of insurance under Point 2 (c), must therefore be granted the advantages provided for by the Netherlands legislation in respect of periods prior to their marriage and prior to 1 January 1957 during which she neither resided nor pursued an activity as an employed person in the Netherlands.

OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 21 January 1986 *

Mr President,
Members of the Court,

1. By an order of 19 October 1984, which was received at the Court Registry on 29 October 1984, the Raad van Beroep, Amsterdam asks the Court whether it is 'in accordance with Article 51 of the Treaty establishing the European Economic Community and with the provisions of Regulation No 1408/71 ... (in particular the provisions of Point 2 of Part I of Annex VI to that regulation) to refuse, in determining ... the pension of a married man, to grant to his wife, who after 1 January 1957 completed periods in accordance with Point 2 (c) of Part I of the aforementioned Annex VI, the advantages which Netherlands law, and in particular, Articles 1 (a) and 5 of the Royal Decree of 20 December 1956 (Staatsblad No 628), issued pursuant to Article 45 of the Algemene Ouderdomswet [General Law on Old-Age], attaches to periods of insurance'. The question arose in proceedings between G. J. J. De Jong, a Netherlands national, and the Sociale Verzekeringsbank, which is the national insurance authority, concerning the amount of the old-age pension to which Mr De Jong is entitled.

In the Netherlands, that benefit is governed by the Algemene Ouderdomswet (hereinafter referred to as 'the Old-Age Law'), which entered into force on 1 January 1957. It has been amended several times and supplemented by various Community rules contained in Annex VI to Council Regulation No 1408/71 of 14 June 1971 (Official Journal, L 230 of 22 August 1983, p. 11). Since I have provided a detailed summary of it in my opinion in Case 284/84, *Spruyt* v *Sociale Verzekeringsbank*, I will confine myself in this case, to recalling that, according to the provisions of that law, (a) a married woman does not have an independent right to a pension; (b) only the husband, when he reaches age 65, is entitled to a pension for himself and his wife on the basis of the periods of insurance which each has completed; and (c) the amount of the pension due to the husband is reduced by 1% for each year in which either he or his wife were not insured.

The Old-Age Law also contains transitional provisions governing cases in which the recipient of the pension was 15 years old on or before 1 January 1957, the date from which the 50-year period of insurance which a recipient must complete in order to qualify for a full pension is calculated. In particular, the years preceding that date are considered as insured periods if the person concerned resided in the Netherlands for an uninterrupted period of six years or for periods totalling six years after his 59th

* Translated from the Italian.

birthday (Article 43) and is a Netherlands national normally resident in the Netherlands (Article 44). Those requirements were rendered less stringent by the Royal Decree of 20 December 1956. Thus Article 1 (a) provides that the years during which a person was insured within the meaning of the Old-Age Law, even though he was not resident in the Netherlands, are deemed to be periods of residence in that country. Article 5 (1) (a) contains a similar provision in favour of Netherlands nationals who have been insured without interruption from the period between 1 January 1957 and their 65th birthday.

The Community rules relevant to this case are contained in Point 2 (a), (c) and (f) of Part I of Annex VI to Regulation No 1408/71. Once again, I have dealt with that regulation at length in my Opinion in the *Spruyt* case. I would therefore refer the Court to that opinion in regard to the contents and scope of those provisions and the legislative policy underlying them.

2. Mr De Jong was born on 27 July 1918 and married Miss Costantino in Italy on 30 October 1950. Following the marriage the latter, who was born on 4 August 1920, took Netherlands nationality. On 16 February 1951, Mr and Mrs De Jong established their residence in the Netherlands. In 1975, the husband became totally unable to work and from that time received benefits under the Wet op de Arbeidsongeschiktheidsverzekering [Law on Insurance against Incapacity for Work, hereinafter referred to as 'Law on Incapacity for Work']. On 17 April 1982, the family moved permanently to Italy, where, on 27 July 1983, Mr De Jong celebrated his 65th birthday and thus became entitled to a pension for himself and for his wife.

In calculating the amount of the pension, the Verzekeringsbank considered, first, that, as a person in receipt of benefits under the Law on Incapacity for Work Mr De Jong had continued to be insured within the meaning of the Old-Age Law, in accordance with the provisions of Article 1 (1) (g) of the Royal Decree of 19 October 1976 (Staatsblad No 557), even after he left the Netherlands. Since he had been insured without interruption since 1 January 1957, Mr De Jong qualified for the benefit of the transitional provisions (Articles 43 and 44 of the AOW and Articles 1 (a) and 5 of the Royal Decree of 20 December 1956) and was therefore entitled to a full pension.

That was not the case in regard to his wife. Since she had been insured from 1 January 1957 to 17 April 1982, the date on which she followed her husband to Italy, she could not claim the same advantages because she had not continued to reside in the Netherlands after her husband's 59th birthday on 27 July 1977 (Article 43 of the Old-Age Law and Article 1 (a) of the Royal Decree of 20 December 1956) or been insured, between 1 January 1957 and Mr De Jong's 65th birthday within the meaning of Article 44 of the Old-Age Law and Article 5 (a) of the abovementioned decree. However, by virtue of Point (2) (c) of Part I of Annex VI, she could be regarded as insured during the period between 17 April 1982 (the departure for Italy) and 27 July 1983 (her husband's 65th birthday). Furthermore, by virtue of the same provision she could be regarded as insured during the period following the marriage between 16 February 1951 (the date at which they settled in the Netherlands) and 1 January 1957, since those periods coincided with periods of insurance completed by Mr De Jong. However, Point 2 (c) also provides that she could not be regarded as insured during the period between her 15th birthday and 15 February 1951.

Consequently, the Verzekeringsbank deducted from Mr De Jong's pension a sum corresponding to the 15 years during which his wife was not insured and paid only 85% of the full amount. Mr De Jong challenged that decision before the Raad van Beroep, Amsterdam. He claimed that since under Point (2) (c) of Part I of Annex VI the period between 17 April 1982 and 27 July 1983 was deemed to be an insurance period, those periods should also be regarded as insurance periods within the meaning of the Old-Age Law in regard to his wife. It would then have been possible to regard the latter as having been insured without interruption from 1 January 1957 to 27 July 1983 and therefore, by virtue of the provisions of Article 5 of Royal Decree of 20 December 1956, to regard her as having also been insured between her 15th birthday and the date of her arrival in the Netherlands.

The national court considered it appropriate to stay the proceedings in order to refer to the Court of Justice the question set out at the beginning of my Opinion. The grounds of the order requesting a ruling state that the question is referred to the Court of Justice essentially in order to determine the meaning of the expression 'periods to be taken into account as insurance periods' contained in Point 2 (c) and, in particular, to establish whether such periods give rise to the same legal consequence as those attached to actual insurance periods by the Old-Age Law.

3. In the course of the procedure before the Court, written observations were submitted by the Netherlands Government, the Verzekeringsbank and the Commission of the European Communities. At an early stage of the proceedings, the Court asked the parties to state whether Mr and Mrs De Jong, after their departure for Italy, could have avoided the reduction of their pension by any method which did not involve continued residence in the Netherlands.

Let me say first that the reply to the Court's question should be in the affirmative. It is worth pointing out *in limine* that the Court has decided that the sole objective of Regulation No 1408/71 'is to coordinate the national legal systems of social security' so that migrant workers will not lose the benefits provided for under those schemes by virtue of their mobility, whereas it is for the legislatures of the Member States to lay down conditions for affiliation to a national social security scheme (judgment of 12 July 1979 in Case 266/78, *Brunori* v *Landesversicherungsanstalt Rhein-Provinz* [1979] ECR 2705; judgment of 24 April 1980 in Case 110/79, *Coonan* v *Insurance Officer* [1980] ECR 1445; judgment of 23 September 1982 in Case 276/81, *Sociale Verzekeringsbank* v *Kuypers* [1982] ECR 3027). The provisions of Point 2 (a), (c) and (f) must be interpreted in the light of those principles.

As I pointed out in my Opinion in the *Spruyt* case, Point 2 (a) and (f) extend the benefit of the transitional rules laid down in the Old-Age Law to workers who leave the Netherlands before reaching their 65th birthday on condition that they resided and worked in the Netherlands after the age of 15 and before the entry into force of the national legislation (1 January 1957). On the other hand, Point 2 (c) is designed to avoid the consequences of the reduction in the married man's pension which may be made under Article 10 of the Old-Age Law. It provides that the wife is entitled to have considered as insurance periods the years following the marriage and preceding 1 January 1957 during which she remained in her own country and while her husband was working in the Netherlands, and was therefore not insured within the meaning of the Old-Age Law.

It seems to me that that explanation affords sufficient justification for the conclusion that the argument advanced by Mr De Jong, to the effect that the periods referred to in Point 2 (c) must also be regarded as insurance periods for the purposes of the

Old-Age Law, exceeds the limits of the coordination which Community law seeks to achieve and introduces conditions for affiliation which are not provided for in Netherlands law. During the period in question, Mrs De Jong had no connection with the Netherlands; she did not reside there, she did not work there, she was not married to a person working in that country. In fact, the result of that argument is, paradoxically, to confer upon a woman on the occasion of her marriage greater advantages than those enjoyed by an unmarried worker whose situation is otherwise identical, even though it is true that the latter may, according to Point 2 (a), have periods before 1 January 1957 taken into account as insurance periods, but only if he actually resided in the Netherlands during those periods.

However, that was not the result which the Community legislature sought to achieve when it adopted the rule contained in Point 2 (c) for the benefit of married women, supplementing the provisions of the Old-Age Law. As we have seen, the sole purpose of that rule is to prevent the husband's pension from being reduced and thus to protect workers who move to the Netherlands after their marriage without taking their wife with them. Such are the bonds of marriage, it might be said; but such is also the additional protection afforded by the principle laid down in Article 48 of the EEC Treaty, in this case, *vis-à-vis* the Netherlands legislation.

It is true that the application of that legislation causes Mr De Jong to lose 15% of his pension. However, as the Verzekeringsbank explained in its reply to the Court's question, it is possible under the Netherlands system for the persons concerned to continue to benefit from the transitional provisions by taking out voluntary insurance. Mrs De Jong can still do that and the amount of the premiums that she would be required to pay would be the same as the contributions which she would have to pay under the compulsory insurance scheme to obtain the same benefit. That being so, the transitional provisions contained in the Old-Age Law cannot be said to obstruct the free movement of workers within the Community.

4. On the basis of the foregoing considerations, I propose that, in reply to the question referred to it by the Raad van Beroep, Amsterdam, by an order of 19 October 1984 in the proceedings between G. J. J. De Jong and the Sociale Verzekeringsbank, the Court should give the following ruling:

Article 51 of the EEC Treaty and Point 2 (c) of Part I of Annex VI to Regulation No 1408/71 must be interpreted as meaning that the recipient of an old-age pension under the Algemene Ouderfdomswet may not claim entitlement under the transitional provisions contained in that Law in respect of periods other than those referred to in the provisions of the annex.