those concerned of the benefit of an entitlement to benefits conferred on them by the legislation of a Member State.

3. Article 10 (1) (a) of Regulation No 574/72 as amended suspends payment of family benefits or family allowances payable under the legislation of the State of employment only up to the amount received, in respect of the same period and the same member of the family, in the State of residence by the spouse pursuing a professional or trade activity within the territory of that State.

In Case 104/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the First Chamber of the Sozialgericht [Social Court] Schleswig for a preliminary ruling in the action pending before that court between

KURT BEECK

and

BUNDESANSTALT FÜR ARBEIT [Federal Employment Office]

on the interpretation of Regulation No 1408/71 of the Council of 14 June 1971 (Official Journal, English Special Edition 1971 (II), p. 416) and Regulation No 574/72 of the Council of 21 March 1972 (Official Journal, English Special Edition 1972 (I), p. 159) and in particular the provisions of those regulations which deal with the entitlement of frontier workers to family allowances,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, A. Touffait and O. Due, Judges,

Advocate General: G. Reischl
Registrar: H. A. Rühl, Principal Administrator

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

The plaintiff in the main action before the Sozialgericht Schleswig, Kurt Beeck, is a German national who lives in Denmark with his wife and two children, Klaus (born on 18 March 1967) and Ursula (born on 2 July 1968). He works as an employed person in Flensburg in the Federal Republic of Germany and travels each day from his home in Denmark to his place of work. He has no living accommodation in Flensburg. His wife works as an employed person in Denmark. She receives Danish family allowances (børnetilskud) in respect of the two children.

In December 1977 the plaintiff applied to the Arbeitsamt [Employment Office] Flensburg for payment in respect of his second child, his daughter Ursula, of half the German family allowance in accordance with Article 8 (2) of the Bundeskindergeldgesetz [Federal Law on Family Allowances], hereinafter referred to as "the Federal Law". In January 1978 the Arbeitsamt refused his application on the ground that in accordance with Article 10 (1) (a) of Regulation No 574/72 entitlement to family allowances under the Federal Law must be suspended because the plaintiff's wife was in employment and was in receipt of family allowances for their children pursuant to Danish law.

The objection lodged by the plaintiff against the decision of the Arbeitsamt was dismissed. He then brought an action before the Sozialgericht Schleswig relying on a judgment of the Bundessozialgericht [Federal Social Court] of 25 October 1977 in another case (Az.: 8/12 RKg 8/77). That judgment concerned a case, which is virtually identical with this case, in which a German national holding a permanent post as an employed person in Flensburg and residing with his wife and two children in Denmark had applied to the Arbeitsamt Flensburg for family allowances whilst his wife, who worked in Denmark, received Danish family allowances for the two children. The grounds and operative part of the judgment of the Bundessozialgericht may be summarized as follows:

1. In view of the close connexion between the legislation on family allowances and provisions on taxation a German national who has been in gainful employment in the Federal Republic of Germany for several years and is subject to German tax laws should be treated as having his habitual residence, within the meaning of Article 1 (1) of the Federal Law, within the territory in which that law applies. Accordingly he has the status of a person entitled to claim under the said Article 1 (1) and by virtue of subparagraph 1 (a) of the second paragraph of Article 2 (5) thereof, his children qualify for the grant of allowances.
2. There is no question of a suspension of German entitlement to family allowance under Article 10 (1) (a) of Regulation No 574/72. That

provision is not applicable owing to the fact that the entitlement in issue is already barred by the provisions of national law to be found in Article 8 (1) (2) of the Federal Law whereby family allowance is not granted for a child in respect of whom comparable benefits are granted outside the territory in which that Law applies.

By an order dated 19 November 1979 the Sozialgericht Schleswig stayed the proceedings and in accordance with Article 177 of the EEC Treaty asked the Court to give a preliminary ruling on the following questions:

1. Is a German national who resides with his wife and children in Denmark and is employed in the Federal Republic but returns daily from his place of work to his residence in Denmark, and whose wife is employed also in Denmark, entitled to receive family allowance under the national laws of the Federal Republic of Germany pursuant to Article 20 in conjunction with Article 4 and Article 1 of Regulation No 1408/71 of the Council of 14 June 1971 as a "frontier worker" within the meaning of those overriding provisions of European law?

2. Is such an employed person also so entitled if, independently of European law, he is already treated under national law as if he had his habitual residence in the Federal Republic of Germany?

3. Is an entitlement to family allowance conferred on a worker residing in Denmark by German national legislation totally suspended under Article 10 (1) (a) of Regulation No 574/72 on the implementation of Regulation No 1408/71 [as amended by Article 1 (5) of Regulation No 878/73] if his wife receives the Danish family allowance (børnetilskud) for those children in Denmark, even though Article 8 (2) of the German Bundeskindergeldgesetz ("the Federal Law") provides for payment of a family allowance to the extent of the difference between the Danish and the German family allowances?

The Sozialgericht Schleswig gave the following grounds for its order:

"... The Court is convinced that the plaintiff has no primary entitlement to receive the family allowance under the Federal Law because neither his legal residence nor his habitual place of residence, within the meaning of Article 1 (1), is within the area of application of that law. The firm opinion of the Court is that the plaintiff's claim to the German family allowance for his children results from overriding European law, because according to Article 73 (1), taken in conjunction with Article 13 (2) (a) of Regulation (EEC) No 1408/71, he is to be treated as if he were resident with his children in the Federal Republic of Germany. According to Article 8 (1) (2) of the Federal Law, the family allowance is not payable for a child where a person, in relation to whom the child is taken into consideration under Article 2 (1), is entitled to receive family allowances for that child which are payable outside the area of application of that law and which are comparable to the German family allowance or to one of the benefits listed under paragraph (1). However, Article 8 (2) of the Federal Law provides that the difference between family allowances shall be paid if in the circumstances referred to in paragraph (1) (2), *inter alia*, the gross amount of the other benefit is lower than that of the German family allowance. According to that

provision the plaintiff would be entitled to receive the German family allowance for his child Ursula to the extent of the difference in benefits because the Danish family allowance for his second child, Ursula, is lower than the family allowance which he is entitled to receive in the Federal Republic. The court is in doubt as to whether Article 10 (1) (a) of Regulation (EEC) No 574/72, which in that respect has the same result as Article 8 (1) of the Federal Law, despite the national provision in Article 8 (2) thereof, suspends *in toto* the national entitlement to receive a family allowance which is granted according to European law on the ground that the plaintiff's wife receives a family allowance under the primary Danish law, or whether Article 10 (1) (a) of Regulation No 574/72 does not affect Article 8 (2) of the Federal Law."

The order making the reference for a preliminary ruling was lodged at the Court Registry on 25 March 1980. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the plaintiff in the main action, by the Bundesanstalt für Arbeit, the defendant in the main action, represented for this purpose by Mr Müller, by the Commission of the European Communities, represented for this purpose by Norbert Koch, acting as Agent, and by the Government of the Italian Republic, represented for this purpose by Franco Favara, Avvocato dello Stato.

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.

By an order of 16 September 1980 the Court decided to assign the case to the Second Chamber pursuant to Article 95 (1) and (2) of the Rules of Procedure.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice

The *plaintiff in the main action* cites in support of his case the decision of the Bundessozialgericht of 25 October 1977 and a commentary (Winckenhagen and Krebs) on the Federal Law. It appears from the passages cited by the plaintiff that he claims entitlement to family allowances under Article 1 (1) of the Federal Law on the ground that for tax purposes he is resident within the area of application thereof.

The *defendant in the main action* is of the view that the first and second questions of the Sozialgericht are not relevant to the issue to be decided as the provisions referred to are of no assistance in settling an issue concerning family allowances and that the only crucial question is the third one.

In that regard it observes that the expression "an entitlement ... conferred by German national legislation" should be understood as meaning "an entitlement under Article 73 of Regulation No 1408/71 in application of the national German provisions of the Bundeskindergeldgesetz", that is to say the Federal German law on family allowances. The question put to the Court should be read in the light of that correction, it being understood that the plaintiff has no entitlement to family allowances arising from German law alone but entitlement pursuant to Article 73 (1) in conjunction with Article 13 (2) (a) of Regulation No 1408/71 and Article 2 of the Federal Law.

In support of its contention the defendant in the main action submits that, despite the erroneous finding of the Bundessozialgericht in its decision of 25 October 1977, a German frontier worker who works in the Federal

Republic of Germany and lives with his family in Denmark should not be regarded as having his habitual residence in the Federal Republic within the meaning of Article 1 (1) of the Federal Law. As regards the geographical area of application of that law it is not permissible to refer to an irrebuttable presumption of residence which exists in revenue law but which cannot apply to family allowances and therefore to the application of the Federal Law. In regard to family allowances reference should be made to the concept of "habitual residence" which the Bundesfinanzhof [Federal Finance Court] defined in a judgment of 5 February 1965 in which it stated that "frontier workers, that is to say workers who daily enter the country from abroad in order to work and leave the country to return abroad when work is over, must be regarded as not being habitually resident in this country".

The plaintiff in the main action is a typical frontier worker who has no habitual residence within the Federal Republic and accordingly no rights under Article 1 (1) of the Federal Law.

On the other hand, under the aforementioned provisions of Regulation No 1408/71, and especially under Article 73 (1), an employed person subject to the laws of the Federal Republic is entitled in respect of children living in Denmark to the family allowances provided for by German legislation just as if his children lived within the Federal Republic of Germany. However, Community law provides in Article 10 (1) (a) of Regulation No 574/72 (successively amended by Regulations No 878/73 of the Council of 26 March 1973 (Official Journal L 86) and No 1209/76 of the Council of 30 April 1976 (Official Journal L 138)) that the entitlements which it thus accords under Article 73 (1) may be suspended in full where a right to benefits which is not subject to conditions of insurance or employment exists in the State in which the children reside and the spouse of the worker to whom benefits are due under Article 73 is employed in that State. By virtue of the second sentence of Article 10 (1) (a) of Regulation No 574/72, which is a Community provision aimed at a specific instance of overlapping and which excludes any application of parallel national provisions, if the spouse of the person entitled to German family allowances under the Community legislation pursues a professional or trade activity in the State of residence of the child in respect of which that benefit is due, in this case Denmark, the right to the "børnetilskud" accruing under Danish national law overrides entitlement to German family allowance accruing under Community law and results in the complete suspension of the latter. In such a case, where spouses have concurrent entitlements in the two States of the European Community in which they work, only the entitlement in the State of residence of the children is to be satisfied and the other State is released from its obligation.

Finally, the Bundesanstalt für Arbeit is concerned to state the meaning which it gives to the expression "benefits *due* under the legislation of a Member State", occurring in Article 10 (1) (a) of Regulation No 574/72. It considers that there is an entitlement to benefits even if they have not necessarily fallen due for payment.

Consequently, in the opinion of the Bundesanstalt für Arbeit, the third question contained in the order should be answered as follows:

"Pursuant to Article 10 (1) (a) of Regulation (EEC) No 574/72 the entitlement of a German frontier worker residing in Denmark to German family allowances

under Article 73 (1) taken together with Article 13 (2) (a) of Regulation (EEC) No 1408/71 and with the provisions of the Federal Law is suspended in full with no possibility of part of the child allowance being paid under Article 8 (2) of that Law if his wife is entitled as a worker employed in Denmark to 'børnetilskud' in respect of the children residing there."

The *Commission of the European Communities* sets out the facts of the case and the problem which has arisen before the national court and then discusses the answer which should be given to the questions raised.

The Commission first reviews the relevant national provisions in order to be able to answer the national court's first two questions. It then goes on to discuss the relevant provisions of Community law. It states that the plaintiff in the main action is a "frontier worker" within the meaning of Article 1 (b) of Regulation No 1408/71 and since no specific rules have been enacted in Community law on family allowances for frontier workers Articles 73 and 13 (2) (a), of Regulation No 1408/71 apply to them (Article 20, concerning benefits for frontier workers in the event of sickness or maternity, not being relevant to the facts of the main action).

Contrary to the opinion expressed by the Bundessozialgericht in the judgment of 25 October 1977 cited by the court making the reference, the prohibition of overlapping of benefits contained in Article 10 (1) (a) of Regulation No 574/72 is not made inoperative by the fact that entitlement to family allowances is already excluded by Article 8 of the Federal Law which is a provision of national law designed to avoid the overlapping of entitlements. The conflict between those provisions may be resolved only by the precedence of Community law and by the application of Article 10 (1) (a) of Regulation No 574/72 alone. That being so, a distinction should be drawn depending on whether the application of that article in regard to German law is to be made before or after 31 December 1978.

The Commission states that a specific answer to the questions referred to the Court is made more difficult by the fact that they also concern the interpretation of national law, which is not within the jurisdiction of the Court. The answer should accordingly be based on hypotheses. In this regard Questions 1 and 2 may be answered together. The Commission believes that in view of that position the questions may be answered as follows:

"(1) For so long and in so far as the provisions of the Bundeskindergeldgesetz relating to the habitual residence of a claimant and the children in question confer, in terms or on the construction given to them by case-law, an entitlement to family allowance on persons who are gainfully employed as frontier workers in the Federal Republic of Germany and who reside, as do the children in question, in another Member State, that entitlement is acquired by virtue of German law and there is no need to apply the provisions of Article 73 (1) and of Article 13 (2) (a) of Regulation (EEC) No 1408/71.

(2) In that event the entitlement of the person concerned to family allowances for children residing in Denmark and in respect of whom Danish family allowances are received is suspended only in respect of the amount of the Danish benefit and, furthermore, only in respect of half the amount of the family allowances if, under the provisions of German law, the person concerned would have been entitled to half the amount of the family allowances and if that amount exceeds the difference between the Danish benefit and the whole of the German family allowances."

The *Government of the Italian Republic* also observes that it is Article 73 (1) and Article 76 of Regulation 1408/71 which appear to be important for the resolution of the dispute. The residence of the persons entitled to or receiving benefits does not matter. The basic principle of Community law is that entitlements remain intact irrespective of residence. That is the "logically necessary result" of Articles 48 (3) and 53 of the Treaty, and of freedom of movement, not only for workers and members of their family, but for persons in general.

Accordingly, as an exception to that principle, Article 76 of Regulation No 1408/71 should be construed in the light of Articles 3, 48 and 51 of the Treaty as being "only intended to limit the possibility of overlapping benefits" — judgment of 20 April 1978 in Case 134/77 *Ragazzoni* [1978] ECR 963. A migrant worker may not be deprived of the benefit of a part of the legislation of a Member State save in the case of an express exception which is in accordance with the Treaty; an example of the way such an exception should be interpreted was given by the Court itself in its judgment of 6 March 1979 in Case 100/78 *Rossi* [1979] ECR 831; that method of interpretation should be applied to Article 10 (1) of Regulation No 574/72, which may not cause a migrant worker and the members of his family to lose a right accorded by a national law — judgment of 21 October 1975 in Case 24/75 *Petroni* [1975] ECR 1149.

The Italian Government submits that in truth Article 10 (1) of Regulation (EEC) No 574/72 does not embody an additional, or, in comparison to the rule in Article 76 of Regulation (EEC) No 1408/71, a more stringent Community rule against overlapping. Article 10 (1) is intended solely to determine the national legislation to be applied in the event of there being different and competing rules against overlapping in both the national legislation of the country in which the member of the family resides and in the national legislation to which the worker is subject.

This case does not involve any such concurrence of national rules against overlapping which act negatively in regard to benefits of the same nature granted for the same period but concurrence of rules which act positively and confer and quantify entitlement to benefits even where other supplementary benefits are available. The Italian Government regards the present case as being "on all fours" with the *Rossi* judgment, cited above.

In conclusion the Italian Government proposes that the answer should be that:

"Article 10 (1) of Regulation (EEC) No 574/72 does not have the effect of suspending an entitlement, accorded by the national legislation of a Member State, to the difference between family allowances due by virtue of Article 73 (1) of Regulation (EEC) No 1408/71 and family allowances due in respect of the same 'member of the family' under the national legislation of another Member State."

III — Oral procedure

At the sitting on 20 November 1980 the Commission, represented for the purpose of the oral procedure by its Legal Adviser, Dr. N. Koch, submitted oral argument and replied to questions put by the Court.

The Advocate General delivered his opinion at the sitting on 18 December 1980.

Decision

1 By an order dated 19 November 1979 which was received at the Court on 25 March 1980 the Sozialgericht [Social Court] Schleswig referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of various provisions 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) and of Regulation No 574/72 of the Council of 21 March 1972 laying down the procedure of implementing Regulation No 1408/71 (Official Journal, English Special Edition 1972 (I), p. 159).

2 Those questions have been put to the Court in the context of a dispute between a frontier worker of German nationality and the Bundesanstalt für Arbeit [Federal Employment Office]. The frontier worker resides in Denmark with his wife and two children but works as an employed person in Flensburg in the Federal Republic of Germany. He travels each day from his Danish residence to his place of work, where he has no living accommodation. His wife is employed in Denmark and receives family allowances (børnetilskud) in that country in respect of their two children. Acting on behalf of the Bundesanstalt für Arbeit, the Arbeitsamt [Employment Office] Flensburg refused his application for the payment in the Federal Republic of half the amount of German allowances payable in respect of his second child under Article 8 (2) of the Federal German Law on family allowances (the Bundeskindergeldgesetz, hereinafter referred to as "the Federal Law"). According to that provision, half the amount of the

allowance provided for may be granted in respect of a dependent child when the benefit provided by another Member State does not exceed 75% of the "Kindergeld" [family allowance].

3 Acting for the Bundesanstalt für Arbeit, the Landesarbeitsamt [Regional Employment Office] Schleswig-Holstein dismissed the objection lodged against that refusal on the ground that his entitlement to family allowances must be suspended in accordance with the Community rule on overlapping benefits contained in Article 10 (1) (a) of Regulation No 574/72 of the Council. The plaintiff in the main action thereupon brought proceedings in which he relied on a judgment given by the Bundessozialgericht [Federal Social Court] on 25 October 1977 in a similar case and which held in effect that, in view of the German definition of residence for tax purposes and the close links existing between the legislation on family allowances and provisions on taxation, a German national must be able to receive family allowances in the same way as a resident.

4 In view of the arguments submitted to it the Sozialgericht Schleswig stayed the proceedings and referred three questions to the Court, the first two of which are as follows:

"1. Is a German national who resides with his wife and children in Denmark and is employed in the Federal Republic but returns daily from his place of work to his residence in Denmark, and whose wife is employed also in Denmark, entitled to receive family allowance under the national laws of the Federal Republic of Germany pursuant to Article 20 in conjunction with Article 4 and Article 1 of Regulation No 1408/71 of the Council of 14 June 1971 as a 'frontier worker' within the meaning of those overriding provisions of European law?

2. Is such an employed person also so entitled if, independently of European law, he is already treated under national law as if he had his residence in the Federal Republic of Germany?"

5 By those questions the national court is asking whether a frontier worker within the meaning of Article 1 (b) of Regulation No 1408/71 acquires a right to family allowances pursuant to the provisions of that Community

regulation. It should first be noted that Article 20 of Regulation No 1408/71, which is referred to in the first question, is not relevant to the case in hand since under the scheme of the regulation that article is concerned with benefits for frontier workers in the event of sickness or maternity; on the other hand, the provisions on family benefits, of which family allowances within the meaning of Article 4 (1) (h) forms part, are applicable to workers as a whole and are those contained in Articles 73 (1) and 13 (2) (a).

6 Article 73 (1) of Regulation No 1408/71 affords a worker subject to the legislation of a Member State entitlement, in respect of the members of his family residing on the territory of another Member State, to the family benefits provided for by the legislation of the first-mentioned State as if they resided on the territory of that State.

7 Therefore, for Article 73 (1) to apply, it is sufficient for the worker to be employed on the territory of a Member State whilst the members of the worker's family reside on the territory of another Member State. That provision goes together with the rule laid down in Article 13 (2) (a) of the same regulation which states that a worker employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State. That arrangement stems from the objective of Regulation No 1408/71, which is to guarantee all workers who are nationals of the Member States and who move within the Community equality of treatment in regard to the different national laws and the enjoyment of social security benefits irrespective of the place of their employment or of their residence, and it must be interpreted uniformly in all Member States regardless of the arrangements made by national laws on the acquisition of entitlement to family benefits.

8 The answer to the first two questions from the Sozialgericht Schleswig should therefore be that by virtue of Articles 73 and 13 (2) (a) of Regulation No 1408/71 taken together a frontier worker residing with his wife and children in a Member State other than the State of employment acquires an entitlement under Community law to family allowances in the latter State.

9 In addition the Sozialgericht Schleswig has put the following third question to the Court:

"Is an entitlement to family allowance conferred on a worker residing in Denmark by German national legislation totally suspended under Article 10 (1) (a) of Regulation No 574/72 on the implementation of Regulation No 1408/71 [as amended by Article 1 (5) of Regulation No 878/73] if his wife receives the Danish family allowance (børnetilskud) for those children in Denmark, even though Article 8 (2) of the German Bundeskindergeldgesetz provides for payment of a family allowance to the extent of the difference between the Danish and the German family allowances?"

10 By that question the national court requests the Court to provide it with guidance in interpreting the rule on overlapping benefits stated in Article 10 (1) (a) of Regulation No 574/72 where the wife of a worker acquires a parallel entitlement to family allowances in the State of residence which overlaps with the worker's entitlement in the State of employment.

11 The aforementioned Article 10 (1) (a) of Regulation No 574/72 of the Council of 21 March 1972 as amended by Regulation No 878/73 of the Council of 26 March 1973 (Official Journal L 86, p. 1), amended in turn by Council Regulation No 1209/76 of 30 April 1976 (Official Journal L 138, p. 1), provides that:

"Entitlement to family benefits or family allowances due under the legislation of a Member State, according to which acquisition of the right to those benefits or allowances is not subject to conditions of insurance or employment, shall be suspended when, during the same period and for the same member of the family:

(a) benefits are due in pursuance of Article 73 or 74 of the regulation. If, however, the spouse of the worker or unemployed worker referred to in those articles exercises a professional or trade activity in the territory of the said Member State, the right to family benefits or family allowances due in pursuance of the said articles shall be suspended; and only those

family benefits or family allowances of the Member State in whose territory the member of the family is residing shall be paid, the cost to be borne by that Member State."

12 That rule against overlapping benefits, under which priority is given to entitlement to benefits payable in the country of residence of the child, applies in a case such as the one described by the national court in which there is an overlapping of comparable benefits. The conclusion must therefore be drawn that entitlement to family allowances payable by virtue of Article 73 is suspended in the State of employment of the frontier worker in view of the entitlement acquired by his spouse in the State of residence the cost of which is borne by that State. However, under well-established case-law based on the fundamental principle of freedom of movement for workers and the objective of Article 51 of the EEC Treaty, a rule designed to prevent the overlapping of family allowances is applicable only to the extent to which it does not, without cause, deprive those concerned of an entitlement to benefits conferred on them by the legislation of a Member State. Accordingly, where the amount of the allowances the payment of which is suspended exceeds that of the allowances received by virtue of the pursuit of a professional or trade activity the rule on overlapping benefits contained in Article 10 (1) (a) of Regulation No 574/72 as amended should be applied only in part and the difference between those amounts should be granted as a supplement.

13 Consequently the answer to the third question should be that Article 10 (1) (a) of Regulation No 574/72 as amended suspends payment of family benefits or family allowances payable under the legislation of the State of employment only up to the amount received, in respect of the same period and the same member of the family, in the State of residence by the spouse pursuing a professional or trade activity within the territory of that State.

Costs

14 The costs incurred by the Commission of the European Communities 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 action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Sozialgericht Schleswig by an order of 19 November 1979, hereby rules:

1. **By virtue of Articles 73 and 13 (2) (a) of Regulation No 1408/71 taken together a frontier worker residing with his wife and children in a Member State other than the State of employment acquires an entitlement under Community law to family allowances in the latter State.**

2. **Article 10 (1) (a) of Regulation No 574/72 as amended suspends payment of family benefits or family allowances payable under the legislation of the State of employment only up to the amount received, in respect of the same period and the same member of the family, in the State of residence by the spouse pursuing a professional or trade activity within the territory of that State.**

Pescatore Touffait Due

Delivered in open court in Luxembourg on 19 February 1981.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber