OPINION OF ADVOCATE GENERAL ALBER

delivered on 26 March 1998 *

A — Introduction

1. This action for failure to fulfil Treaty obligations concerns the special situation, regarding retirement pension rights, of frontier workers living in Belgium who were formerly employed in the French steel industry and whose employment was terminated in mass dismissals following the 1976 steel crisis on terms negotiated under collective agreements.

2. One such collective agreement is the 'Convention Générale de Protection Sociale pour le Personnel des Sociétés Sidérurgiques de l'Est et du Nord concernées par les Restructurations' of 24 July 1979 ('the CGPS'). It contains a provision whereby workers placed in early retirement qualify for supplementary pension points under the general supplementary pension scheme until they reach normal retirement age. [1] Frontier workers living in Belgium are excluded from qualifying for these 'free supplementary points'. [2] This group of persons is governed by special rules which are set out in Annex VI to the CGPS. Article 4 of this Annex deals with social security. It makes reference to almost all of the social security benefits negotiated on behalf of the dismissed workers and listed in Article 27 of the CGPS. However, besides not including Article 27(5), which deals with special housing terms, it does not include Article 27(2), point 2.1, which concerns the granting of extra ('free') retirement pension points under the general supplementary pension scheme, which is the subject-matter of this case.

3. As a result of this special situation, the frontier workers living in Belgium receive a lower pension upon reaching retirement age than their former work-mates living in France. Following complaints from those concerned about this unfavourable situation, the Commission instituted proceedings for failure to fulfil Treaty obligations.

The Commission claims that the Court should:

(1) declare that, by excluding frontier workers residing in Belgium from qualifying for

* Original language: German.

1 — See Article 27(2), point 2.1, of the CGPS.

2 — 'Points gratuits de retraite complémentaire' within the meaning of Article 27(2)(2.1) of the CGPS.

supplementary retirement pension points after being placed in early retirement, the French Republic has failed to fulfil its obligations under Article 48(2) of the EC Treaty and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community; [3]

(2) order the French Republic to pay the costs.

The French Republic contends that the Court should:

(1) dismiss the action;

(2) order the applicant to pay the costs.

I shall come back to the parties' submissions during the course of my analysis.

B — Submissions of the parties

4. The *Commission* considers that the unfavourable situation of the frontier workers living in Belgium under the French supplementary pension system constitutes an infringement of Article 48(2) of the Treaty and Article 7 of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community. The Commission describes the case as one of indirect discrimination, since the unequal treatment is determined not by nationality but by place of residence, which in fact produces similar effects. The formal connecting criterion is receipt of an unemployment or early retirement benefit from an 'ASSEDIC'. [4] Recipients are credited with supplementary retirement pension points in respect of periods during which such benefits were paid. Since the unemployed workers or early retirees resident in Belgium are covered by the Belgian system — and thus receive Belgian unemployment benefits — they are unable to satisfy the criterion.

5. The Commission submits that, although the unequal treatment results from a redundancy scheme negotiated as a collective agreement, the French State still bears liability for it, given that it is responsible for the financial implementation of the agreements.

3 — OJ, English Special Edition 1968 (II), p. 475.

4 — Association pour l'Emploi dans l'Industrie et le Commerce.

6. The general supplementary pension scheme is itself founded on a collective agreement entered into by the social partners. The scheme is compulsory, however. The terms were approved by the French State and declared to be generally binding by a Law of 29 December 1972. [5]

7. The Commission submits that, whereas the management of the scheme is primarily the responsibility of the two sides of industry and whilst it is funded by contributions from employers and employees, the scheme ultimately rests on an agreement reached between the two sides of industry and the government, the State playing an active role in guaranteeing the financial equilibrium of the supplementary schemes.

8. The *French Government* first refers to the origins and objectives of the CGPS. One aim of the agreement was to guarantee a minimum income ('ressource minimum garantie') [6] to all workers dismissed, including frontier workers. This guaranteed minimum income is made up of various components. The first component is the unemployment benefit paid under the statutory social insurance system, topped up to a certain level by an additional payment from the French State. [7]

9. Under Annex VI to the CGPS, frontier workers living in Belgium are covered by benefits paid under the Belgian system, [8] which are also supplemented by additional allowances ('allocations complémentaires') from the French State. [9]

10. The French Government argues firstly that the special situation of frontier workers living in Belgium rests on Article 71 of Regulation (EEC) No 1408/71, [10] which provides that frontier workers are entitled to receive unemployment benefits in their Member State of residence. Secondly, in negotiations with the Belgian authorities it was agreed that the workers resident in Belgium who had been placed in early retirement could claim Belgian early retirement benefits. The French Government submits that, as recipients of unemployment benefits, they no longer have the status of workers under Community law.

11. More generally, the French Government maintains that the supplementary pension scheme falls outside of the scope of Regulation (EEC) No 1408/71. Besides, at the time when the CGPS was concluded there was no requirement under Community law for

5 — Article L 731-5 of the Social Security Code.

6 — See Article 23 of the CGPS and Annex VI Article 2, point 1.2, third paragraph, of the CGPS.

7 — See Article 21 of the CGPS.

8 — Annex VI, Article 2(1.1).

9 — See Article 2(1.2) and Article 3 of Annex VI to the CGPS.

10 — Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community, OJ, English Special Edition 1971 (II), p. 416, as amended and updated by Council Regulation (EC) No 1290/97 of 27 June 1997 (OJ 1997 L 176, p. 1).

periods of full unemployment to be taken into account for the purposes of retirement pension insurance. [11]

C — Analysis

12. The French Government submits that the 'free' supplementary retirement pension points are simply the counterpart of the unemployment benefit funded by the Unedic. [12] Since the unemployment support was not actually paid under the Unedic regime, the situation is not comparable for the purposes of recognition of periods of unemployment. Moreover, the supplementary pension scheme cannot be burdened with liabilities unmatched by any receipts, or it would endanger the financial balance of the whole system. The imposition of unforeseen liabilities would be in breach of the principle of the protection of legitimate expectations.

13. The French Government suggested, at the hearing, that, in the event of judgment being given for the applicant, the Court should limit the temporal effects of the ruling to the future.

14. Before the application of the relevant provisions of Regulation No 1612/68 are considered, it should first be ascertained whether the case may not fall within the scope of Regulation No 1408/71. Article 42(2) of Regulation No 1612/68 gives precedence of a sort to Regulation No 1408/71 by providing: 'This Regulation shall not affect measures taken in accordance with Article 51 of the Treaty'. The relative precedence of Regulation No 1408/71 has also been acknowledged by the Court. [13]

15. The Commission expressly does not rely on Regulation No 1408/71 and bases its case on the prohibition of discrimination against workers laid down in Regulation No 1612/68 and enshrined in the Treaty. The French Government, too, expressly takes the view that the collectively negotiated schemes do not fall within the scope of Regulation No 1408/71.

11 — The position has now changed, as a result of the insertion of a new Article 45(6) into Regulation (EEC) No 1408/71 by Regulation (EEC) No 2195/91 OJ 1991 L 206, p. 2.

12 — This is the umbrella organisation of the Assedics, the institutions responsible for paying unemployment benefits.

13 — See Case 122/84 *Scrivner* [1985] ECR 1027, paragraph 16.

16. The scope of Regulation No 1408/71 is defined in Article 4(1) as follows:

'This Regulation shall apply to all legislation concerning the following branches of social security:

a) ...

b) ...

c) old-age benefits,

d) ...

e) ...

f) ...

g) unemployment benefits,

h) ...'.

17. According to the Court's settled case-law 'a benefit may be regarded as a social security benefit in so far as it is granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a *legally defined position*, and provided that it concerns one of the *risks expressly listed* in Article 4(1) of Regulation No 1408/71'. [14]

18. Clearly, the award of 'free points' in the supplementary pension scheme is based not on legislation but on a collective agreement. It does not therefore satisfy the criterion of 'legislation concerning ... branches of social security', laid down in Article 4 of Regulation No 1408/71, or that of a 'legally defined position', [15] to use the Court's formulation.

14 — See Case C-111/91 *Commission* v *Luxembourg* [1993] ECR I-817, paragraph 29, with further references; emphasis added.

15 — See for example *Commission* v *Luxembourg* (cited in footnote 14).

19. Moreover, it is seriously open to question whether the disputed recognition of periods of unemployment concerns one of the 'risks expressly listed'. It is not an unemployment benefit within the meaning of Article 4(1)(g). The case-law clearly defines unemployment benefits as benefits intended to replace the remuneration which a person has lost by reason of unemployment and thereby to provide for the maintenance of that person. [16] These conditions are not met.

20. But it is also doubtful whether it is an old-age benefit within the meaning of Article 4(1)(c), since the provision at issue does not directly confer a pension benefit of any kind. All it does is take account of particular periods with the effect of subsequently raising the level of benefit. Irrespective of the fact that the provision in question is in any event merely a term of a collective agreement, this form of recognition of periods of full unemployment was not covered by Regulation No 1408/71 at the time when the collective agreement was entered into. It was only with the adoption of Regulation (EEC) No 2195/91 of 25 June 1991 [17] that the following paragraph was added to Article 45 of Regulation No 1408/71:

'A period of full unemployment of a worker to whom Article 71 (1) (a) (ii) or (b) (ii), first sentence, applies shall be taken into account by the competent institution of the Member State in whose territory the worker concerned resides in accordance with the legislation administered by that institution, as if that legislation applied to him during his last employment.

If the period of full unemployment in the country of residence of the person concerned can be taken into account only if contribution periods have been completed in that country, this condition shall be deemed to be fulfilled if the contribution periods have been completed in another Member State.'

21. The provision at issue accordingly does not fall within the scope of application of Regulation No 1408/71.

22. It is however misleading when the French Government submits that the approach taken in the CGPS to the question of early retirement follows directly from Article 71 of Regulation (EEC) No 1408/71, which provides:

'(1) An unemployed person who was formerly employed and who, during his last employment, was residing in the territory of

16 — See Case C-57/96 *Meints* [1997] ECR I-6689, paragraph 27, and Case C-102/91 *Knoch* [1992] ECR I-4341, paragraph 44.

17 — Council Regulation (EEC) No 2195/91 of 25 June 1991 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1991 L 206, p. 2).

a Member State other than the competent State shall receive benefits in accordance with the following provisions:

(a)

(i) ...

(ii) A frontier worker who is wholly unemployed shall receive benefits in accordance with the provisions of the legislation of the Member State in whose territory he resides as though he had been subject to that legislation while last employed; these benefits shall be provided by the institution of the place of residence at its own expense.'

23. There are two points which should be borne in mind in this regard. First, as has been shown, this matter does not fall within the scope of application of Regulation No 1408/71, since it concerns the award of points under a collective agreement and not the payment of unemployment benefits under the statutory system. Secondly, as the French Government has told the Court, it was necessary — even with regard to unemployment benefits — for an agreement to be negotiated with the Belgian authorities to permit the frontier workers affected by the mass dismissals to take early retirement under the Belgian system. From any angle, therefore, what is involved is more than, or something other than, unemployment benefits under the general system.

24. The question which now arises is therefore whether the provision for the crediting of points constitutes discrimination prohibited under Community law within the meaning of Article 48(2) of the Treaty and Article 7 of Regulation No 1612/68. Article 48(2) of the Treaty provides:

'Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.'

Article 7 of Regulation No 1612/68 provides, on the point that concerns us here:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

3. ...

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.'

25. A number of preliminary issues must be resolved in relation to the applicability of Regulation No 1612/68. With regard to any doubts as to whether it applies to frontier workers, reference may be made to the judgment in *Meints* in which this issue was also raised. [18] In that case the Court found that the attribute of being a frontier worker did not prevent the application of the Regulation and expressly referred to the fourth recital to the Regulation, which states: 'Whereas such right [of freedom of movement] must be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services', and to Article 7 of the Regulation which refers, without reservation, to a 'worker, who is a national of a Member State'. [19]

26. The French Government has also suggested that Regulation No 1612/68 could not be relied upon as the persons concerned were no longer active and had consequently relinquished the status of worker.

27. This approach seems inappropriate since the advantages in question are clearly based on the status of worker in a specific employment relationship. Moreover, the Court has expressly recognised 'that migrant workers are guaranteed certain rights linked to the status of worker even when they are no longer in an employment relationship'. [20]

28. Article 7(1) of Regulation No 1612/68 expressly makes conditions of dismissal a matter of equal treatment. The CGPS is nothing other than a collective agreement setting out the negotiated conditions of a mass dismissal. In that respect the workers are thus all in a similar situation. They are employees of the same employer who is simultaneously dismissing approximately 21 000 workers on economic grounds.

18 — Cited in footnote 16.

19 — *Meints* (cited in footnote 16), paragraph 50.

20 — Case 39/86 *Lair* [1988] ECR 3161, paragraph 36.

29. If the award of 'free points' in the general supplementary pension scheme, provided for in the CGPS, is regarded as forming part of the conditions of dismissal within the meaning of Article 7(1) of Regulation No 1612/68, then the question as to whether the points constitute a 'social advantage' within the meaning of Article 7(2) no longer matters. Only if a doubt subsists as to whether the advantage in question falls to be classified as part of the conditions of dismissal is it necessary here to show that it also meets the criteria for a 'social advantage' within the meaning of the provision. Such advantages are defined in the Court's case-law as all advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems likely to facilitate their mobility within the Community. [21]

30. Since the provision at issue is linked to existing employment relationships — as is, for that matter, the CGPS as a whole — there is an indissoluble link to the objective status as workers of the persons concerned. Any provision which introduces or enhances social security cover for workers is by its nature likely to facilitate the mobility of workers.

31. The problem of unauthorised and undesirable 'exportation of social benefits' arises only if one leaves the field of application of Article 7(1) of Regulation No 1612/68 and, contrary to the view expressed above, applies Article 7(2). But even if the crediting of pension points is considered to be a social advantage, there are no grounds to fear an unjustified 'exportation of social benefits' because the link, by definition, to the objective status of worker means that there is a sufficiently close connection to a specific employment relationship. Moreover, it was expressly held by the Court in *Meints* [22] that: 'A Member State may not make payment of a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 dependent on the condition that recipients be resident within its territory.'

32. The remainder of this discussion will proceed on the assumption that the crediting of 'free points' in the general supplementary pension scheme under the CGPS constitutes a condition of dismissal within the meaning of Article 7(1) of Regulation No 1612/68.

33. That provision prohibits all unequal treatment of workers on grounds of nationality. The unequal treatment in this case is not, of course, based expressly on nationality. But

21 — Case 65/81 *Reina* [1982] ECR 33, paragraph 12, Case 249/83 *Hoeckx* [1985] ECR 973, paragraph 20 and Case 157/84 *Frascogna* [1985] ECR 1739, paragraph 30; *Lair* (cited in footnote 20), paragraph 21; Case C-310/91 *Schmid* [1993] ECR I-3011, paragraph 18, and *Meints* (cited in footnote 16), paragraph 39.

22 — Cited in footnote 16, paragraph 3 of the operative part of the judgment.

the Court has consistently held [23] that all forms of discrimination are prohibited which indirectly lead to the same result. The use of the criterion of residence is likely to bring about indirect discrimination based on nationality if the criterion is satisfied significantly more frequently by nationals of a Member State other than the Member State which adopted the provisions in question.

34. It must be assumed to be highly probable that frontier workers resident in Belgium have Belgian rather than French nationality. The argument put forward by the French Government that place of residence is an objectively justified criterion since frontier workers who live in France and work in other Member States also potentially qualify for the advantage in question does not hold water since frontier workers resident in France are as a rule likely to be French nationals.

35. The French Government further argues that it is the payment of benefits by an Assedic, rather than residence, which is the determining factor, but this merely masks the material facts. The CGPS does not actually provide that entitlement to receive French unemployment insurance benefits is a condition for the award of 'free points'. Article 27(2), point 2.1, simply provides, in substance, that free points in the supplementary pension scheme will be awarded up to retirement age in accordance with the rules governing the supplementary pension funds. [24] Presumably the rules in question refer to payment of a benefit by an Assedic, which is in turn conditional on residence in France. Such a detour, by which entitlement to an advantage is made conditional on past receipt of unemployment benefits, is prohibited if it ultimately results in discrimination based on residence and if it is not objectively justified on other grounds. This has been expressly confirmed, most recently by the decision of the Court in the *Meints* case. [25]

36. But it is not necessary to take this detour, since it is the CGPS which directly discriminates according to residence. The unequal treatment flows from the CGPS — and not for example from the applicable legislation — by virtue of the fact that Annex VI to the CGPS lays down special rules for frontier workers resident in Belgium which exclude them from the supplementary pension advantage negotiated for workers resident in France.

23 — Case 152/73 *Sotgiu* [1974] ECR 153, paragraph 11, and Case C-175/88 *Biehl* [1990] ECR I-1779, paragraph 13.

24 — Point 2.1 provides, under the heading 'Régimes généraux de retraite complémentaire': 'L'attribution aux intéressés de point gratuits de retraite complémentaire jusqu'à l'âge de départ en retraite normale, s'opère conformément aux règlements en vigueur dans les caisses de retraite complémentaire dont ils relèvent'. ('The award of free supplementary retirement pension points to those concerned until they reach normal retirement age shall be governed by the rules in force in the supplementary pension funds to which they belong.')

25 — See *Meints* (cited in footnote 16), paragraph 43 et seq.

37. As a further ground of objective justification, the French Government raises the problem of financing the advantage in question. It must, of course, be assumed that the additional supplementary pension points awarded in respect of periods of unemployment or early retirement are awarded *free* — with no payment in return. The CGPS specifically refers to 'points gratuits'.

38. The French Government argues that the various schemes are interdependent. It states that the unemployment insurance institution entered into agreements with the general supplementary pension schemes (ARRCO and AGIRC). According to the French Government's submissions at the hearing, a deduction from unemployment insurance payments is passed on to the supplementary pension schemes. But this cannot justify the unequal treatment either. Even if a certain percentage of the benefit is diverted, it still represents only a part of the income received by workers covered by the CGPS. If the benefits from public social insurance institutions fall short of the minimum income laid down in the CGPS, [26] the French State always makes up the deficiency. This applies without distinction to all benefit recipients, whether they live in France or in Belgium. [27] The French State's obligation to ensure maintenance of the income and benefits in lieu of income of the persons concerned is thus an integral part of the system. Even if the French unemployment insurance institution were to make payments to the general supplementary pension schemes, this in itself is not sufficient to justify the unequal treatment.

39. The question to be considered now is what legal techniques could be used to bring about a situation of equal treatment. The impugned unequal treatment flows from a collective agreement. Article 7(4) of Regulation No 1612/68 directly provides that discriminatory clauses contained in any form of employment agreement shall be null and void. The unequal treatment in this case is the result of an omission. The enumeration of social security benefits in Annex VI to the CGPS fails to include a reference to the general supplementary pension schemes. So nullity can be of no help.

40. But, according to the Court's settled case-law, [28] in a case of unequal treatment contrary to Community law the advantage sought must be made available on the same conditions. The frontier workers resident in Belgium must therefore be allowed to enjoy the advantage by applying Article 27(2), point 1.2, of the CGPS to them by analogy.

41. Lastly, the French Government submits that if 'free points' were to be awarded to the frontier workers resident in Belgium, the

26 — See Article 23 of the CGPS and Annex VI, Article 2(1.2)(3) CGPS.

27 — See Article 21 of the CGPS for French residents and Annex VI Article 2, point 1.2, and Article 3 of the CGPS for Belgian residents.

28 — See, for example, *Reina* (cited in footnote 21), paragraph 18.

financial equilibrium of the schemes would be jeopardised. It invokes the principle of the protection of legitimate expectations, which, it argues, precludes the imposition of an unforeseen additional burden on general supplementary pension schemes.

42. At the hearing, the French Government's representative stated that, of the 21 000 individuals covered by the CGPS, 665 were Belgian. Given the fact that between 1977 and 1987 seven similar agreements were negotiated in the steel industry, the total number of Belgian steel workers involved would come to 1 109. There were various methods by which supplementary pensions for these individuals could be funded. One possibility would be to pay in a sum equivalent to the contributions — as no contributions have in fact been paid. Another would be to inject a capital sum to ensure pension payments to the persons concerned. Depending on which of these two options were chosen and on whether account was taken only of those covered by the CGPS or also of those former steel workers covered by similar agreements, the costs would come to FRF 75 000 000, 115 000 000, 124 000 000 or 192 000 000 respectively.

43. This argument, of course, is based on an estimate of the possible financial consequences. But financial consequences are a matter which can properly be taken into account in the legal appraisal of a case. It cannot be denied that, if the Court were to find against the French State, the general supplementary pension schemes could be faced with considerable unforeseen liabilities. But it should also not be forgotten, as the Commission rightly pointed out, that the negotiated transfer of the frontier workers resident in Belgium to the Belgian social insurance system represented a substantial saving for the French schemes.

44. Moreover, a transfer of funds by the French State would not be contrary to the system since the compulsory supplementary pension schemes are not funded exclusively by contributions. In so far as the State has an obligation to maintain the schemes, it is also bound to finance liabilities not originally foreseen but which have arisen on legal grounds.

45. As regards the foreseeability of the benefit liabilities and the question whether there is a legitimate expectation worthy of protection, it should be borne in mind that the competent State, [29] under social security law, is normally the State of employment. This is the case for old-age benefits in the form of retirement pensions. Prima facie, it is also the case for compulsory supplementary pension schemes, even if they are not covered by Regulation No 1408/71. The frontier workers resident in Belgium also have actual pension claims against the general supplementary pen-

29 — In the context of Regulation No 1408/71, see Article 1(q), which refers to the 'competent institution', as defined in Article 1(o).

sion schemes in respect of their periods of employment. This case is concerned only with the inclusion of 'missing' periods — periods in which no contributions were paid.

46. Even if it has been agreed with the competent authorities that a benefit will be granted to a particular group of workers for the period between redundancy and retirement age, that does not amount to a complete relinquishment of the original competence. In this regard, the Commission referred at the hearing to the proposal for a regulation on the coordination of pre-retirement benefits, which is based on the principle of the competence of the Member State of last employment. [30] Even the 'exportation' of retirement pension payments would be in keeping with the scheme of Article 51 of the Treaty, as the benefits in question relate to periods to be taken into account in the case of the beneficiary in person. It would therefore appear that any assumption, based on the CGPS, that certain periods will not be taken into account, so as to increase the benefit payable by way of supplementary pension insurance, is not a legitimate expectation worthy of protection.

47. While one can understand the French Government's suggestion that, in the event of judgment being given for the applicant, the Court should limit the temporal effects of its ruling in view of the estimated financial consequences, it would completely undermine the effect of any adverse judgment. The agreement embodied in the CGPS is a past event. The group of persons concerned is thus fixed for all time. A judgment having only prospective effect would be of no use to the individuals concerned, since the key issue for them is recognition of periods of unemployment or early retirement which, from today's perspective, belong to the past. Workers who were 55 or over 55 in 1979 have in the meantime reached statutory retirement age, of which, by definition, old-age pensions including *supplementary pensions* become payable.

48. Even if the six similar agreements dating from the same period, which the French Government referred to in bringing up the question of the financial implications, are not at issue in these proceedings, the same conclusion would apply to them. Limiting the temporal effects of the judgment would amount to denying the equal treatment demanded.

Costs

Under the first paragraph of Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for. Since, under the solution suggested here, the defendant would be unsuccessful, it should therefore have to bear the costs of the proceedings.

30 — Proposal for a Council Regulation amending, for the benefit of beneficiaries of pre-retirement benefits, Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to the members of their families moving within the Community, and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1996 C 62, p. 14, see Article 71b(2)(a)).

D — Conclusion

In the light of the foregoing, I suggest that the Court rule as follows:

(1) By excluding frontier workers residing in Belgium from qualifying for supplementary retirement pension points after being placed in early retirement, the French Republic has failed to fulfil its obligations under Article 48(2) of the EC Treaty and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement of workers within the Community;

(2) The French Republic is ordered to pay the costs of the proceedings.