. In support of its decision, the Belgian social security institution referred to Article 77 (2) (b) (i) of Regulation No 1408/71, according to which a worker who draws an invalidity pension under the legislation of more than one Member State is to be granted, irrespective of the Member State in whose territory the pensioner or the children are residing, family allowances "in accordance with the legislation of whichever of these States he resides in provided that . . . a right to one of the benefits referred to in paragraph (1) is acquired under the legislation of that State".

4 The Belgian social security institution did not consider that the issue had already been resolved by virtue of the Court's interpretation of that provision in its judgment of 12 June 1980 (Case 733/79, *Laterza*, [1980] ECR 1915). According to the Belgian social security institution, Article 51 of the EEC Treaty confers powers on the Council solely for the purpose of aggregating insurance periods and ensuring the actual payment of benefits to persons residing in the territory of the Member States, and in view of those limits Article 77 (2) (b) (i) of Regulation No 1408/71 can constitute nothing more than a renvoi rule for the designation of the applicable national law. It therefore considered that if Article 77 (2) (b) (i) had to be construed as giving rise to a right not provided for in any national legislation it would not be covered by Article 51 of the EEC Treaty.

5 Mr Patteri contested that restrictive interpretation of Article 51 of the EEC Treaty and of Regulation No 1408/71, which would cause him to forfeit the higher family allowances that he would have received had he continued to reside in Belgium.

6 In appeal proceedings against the judgment of the Cour d'Appel [Court of Appeal], Mons, which had found in favour of Mr Patteri, the Cour de Cassation considered that the argument put forward raised questions of

Community law which did not appear to have been submitted previously to the Court of Justice. Consequently, the Cour de Cassation submitted the following questions:

"1. Does Article 51 of the Treaty of Rome authorize the Council of Ministers only to adopt such measures as are necessary to secure for migrant workers the actual payment of social security benefits, the said benefits continuing to be governed, as regards the principle and the amount thereof, exclusively by separate bodies of rules giving rise to separate claims against separate institutions, and is it therefore appropriate to interpret the provisions of Regulation No 1408/71, and in particular Article 77 thereof, as conferring a direct right upon individuals only to the extent necessary to secure the actual payment of benefits, the principle and the amount of which continue to be governed exclusively by the various national laws, so that the said provision cannot create for migrant workers direct entitlement to payment by the authorities of a Member State of family allowances which are not payable under the national law of that Member State?

2. If it is necessary to interpret Article 77 (2) (b) (i) of Regulation No 1408/71 as meaning that entitlement to the payment of family benefits by the Member State in whose territory the recipient of an invalidity pension resides does not take away a previously acquired right to higher benefits payable by another Member State, or at least to a supplement equal to the difference between the two amounts, establishing for the recipient a right which was not created by the legislation of either Member State, is Regulation No 1408/71 valid in the light of Article 51 of the Treaty of Rome?"

7 As both the Belgian social security institution and the Commission of the European Communities point out, the two separate questions submitted to the Court concern, in reality, only one issue: that of the interpretation of Article 51 of the EEC Treaty. In fact, the validity of Article 77 (2) (b) (i) of Regulation No 1408/71 can be called in question only if Article 51 of the EEC Treaty has the restrictive scope attributed to it by the Belgian social security institution.

8 It is apparent from the very wording of Article 51 that the two measures mentioned, namely (a) aggregation, for the purpose of acquiring and retaining the right to benefit, of all periods taken into account under the laws of the several countries and (b) payment of benefits to persons resident

in the territories of Member States, are merely two possible measures among several which it is the responsibility of the Council to adopt in order to promote the free movement of workers. As has been consistently held by the Court (judgments of 19. 3. 1964 in Case 75/63, *Hoekstra (née Unger)*, [1964] ECR 177), of 9. 6. 1964 in Case 92/63 *(Nonnenmacher,* [1964] ECR 281 and of 15. 7. 1964 in Case 100/63 Kalsbeek *(née van der Veen),* [1964] ECR 565), the fundamental aim of Article 51 of the EEC Treaty is to secure the free movement of workers. Consequently, the restrictive interpretation of Article 51 advocated by the Belgian social security institution cannot be accepted.

9 As the Court has emphasized on several occasions, the aim of Article 51 of the EEC Treaty influences the interpretation of the regulations adopted by the Council in the field of social security for migrant workers.

10 Wholly in conformity with the above principles, the Court considered in its judgment of 12 June 1980 in *Laterza* that "the provisions of Article 77 (2) (b) (i) of Regulation No 1408/71 cannot be applied in such a way as to deprive the worker, by substituting the benefits provided by one Member State for the benefits payable by another, of the most favourable benefits". Since that interpretation followed necessarily from the objective of Article 51 of the EEC Treaty, the validity of Article 77 (2) (b) (i) of Regulation No 1408/71 as thus construed cannot be called in question by reference to the said Article 51.

11 For those reasons, it must be stated in reply to the questions submitted, in the first place, that where, in the case referred to in Article 77 (2) (b) (i) of Regulation No 1408/71, the amount of benefits paid by the State of residence is lower than that of the benefits granted by another Member State which is responsible for payment, the worker retains the right to the higher amount of benefits and is entitled to receive an additional benefit, paid by the competent social security institution of that State, equal to the difference between the two amounts; and, in the second place, that consideration of the questions referred to the Court has disclosed no factor of such a kind as to affect the validity of Article 77 (2) (b) (i) of Regulation No 1408/71.

Costs

12 The costs incurred by the Council of the European Communities, the Commission of the European Communities, the Government of the Federal

Republic of Germany and the Government of the Italian Republic, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the questions referred to it by the Cour de Cassation of the Kingdom of Belgium, by judgment of 3 October 1983, hereby rules:

1. **Where, in the case referred to in Article 77 (2) (b) (i) of Regulation 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 (Official Journal, English Special Edition 1971 (II), p. 416), the amount of the benefits paid by the State of residence is lower than that of the benefits granted by another State which is responsible for payment, the worker retains the right to the higher amount and is entitled to receive an additional benefit, paid by the competent social security institution of that State, equal to the difference between the two amounts.**

2. **Consideration of the questions referred to the Court has disclosed no factor of such a kind as to affect the validity of Article 77 (2) (b) (i) of Regulation No 1408/71.**

Koopmans Bosco Joliet

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl
Principal Administrator

T. Koopmans
President of the First Chamber