In Case 171/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Lyon, for a preliminary ruling in the action pending before that court between

BIAGIO VALENTINI

and

ASSEDIC, ASSOCIATION POUR L'EMPLOI DANS L'INDUSTRIE ET LE COMMERCE [Association for Employment in Industry and Trade], LYON,

on the interpretation of Article 46 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 on the interpretation of Article 51 of the EEC Treaty,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco, T. Koopmans, O. Due, K. Bahlmann, Y. Galmot and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

1. Biagio Valentini, an Italian national, who was born on 25 March 1914 and resides in France, worked in turn in Italy and in France. Until 1957 he worked in Italy and by reason of that fact has, since the age of 60, received an old-age pension of a sum equivalent to FF 15 per day. That pension, to which he had contributed, is paid by the Istituto Nazionale per la Previdenza Sociale [National Social Welfare Institution]. Subsequently, from 1 April 1963 to 23 September 1977, he was employed in France at Villeurbanne (Rhône) as a carpenter. In 1977, at the age of 63, he ceased work and requested the Association pour l'Emploi dans l'Industrie et le Commerce [hereinafter referred to as "the Association"], Lyon, to pay him under the "guaranteed income scheme" established by the amendment of 13 June 1977 to the annex to the regulation governing special allowances relating to the situation of unemployed workers over 60. That scheme provides that a worker who has retired may claim benefits amounting to a daily proportion of 70% of his average daily earnings, calculated on the same basis as that of the special unemployment benefit, that is to say in general on the basis of the average daily earnings of the preceding three months.

It appears from the papers and information submitted by the parties to the proceedings that "the system of guaranteed income" derives from a joint scheme, established by agreements between management and labour in France.

The amendment of 13 June 1977 was agreed between the Union Nationale Interprofessionnelle pour l'Emploi dans l'Industrie et le Commerce [Nationale Inter-trade Organization for Employment in Trade and Industry, hereinafter referred to as "the Inter-trade Organization"] and the State, pursuant to Article L 351-8 of the Code de Travail [Labour Code], and within the framework of the National Inter-trade Agreement of 13 June 1977 which complemented and modified the National Inter-trade Agreement of 27 March 1972. Those two agreements are annexes to the Agreement of 31 December 1958 which set up the scheme of unemployment insurance by the establishment of a national inter-trade scheme of special benefits for unemployed workers in industry and trade. The scheme is administered by the Inter-trade Organization and the Association, in other words not by an institution created by the State but by independent bodies. The agreement of 27 March 1972 provided for an additional benefit,

amounting to 70% of the former earnings, to be paid to recipients of benefits under the unemployment insurance scheme if they were made redundant after 60 years of age and if, in addition, they satisfied certain special conditions. The agreement of 13 June 1977 temporarily extended that scheme to workers over 60 who retired and temporarily altered certain provisions of the earlier agreement and of the regulation annexed to it. The agreement of 13 June 1977 came into force on 11 July 1977. Initially its duration was limited to 31 March 1979, but it was subsequently extended.

According to that agreement, in order to qualify for the guaranteed income allowance, a worker must satisfy five conditions:

In the first place, his contract of employment must be terminated, either as a result of redundancy or following retirement;

Secondly, he must be at least 60 years of age:

Thirdly, he must have adhered for 10 years to a social security scheme for workers by virtue of the fact that he has worked within the field of application of the unemployment insurance scheme and provide evidence of one year's continuous employment in one or more undertakings in the five years preceding the redundancy or retirement;

Fourthly, when he submits his application, he must not be entitled to receive an old-age pension under the social security scheme at the rate applicable at 65 years of age or the supplementary retirement pension awarded without the application of the coefficient in respect of early retirement;

Fifthly, he must not be in receipt of his social security retirement pension.

Article 2 (2) of the agreement provides that workers who are in receipt of an old-age pension before the contract of employment has been terminated are entitled to benefits, but that the amount of such benefits is reduced by the old-age allowances which they have acquired so that the ceiling of 70% of the former wage is not exceeded. In accordance with that provision, Article 38 of the above-mentioned amendment provides, in the version of 21 September 1979, that workers who are in receipt of an old-age benefit for life before their contract of employment has been terminated, receive a daily allowance under the guaranteed income scheme which is reduced so that, when added to the old-age allowance for one day, the total of the two benefits represents a maximum of 70% of the reference daily earnings.

Any old-age benefit, in other words any retirement allowance or pension awarded under a general scheme, a special scheme or an individual scheme must be taken into account for the award and calculation of the guaranteed income benefit, whether that pension or retirement allowance is full or proportional.

The Association accepted Mr Valentini's entitlement to the guaranteed income benefit and granted him an alternative income amounting to 70% of his former wage. However it deducted from that sum the amount of the Italian old-age pension which Mr Valentini had acquired in Italy, referring to Article 2 (2) of the above-mentioned inter-trade agreement of 13 June 1977. In view of the fact that Mr Valentini received an

Italian old-age pension at a daily rate of FF 15, and that his daily earnings amounted to FF 84.90, the Association calculated his daily benefit during his period of initial entitlement, taking into consideration subsequent revalorizations in accordance with the regulation at FF 47.05 (from 23 September 1977) increasing to FF 57.60 (from 1 April 1978).

On 14 May 1980, Mr. Valentini brought an action against the Association before the Tribunal de Grande Instance, Lyon, and asked the court to declare "that the reduction in his guaranteed income benefit was unjustified" and "to order the Association to pay him the sums which had been unduly deducted since 23 September 1977". He claimed that the fact that his Italian pension had been taken into account for the calculation of his benefit constituted an infringement of Articles 7, 48 and 51 of the EEC Treaty.

For its part, the Association asked the Tribunal de Grande Instance to dismiss Mr Valentini's action on the basis of Article 51 of the EEC Treaty and Article 67 of Regulation (EEC) No 1408/71 of the Council, according to which, in its view, a worker who places himself at the disposal of the employment services of the Member State in which he resides receives benefits in accordance with the legislation of the Member State in which he is registered as unemployed. It maintained that the failure to apply the prohibition of overlapping would place the plaintiff in a more favourable position than a worker of French nationality.

In view of the fact that the plaintiff relied on provisions of Community law, the Tribunal de Grande Instance, Lyon, by a judgment of 2 June 1982, decided to stay the proceedings:

"Until the Court of Justice of the European Communities, interpreting Article 46 of Regulation No 1408/71 of 14 June 1971 and Article 51 of the Treaty of Rome, has declared whether, in application of those provisions, a worker of Italian nationality residing in France, who has been in receipt of an old-age pension paid in Italy since the age of 60 and who receives in France the guaranteed income of 70% of his daily earnings as provided for in the amendment of 13 June 1977 to the annex to the regulation on allowances for unemployed workers, may claim to have his Italian pension paid concurrently with the French allowance of 70% of his daily earnings or whether, on the other hand, the French organization which pays him that allowance, namely the Association pour l'Emploi dans l'Industrie et le Commerce, is entitled to deduct from that allowance the sums paid by the Italian institution."

2. The judgment making the reference was lodged at the Court Registry on 24 June 1982.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Association, represented by Philippe Lafarge, of the Paris Bar, by the French Government, represented by Jean-Paul Costes, Secretary-General of the Comité Interministériel pour les Questions de Coopération Economique Européenne [Interdepartmental Committee for Questions of European Economic Cooperation], acting as Agent, by the Italian Government, represented by Pier Giorgio Ferri, Avvocato dello Stato, and by the European Commission, represented by Jean Amphoux, a Legal

Adviser in the Legal Department, 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 a preparatory inquiry. However, it requested the French Government to provide the Court, before 1 March 1983, with additional information relating to the French system of early retirement applicable in this case, in particular the text of the Agreement of 31 December 1958 and of the inter-trade agreements relating to the "guaranteed income scheme", namely the National Inter-trade Agreement of 27 March 1972 and the amendment of 13 June 1977 to the annex to the regulation governing special allowances relating to the situation of unemployed workers over 60 and the amendments thereto. In addition, it requested the Commission to submit, before 1 March 1983, an analytical table of the early retirement schemes in force in Member States and to make a comparative study of the principles of old-age insurance. The Commission and the French Government lodged their replies to the Court's request on 24 February and 2 March 1983 respectively.

II — Observations of the parties

1. Observations of the defendant in the main proceedings

The defendant in the main proceedings takes the view that Article 46 of Regulation No 1408/71 concerning old-age pensions and death grants cannot be applicable in the context of benefits of the type envisaged by the National Inter-trade Agreement of 13 June 1977 and the amendment of the same date. It notes that the benefit paid by it to Mr Valentini is not an old-age benefit but an unemployment allowance awarded to unemployed workers over 60 years of age. As regards the legal character of the benefits in question, it observes that the allowances are financed and paid by the institutions of the unemployment insurances scheme, bodies which are entirely distinct from the retirement pension institutions. Furthermore, the acquisition of entitlement is conditional upon registration of the receipt at the offices of the Agence Nationale pour l'Emploi [National Employment Office]. The entitlement to and calculation of the allowance are not determined on the basis of years of service as is the case for retirement pensions. Moreover, entitlement is calculated in the same manner and on the same conditions as for other unemployment allowances. In addition, the latter are of limited duration and payment thereof must cease as soon as the recipient reaches normal retirement age. It observes that the guaranteed income allowance is "an unemployment allowance which is totally different in character from an old-age pension", so that the provisions authorizing, in certain conditions, the overlapping of old-age, invalidity, or survivors' pensions, referred to in Article 46, are not applicable in this instance.

That is equally true of the provisions of Article 51 of the EEC Treaty which establish the principle of the aggregation of periods of insurance for the purpose of acquiring social benefits and the calculation of the amount thereof in the case of migrant workers. However in order to establish and to calculate Mr Valentini's entitlement to unemployment allowances, it was not necessary to take into account work performed in Member States other than France, so that the application of the coordinating rules was not considered.

2. Observations of the French Government

The *French Government* does not deny that the unemployment insurance scheme set up by the agreements falls within the scope of Regulation No 1408/71 of the Council inasmuch as the Agreement of 31 December 1958 was notified to the President of the Council of the European Communities and published on 6 April 1973, in accordance with Articles 1 (j) and 96 of Regulation No 1408/71. However, it takes the view that Article 46 of that regulation cannot apply in this instance, since the benefit in question is not an old-age pension but an unemployment benefit, which comes under Chapter 6 of the regulation. That follows from the fact that the benefit is paid and financed by the institutions of the unemployment insurance scheme which, in France, are separate from the social security institutions, which administer old-age pensions.

In addition, the rules for awarding the benefit are identical to those applicable for unemployment benefit and its recipients must be registered with the Agence Nationale pour l'Emploi. In that respect, the Court has expressly held that such registration was necessary in the context of unemployment, in particular in its judgments of 9 July 1975 (Case 20/75 *Gaetano d'Amico* [1975] ECR 891) and of 27 May 1982 (Case 227/81, *Aubin* v *Union National Interprofessionnelle* [1982] ECR 1991).

The French Government refers also to the fact that the payment of the benefit ceases on the day on which the recipient recommences an occupation, whether for an employer or not — which does not exclude old-age pensions. The characteristics of the guaranteed income scheme show that it is an integral part of the unemployment benefit scheme, of which it represents only a variation. On the other hand, the provisions concerning the non-overlapping of old-age, invalidity and death benefits and the case-law of the Court relating thereto are not applicable inasmuch as they are set out in Chapter 3 of Regulation No 1408/71, whilst the provisions on unemployment come under Chapter 6 and lay down no rule requiring the aggregation of such benefit. Indeed they exclude it, inasmuch as they offer the worker the choice of either joining the scheme of unemployment benefits of the State in which he was last employed, or of claiming the benefits of the State in which he resides.

Finally, it maintains that in respect of the overlapping of an unemployment benefit with benefits paid under the legislation of another Member State, the relevant provisions of Article 12 (2), which are the only provisions applicable in this instance, show that Community law does not preclude the adoption by a Member State of legislative provisions for reduction, suspension or withdrawal of benefits, as has recently been confirmed by the Court.

It would therefore be appropriate for the Court to rule that Article 46 of Regulation No 1408/71 cannot apply to unemployment benefits referred to in Chapter 6 of that regulation and that it follows, both from the case-law of the Court on the overlapping of unemployment benefits and from the Court's interpretation of the first sentence of Article 12 (2) of the regulation, which concerns the overlapping of different categories of benefit, that a Member State is justified in applying its

national provisions prohibiting the overlapping of benefits to a Community citizen who is entitled to an old-age pension paid by the authorities of one Member State and is in receipt of a guaranteed income allowance in another.

3. Observations of the Italian Government

The *Italian Government*, on the other hand, suggests that the question be answered in the affirmative on the ground that Regulation No 1408/71 should be interpreted in a manner favourable to the migrant worker, as the Court had laid down in its previous decisions. Moreover the Court has established the definite principle that strict limits must be imposed on the conditions in which measures against overlapping are permissible and has interpreted the provisions of Regulation No 1408/71 to the effect that, and to the extent to which, they implement the objectives laid down in the Treaty, in particular those referred to in Article 51 (a) and (b). It has decided, in particular, that if the application of national legislation proves to be less favourable than that of the scheme of aggregation and apportionment provided for in Article 46 (1) of Regulation No 1408/71, the latter scheme must be applied (judgment of 14 March 1978, Case 98/77 *Schaap* [1978] ECR 707). The conditions in which it is permissible to reduce social security benefits determined in pursuance of Article 46 (1) and (2) are defined in Article 46 (3). The Court has limited the application of that provision exclusively to cases in which it appears necessary to have recourse to the arrangement for aggregation of periods of insurance for the purpose of acquiring the right to social security benefits. In any other circumstances, the reduction on grounds of overlapping provided for in that measure is not compatible with Article 51 of the Treaty. Thus measures effecting reductions are not permissible in pursuance either of Article 46 (2) or of Article 12 (2) of Regulation No 1408/71. The Court should therefore reply to the question in the affirmative.

4. Observations of the Commission

The *Commission* takes the view that it is not possible to exclude the possibility that, in principle, Regulation No 1408/71 may be applicable to the French provisions relating to the guaranteed income allowance, despite their contractual nature, because they are covered by a declaration of the French Government, made in accordance with Article 1 (j) of that regulation by letter of 23 March 1972 (Official Journal of 6 April 1973, L 90, p. 1). However, the Commission too concludes that the award of a guaranteed income allowance of the type provided for under the French system of early retirement does not fall within the sphere of application of Article 46 of Regulation No 1408/71.

Neither the provisions concerning old-age benefits (Articles 44 to 51 of Regulation No 1408/71) nor those concerning unemployment benefits (Articles 67 to 71) are relevant to a consideration of the specific character of benefits such as the guaranteed income allowance. Those provisions were based on a traditional view of the benefits in question and the rules laid down in accordance therewith are not entirely appropriate. It was for that reason that the Commission proposed to the Council specific rules for the coordination of early retirement schemes (Official Journal of 9 July 1980, C 169, p. 22).

On the one hand, the effect of applying the provisions relating to the coordinated award of old-age pensions might alter the relationship between the benefits paid and the guaranteed income scheme as it was conceived and organized by the national provisions, as an extension of unemployment insurance. In particular it might weaken the link between the amount of the allowances actually paid, the amount of the income which it is intended to guarantee and the taking into account of benefits of a different type. Practical considerations such as the relatively short duration of the guaranteed income allowances, which are paid only until the award of old-age benefits properly so called, must also be taken into account.

On the other hand, the application of the provisions relating to unemployment benefits would imply a close connection between their grant and the availability of the person concerned on the employment market of the relevant State, whilst the purpose of the guaranteed income scheme is to remove recipients from the employment market. There is therefore no justification for maintaining in respect of those recipients the residence requirements which may be imposed as a condition for the payment of unemployment benefits.

As regards the overlapping of a guaranteed income allowance in a Member State and an old-age pension entitlement to which has been acquired in another Member State, the Commission contends that the purpose of Article 46 together with Article 12 (2) of Regulation No 1408/71 was to govern exclusively the overlapping of benefits of the same kind, in particular old-age or invalidity pensions. It considers that the concept of benefits of the same kind has been interpreted broadly by the Court, but that for such an interpretation to be possible a sufficient degree of comparability is required between the benefits which are to be paid jointly. In this instance there is no such comparability.

As regards Article 51 of the EEC Treaty, the Commission takes the view that Community law does not preclude Member States from taking into consideration for the application of their provisions against overlapping benefits payable to the persons concerned in other Member States such as the determination of the conditions for the acquisition, retention, loss or suspension of the right to social security benefits. Such conditions therefore apply without discrimination to nationals of all the Member States. The rule laid down in Article 38 of the regulation governing special allowances for unemployed workers over 60, in pursuance of which the guaranteed income allowance was reduced by the amount of the old-age benefits, applies equally to French nationals who are in the same position and the benefit paid is not reduced by a sum which is more than proportional to that of the foreign benefit on the basis of which the reduction is effected. In this instance there has therefore been no discrimination.

In the light of the above considerations, the Commission suggests that in reply to the question submitted it should be stated that the award of a guaranteed income allowance of the type provided for under the French unemployment insurance scheme does not fall within the sphere of application of Article 46 of Regulation No 1408/71.

III — Summary of the written observations submitted in reply to the questions put by the Court

At the Court's request, the *Commission* submitted an analytical table of early retirement schemes in force in the Member States and presented a comparative study of the schemes of early retirement and old-age insurance. It concludes on the basis of that examination that the early retirement schemes are distinguished from the unemployment insurance schemes by the fact that recipients are no longer required to make themselves available on the labour market as they are required to do for the grant of traditional unemployment allowances. That is because the very purpose of the grant of early retirement pensions is to remove such persons from that market. Moreover, in the Commission's view, such schemes may also be distinguished from old-age insurance benefits by numerous features, for example by their temporary nature and dependence on the economic situation, by the calculation of the amount payable under them and, except in the case of the early retirement pension introduced in Belgium, by their financing.

The *French Government* submitted to the Court the provisions concerning the French system of early retirement applicable in this instance.

IV — Oral procedure

The defendant in the main proceedings, the French Government, the Italian Government and the Commission presented oral argument at the sitting on 20 April 1983. On the question of the availability of recipients of the guaranteed income allowance on the labour market, the representatives of the defendant in the main proceedings, of the French Government and of the Commission stated that the recipients must be registered as unemployed at the Agence Nationale pour l'Emploi. However they are not required to sign on, and they are under no obligation to accept work under threat of losing the benefit in question. Furthermore they are not registered as seeking work for the purposes of national statistics.

The Advocate General delivered his opinion at the sitting on 18 May 1983.

Decision

1 By order of 2 June 1982, received at the Court on 24 June 1982, pursuant to Article 177 of the EEC Treaty, the Tribunal de Grande Instance [Regional Court], Lyon, referred to the Court for a preliminary ruling a question on the interpretation of Article 46 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 on the interpretation of Article 51 of the EEC Treaty.

2 That question was raised in the context of proceedings between Biagio Valentini and the Association pour l'Emploi dans l'Industrie et le Commerce [Association for Employment in Industry and Trade, hereinafter referred to as "the Association"], Lyon.

3 Mr Valentini, an Italian national, worked in Italy until 1957 and, by reason of that fact, has received since the age of 60, in other words since 1974, a contributory old-age pension amounting to FF 15 per day, which is paid by the Istituto Nazionale per la Previdenza Sociale [National Social Welfare Institution].

4 Subsequently, Mr Valentini worked in France from 1963 to 1977 and by virtue of that fact has since the age of 63, that is, since he left his paid employment in the latter year, received allowances under the guaranteed income retirement scheme.

5 The guaranteed income retirement scheme was temporarily set up in France by the national inter-trade agreement of 13 June 1977 which supplemented and amended the national inter-trade agreement of 27 March 1972 on the guaranteed income retirement scheme, which in turn supplemented the regulation annexed to the agreement of 31 December 1958 setting up the national inter-trade scheme of unemployment insurance and based on Article L 351-5 of the Code de Travail. That scheme is administered by the offices of the Association, which also administer the scheme's funds and which operate as members of the Union Interprofessionnelle pour l'Emploi dans l'Industrie et le Commerce [Inter-trade Organization for Employment in Trade and Industry].

6 The allowances paid under the guaranteed income scheme are granted to workers over 60 years of age who retire on the condition that they have been affiliated for 10 years to a workers' social security scheme by reason of an occupation within the field of application of the unemployment insurance scheme and that in principle they can provide evidence of one year's continuous employment in one or more undertakings in the five years preceding retirement.

7 The allowances represent a daily proportion of 70% of the average daily earning during the last three months of employment. They may however be reduced in pursuance of Article 38 of the amendment of 13 June 1977 to the annex to the regulation governing the scheme of special allowances relating to the situation of unemployed workers over 60. That provision, which is part of the above-mentioned inter-trade agreement of 13 June 1977, seeks to limit the allowances in question "so that when added to the old-age benefits for one day, the sum of the two benefits amounts to a maximum of 70% of the reference daily earnings".

8 The Association, Lyon, accepted Mr Valentini's entitlement to the guaranteed income allowances, the conditions of which he satisfied solely on the basis of his work in France. However, the Association deducted the Italian old-age pension amounting to FF 15 per day from the daily sum paid to him, so that the total of the two benefits should not exceed the ceiling of 70% of the former daily earnings.

9 Mr Valentini brought an action against that method of calculation before the Tribunal de Grande Instance, Lyon, which decided to stay the proceedings:

"Until the Court of Justice of the European Communities, interpreting Article 46 of Regulation No 1408/71 of 14 June 1971 and Article 51 of the Treaty of Rome, has declared whether, in application of those provisions, a worker of Italian nationality residing in France, who has been in receipt of an old-age pension paid in Italy since the age of 60 and who receives in France the guaranteed income of 70% of his daily earnings as provided for in the amendment of 13 June 1977 to the annex to the regulation on allowances for unemployed workers, may claim to have his Italian pension paid concurrently with the French allowance of 70% of his daily earnings or whether, on the other hand, the French organization which pays him the allowance, namely the Association pour l'Emploi dans l'Industrie et le Commerce, is entitled to deduct from that allowance the sums paid by the Italian institution."

10 It appears from the order of the national court that the question submitted essentially seeks to ascertain whether benefits such as the allowances under the guaranteed income retirement scheme provided for in the relevant French provisions fall within the field of application of Article 46 of Regulation

No 1408/71 in such a way as to exclude the application of national provisions against overlapping. More precisely, there are two parts to the question: the first is intended to establish whether an allowance of the type paid under the guaranteed income scheme is of the same kind as an old-age pension within the meaning of the above-mentioned regulation; the second part seeks to ascertain whether, in view of the nature of the benefits in question and in the light of Article 51 of the EEC Treaty, either national or Community provisions against overlapping may be applicable.

11 As regards a reply to the first part of the question, the defendant in the main proceedings, the French Government and the Commission point out that benefits such as those arising under the guaranteed income retirement scheme in France may not be regarded as old-age benefits, either because, as the Association, Lyon, and the French Government maintain, the benefits in question are unemployment benefits, or because, as the Commission suggests, the benefits fall into a special category which is as yet not covered by Regulation No 1408/71, so that such benefits may not be regarded as being of "the same kind" as old-age pensions.

12 On the other hand, the Italian Government maintains that such benefits must be regarded as being of "the same kind" as old-age benefits, in view of all their constituent elements, in particular the factor of age.

13 According to the established case-law of the Court, social security benefits must be regarded, irrespective of characteristics peculiar to the various national laws, as being of the same kind when their purpose and object together with the basis on which they are calculated and the conditions for granting them are identical. On the other hand, characteristics which are purely formal must not be considered relevant criteria for the classification of the benefits.

14 In that respect, it should be noted that the essential characteristic of the old-age benefits referred to in Article 4 (1) (c) and 46 of Regulation No 1408/71 lies in the fact that they are intended to safeguard the means of subsistence of persons who, when they reach a certain age, leave their employment and are no longer required to hold themselves available for

work at the Employment Office. Moreover, the system of aggregation and apportionment of the benefits provided for in Article 46 is based on the assumption that the benefits are normally financed, acquired on the basis of the recipient's own contributions and calculated by reference to the length of time during which he has been affiliated to the insurance scheme.

15 That follows moreover from all the provisions of Chapter 3 of Title 3 of Regulation No 1408/71, in particular Article 45 thereof and the aims set out in the sixth recital in the preamble thereto according to which the objectives of the regulations "must be attained in particular by aggregation of all the periods taken into account under the various national legislations for the purpose of acquiring and retaining the right to benefits and of calculating the amount of benefits", and in the eighth recital which refers expressly to old-age pensions, the right to which has been acquired in various Member States on the basis of insurance periods.

16 Hence, whilst benefits of the type in question are to some extent similar to old-age benefits, as regards their purpose and object which is, in particular, to guarantee the means of subsistence of persons who have reached a certain age, they clearly differ from them in respect of the basis on which they are calculated and the conditions for their grant, regard being had to the system of aggregation and apportionment which forms the basis of Regulation No 1408/71.

17 The retirement allowances also differ in so far as they pursue an object related to employment policy inasmuch as they help to release posts held by workers who are near the age of retirement for the benefit of younger unemployed persons, an object which has only become apparent after the implementation of Regulation No 1408/71, in the context of the economic crisis which has affected the Community for a number of years.

18 In addition it should be noted that the Commission has submitted to the Council a proposal for supplementing Regulation No 1408/71 in order to take into account the specific features of benefits of the type in question.

19 It must therefore be stated that the benefits in question may not be regarded as being of the same kind as the old-age benefits referred to in Article 46 of Regulation No 1408/71.

20 As regards the second part of the question, relating to the applicability of national provisions against overlapping, it should be recalled that, according to Article 12 (2) of Regulation No 1408/71, legislative provisions of a Member State for the reduction, suspension or withdrawal of benefit in cases of overlapping of two or more social security benefits may be applied to the recipient even though the right to such benefits was acquired under the legislation of another Member State, in so far as those benefits are not benefits of the same kind as benefits received in respect of invalidity, old-age, death or occupational disease.

21 In those circumstances, it is no longer necessary to consider the question which of the provisions against overlapping are applicable if the benefits in question are of the same kind as old-age benefits within the meaning of the second sentence of Article 12 (2) of Regulation No 1408/71.

22 Moreover, it should be stated that the first sentence of Article 12 (2) is compatible with Article 51 of the Treaty inasmuch as that provision does not prohibit the application of national rules against overlapping in cases where benefits — such as those in question — are not of the same kind as benefits received in respect of invalidity, old-age, death or occupational disease within the meaning of Regulation No 1408/71. In so far as those national provisions against overlapping are applied in a manner which is identical to nationals of all the Member States without taking into account their nationality, there can be no discrimination within the meaning of Article 48 of the EEC Treaty.

23 In reply to the question referred to the Court, it should therefore be stated that benefits such as the allowances under the guaranteed income retirement scheme provided for in the relevant French provisions do not fall within the scope of Article 46 of Regulation No 1408/71 and that where such benefits overlap with old-age pensions of other Member States, Community law does not prevent the national rules against overlapping from being applied.

Costs

24 The costs incurred by the French Government, the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings before the national court, the decision as to costs is a matter for that court.

On those grounds

THE COURT,

in answer to the question referred to it by the Tribunal de Grande Instance, Lyon, by order dated 2 June 1982, hereby rules:

Benefits such as allowances under the guaranteed income retirement scheme provided for in the relevant French provisions do not fall within the scope of Article 46 of Regulation No 1408/71, and where such benefits overlap with old-age pensions of other Member States, Community law does not prevent the national rules against overlapping from being applied.

	Mertens de Wilmars	Pescatore	O'Keeffe
Everling	Mackenzie Stuart	Bosco	Koopmans
Due	Bahlmann	Galmot	Kakouris

Delivered in open court in Luxembourg on 5 July 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President