OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 19 OCTOBER 1972[1]

Mr President,
Members of the Court,

I — *Introduction*

Facts

By three orders dated 1 March 1972 the Bundessozialgericht Kassel (Federal Social Court) has requested you to give a preliminary ruling under Article 177 of the Treaty of Rome on certain questions concerning the interpretation of Regulation No 3 of the Council of the European Economic Community concerning social security for migrant workers (Cases 14/72, 15/72 and 16/72).

I must briefly recall the conditions under which this court was led to refer these questions to you.

Under the legislation of the Federal Republic, any person suffering from tuberculosis, whether or not of German nationality or within the State insurance scheme, is entitled under the Bundessozialhilfegesetz (BSHG) (Federal Welfare Law) of 30 June 1961 to benefits covering, in particular, medical or hospital treatment, financial aid by way of maintenance and aid to integration into working life. The charge of providing such benefits is borne both by the social assistance institutions and the pension insurance organizations. Article 1244a of the Reichsversicherungsordnung (RVO) (State Insurance Regulation) imposes an obligation on these organizations to take action in favour of insured persons or their dependants where such persons have paid contributions by reasons of employment which is subject to a compulsory insurance scheme for a period of at least six calendar months during the two years preceding the diagnosis of the illness, or where they satisfy the general qualifying period of 60 months applying to pensions payable on grounds of unfitness for employment.

A — The first of the cases brought before the Bundessozialgericht concerns Mr Heinze, a German citizen, who worked in Germany for 36 months from 1950 to 1953, and then in the Grand Duchy of Luxembourg for 84 months from 1953 to 1960. In 1966 his wife and son contracted contagious tuberculosis which required treatment. The Landesversicherungsanstalt Düsseldorf refused to bear the expenses incurred in this treatment on the ground that, although Mr Heinze was subject to the compulsory insurance scheme, the periods during which he had paid contributions in Germany were insufficient for the purposes of the conditions laid down by Article 1244a of the RVO.

However, when dealing with the action at first instance the Sozialgericht Düsseldorf considered that, on the contrary, under the terms of Article 16 *et seq.* of Regulation No 3 of the Council of the European Economic Community the periods during which the person concerned had worked in Luxembourg had to be aggregated with the periods of affiliation to the German scheme. Mr Heinze's dependants were therefore entitled to the benefits available to persons suffering from tuberculosis.

On appeal by the Landesversicherungsanstalt, the Landessozialgericht upheld this decision, although it did not base its decision on Article 16 of Regulation No 3 but on Article 24 *et seq.*, which concern the aggregation of insurance periods for the payment of invalidity benefits.

B — In the second case, the Land Niedersachsen, represented by the Landessoziamamt (Regional Welfare Office), claimed from the Landesversicherungsanstalt Hannover the reimbursement of the expenses of the hospital treatment of Mr Antonio Buscema, an Italian national, who had contracted contagious tuberculosis requiring hospital treatment over a long period. He was affiliated to the invalidity insurance scheme in Italy for eight years

1 — Translated from the French.

from 1956 to 1964. In addition, until 31 March 1965 he also paid contributions in Italy to a special insurance scheme against the risk of tuberculosis. Soon afterwards he took up employment in Germany which was subject to a compulsory sickness and pension insurance scheme.
When his illness was diagnosed in August 1965 he was admitted to hospital. The costs of his treatment were borne by the Landessozialamt which sought their repayment from the Landesversicherungsanstalt on the ground that Mr Buscema was affiliated to that organization.
The Sozialgericht Hannover upheld the claim made by the Landessozialamt on the ground that the benefit in question had to be regarded as a sickness benefit and that, under Article 16 of Regulation No 3, it was necessary to aggregate the insurance periods completed in Italy and the Federal Republic of Germany. On appeal, the Landessozialgericht of Niedersachsen upheld this decision, although on the basis of the provisions of the Community regulation relating to invalidity benefits.

C — Finally, in the third case the main action arose between the Allgemeine Ortskrankenkasse (Local Sickness Insurance Fund) Hamburg, and the Landesversicherungsanstalt Schleswig-Holstein over the repayment of the costs of the hospital treatment of the daughter of Mr Primo Primus, an Italian national, who contracted tuberculosis in May 1965. This worker had completed insurance periods in Germany which alone would be insufficient to justify the costs of the hospital treatment of his daughter being borne by a pension insurance organization. However, he has also completed insurance periods in Italy, Luxembourg and, in addition, Switzerland. The Sozialgericht Hamburg accepted the aggregation of the insurance periods completed by Mr Primus and ordered the Landesversicherungsanstalt Schleswig-Holstein to reimburse the costs of the hospital treatment on the ground that the benefits provided for under Article 1244a of the RVO are invalidity benefits within the meaning of Articles 26 and 27 of Regulation No 3.
On appeal, the Landessozialgericht Hamburg upheld this judgment.
In a request for a preliminary ruling which is common to all three cases the Bundessozialgericht asks you, first, whether Articles 26 and 27 of Regulation No 3, which provide for the aggregation of insurance periods in order to cover the risk of invalidity, are applicable *by analogy* to the provisions of the German legislation governing the fight against tuberculosis, when it is stated in the orders referring the matters that, according to the law in force in the Federal Republic of Germany, these provisions concern, not social security benefits, but rather an obligation which, for the purposes of the prevention of disease, is imposed under certain conditions on pension insurance organizations. The Bundessozialgericht adds that the provisions in question are not in the nature of pensions. They are not apportioned '*pro rata temporis*'. They are paid independently of the materialization or threat of the risk of invalidity. Finally, the burden on the pension organizations depends upon the persons concerned being affiliated to the insurance scheme for a minimum period but once this condition is satisfied the benefits do not differ on the basis of the length of the period of affiliation.
The Bundessozialgericht refers to you two other additional questions in Cases 15/72 and 16/72. You will only be required to consider them if you reply in the affirmative to the joint question contained in the three orders referring the matters.

II — *Applicability of Regulation No 3*

Question of principle

As we have seen, the main actions arise out of the divisions of competence between the social assistance organizations and the pension insurance funds by the German legislation adopted in the fight against tuberculosis.
In fact, contrary to the procedure followed in other countries, such as France, in which protection against tuberculosis forms part of the general sickness insurance scheme, in the Federal Republic of Germany

the measures adopted for the treatment of tuberculosis sufferers and their reintegration into everyday life form the subject of special and independent provisions which were originally laid down in a regulation adopted on 8 September 1942 which, in addition, specified that the advantages in question were not granted in the context of public assistance. Subsequently, these provisions were consolidated in the law of 23 July 1959 on assistance in cases of tuberculosis which was replaced three years later on 30 July 1961 by the Bundessozialhilfegesetz (Federal Law on Social Assistance). Title III, Section 8 of this law gathers together the various provisions applicable, whether dealing with medical treatment at home, hospital treatment, cash benefits, such as subsistence allowances, assistance to integration—or to reintegration—into working life, or, finally, special benefits such as assistance in finding replacement staff or in finding accommodation.

The benefit of this scheme of protection is extended by way of social assistance without regard to nationality and with no requirement that the person concerned be employed. However, the assistance organizations only take action on a secondary level, that is, where the tuberculosis sufferers belong to no other State insurance institution, and, in particular, to no other pension insurance organization. The same applies to urgent cases: where it has not been possible to determine immediately the institution to which the invalid belongs, it is the social assistance office which bears the burden of the benefits, although only on a temporary basis, since the organization which is finally responsible must repay to that office the costs which it has incurred by way of an advance.

As regards workers affiliated to the compulsory pension insurance scheme and their dependants, Article 1244a, which was introduced into the State Insurance Regulation in 1959, makes the pension insurance funds responsible for the burden of the tuberculosis benefits. However, in order to acquire a right to benefit the second paragraph of this article requires contributions to have been paid, by way of employment or an activity which is subject to a compulsory insurance scheme, over at least six calendar months out of the twenty-four months preceding the diagnosis of the condition requiring treatment. If no such contributions have been paid no benefit can be paid by way of invalidity before the end of the qualifying period of 60 months.

These provisions, which are intended only to determine which organization must bear the financial burden of the scheme, do not affect the reply to the first question referred by the Bundessozialgericht which seeks to decide on the 'classification', within the meaning of Regulation No 3, of the benefits payable by the pension insurance funds. This Community provision is not required to take account of the apportionment of the powers between the various national organizations or institutions. Its criteria are based only upon the material nature of the advantages awarded to the workers and their families. In fact, to decide on this classification raises two distinct problems:

— The first calls into question the very scope of Regulation No 3. Do the advantages provided for by the German law fall within the 'social security benefits' listed in Article 2(1) of that regulation?

— The second involves a decision whether, and by virtue of what provisions of the regulation, the insurance periods completed in the different Member States, (in this instance, Germany, Italy and Luxembourg), must be aggregated for the purposes of awarding the benefits.

On the first point you are dealing with a problem which is very closely connected to that referred to you by the Tribunal du Travail (Labour Court) of Brussels, which which you settled in your judgment of 22 June 1972 in Case 1/72, *Rita Frilli* v *Belgian State*, [1972] ECR 457. The terms in which the Bundessozialgericht has referred its primary question clearly show that, in its opinion, the special German scheme of benefits awarded to persons suffering from tuberculosis form part of public health policy rather than social security and constitute action to prevent

the spread of desease. Moreover, the grounds put forward by the Bundessozialgericht to support its request for a preliminary ruling tend to suggest that this scheme, which was introduced by the Federal law on social assistance of 1961 consitutes 'social assistance and medical aid'.

We are aware that Regulation No 3, which was in force when the Bundessozialgericht referred the question to you, expressly excludes this form of protection from its area of application.

As I explained in the *Frilli* case, there are no fixed criteria enabling a categorical distinction to be made between the two complementary concepts of 'social security' and 'assistance', neither of which is precisely defined by Article 51 of the Treaty of Rome, or by Regulation No 3 which follows therefrom. However, the wording of the regulation and, more particularly, the general provisions which determine the area of its application, show that the Council wished to confer on the concept of 'social security' the widest possible meaning while, on the other hand, the exclusion of social assistance and medical aid can only be given a restrictive interpretation.

This is clearly the meaning of your case-law. You have consistently given Regulation No 3 a very liberal interpretation, which was confirmed by the judgment of 22 June last and solidly based on the priciples laid down by Article 51 of the Treaty, the of which is to ensure the practical implementation of the principle of freedom of movement and employment of Community workers in the territory of each of the Member States. This aim can only be achieved by the recognition of the right of workers to all social security benefits of whatever nature, and by the aggregation of insurance periods completed under different national legislative systems.

On the basis of an analysis of German legislation it may be thought that the benefits paid to tuberculosis sufferers clearly fall within this Community concept of social security, at least to the extent to which they are payable to workers who are affiliated to a compulsory insurance scheme, or to their dependants.

1. Without attaching decisive importance to the fact that Article 1244a, which gives competence in this matter to pension insurance organizations, is contained in a legislative provision on social security, that is, the regulation on State insurance, it must be noted that this provision, which establishes an individual right to benefits, creates a direct link between affiliation to a pension insurance scheme and the exercise of the right in question, although, on the level of mere social assistance, it is clear that no such link exists.

The affiliation of the tuberculosis sufferer, who is thus treated and assisted by this provision, sets in motion the primary obligation of the pension insurance organization, whilst, within the context of the Federal law on social assistance, the intervention of the assistance organization is purely secondary.

Secondly, however diverse the benefits paid, whether medical or hospital treatment, subsistence allowance or aid to reintegration into working life, they fall by their very nature within the scope of Article 2(1) of the Community regulation without any need, at least at this stage of the proceedings and as regards the settlement of the question of principle, to determine whether they must be classified as sickness benefits (subparagraph (a)) or as invalidity benefits, including those intended to maintain or improve earning capacity (subparagraph (b)).

From a commonsense point of view, these benefits, which are intended to allow the treatment of consumptives and their reintegration into normal life, are no different in nature from other sickness benefits; the fact that tuberculosis is a contagious infection which presents a real danger for the whole population, that treatment generally takes place over a long period and that close medical supervision is exercised over the invalids even after their recovery clearly cannot change the classification of these benefits.

Furthermore, the fact that the measures thus adopted, whether within the context of the law on social assistance or of pension insurance, form part of general action taken to prevent the spread of disease—for example, it is provided that, subject to

certain reservations, the social security institutions may give *instructions* to tuberculosis sufferers who are affiliated to their organization—is in no way surprising since it is true that most of the action taken within the context of social security necessarily forms part of general public health policy.

Moreover, if tuberculosis is a social scourge, are there not other contagious diseases which, even though they are less dangerous, nevertheless give rise to a right to sickness insurance benefits the principal aim of which is clearly to enable the invalids to take care of themselves and recover their earning capacity, but the effect of which is also to prevent the spread of disease? The existence in Germany of a special scheme of protection against tuberculosis cannot exclude the benefits for which the scheme provides from the area of application of the concept of social security, within Regulation No 3. I therefore suggest unhesitatingly that an affirmative answer be given to the question of principle submitted to you.

2. If you accept that, in principle, Regulation No 3 is applicable to the benefits in question, it is then necessary to consider which provision of this regulation would require the aggregation of the insurance periods. However, it is first necessary to consider whether the question concerns a true 'aggregation' within the meaning given to this word in relation to retirement or invalidity pensions, since these benefits are not awarded '*pro rata temporis*', their amount is independent of the period of affiliation and, furthermore, apart from certain cash allowances, they cover the cost of medical and hospital treatment. If this question arises, it is merely because the acquisition of the right is subject to a minimum period of payment of contributions; it is not for the purpose of calculating the benefits.

The very nature of these benefits raises the question whether the basis of the aggregation rule is to be found in Article 16 *et seq.* of Regulation No 3 (Chapter 1 of Head III) relating to sickness benefits or in the provisions of Chapter 2—Article 24 *et seq.* —concerning invalidity benefits.

Although the court referring the matter only posed the question in relation to Articles 26 and 27, thus apparently supporting the application of the provisions governing invalidity benefits, I do not beleive that you are bound by this point of view. On the contrary, it is for you to indicate clearly the ground on which, according to a correct interpretation of the Community law, the national court must base its action.

In this connexion let me say, first of all, that in my opinion there is no doubt as to the application of the principle of the aggregation of the insurance periods, whichever provisions of the regulation, between which you will be required to choose, are held to be applicable.

This principle in fact derives directly from Article 51 of the Treaty, by which it was introduced as one of the means of guaranteeing the free movement of workers. Even if you should consider it impossible to find in Regulation No 3 a rule which is technically adapted to the payment of the benefits which the German law provides in favour of persons suffering from tuberculosis, it would nevertheless be necessary to consider whether aggregation is applicable *de jure*.

You did not hesitate to adopt comparable reasoning in your judgment of 27 October 1971 in Case 23/71, *Michel Janssen* v *Alliance Nationale des Mutualités Chrétiennes* ([1971] ECR 859), which allows agricultural 'helpers' recognized under Belgian law the opportunity of taking advantage of periods completed as a wage-earner under the legislation of another Member State, in order to claim certain sickness and invalidity insurance benefits payable to *self-employed workers*. You clearly based this solution on the ground that 'the object of Articles 48 to 51 would not be achieved but would be missed if the insurance period completed by a worker in accordance with the legislation of one Member State were, as far as he was concerned, lost, if, in taking advantage of the freedom of movement secured for him, he changes his place of work and thus becomes subject to the social security system of another Member State'.

However, you must decide as to the nature

of the benefits in question and guide the Bundessozialgericht in the problem of which scheme of aggregation to apply, that concerning sickness benefits or that concerning invalidity benefits. This is important because, to a certain extent, the solutions to the main actions which will derive therefrom depend on this choice.
For my own part, I consider that the benefits paid under Article 1244a of the RVO must be placed in the category of sickness benefits, as has already been accepted at first instance by two of the social courts.

There are numerous arguments to support this conclusion:

— First, these advantages are clearly not invalidity pensions, within the proper meaning of the term. They are not pensions intended to compensate for an incapacity for work. We have seen that the benefits are paid independently of any reduction in earning capacity and of any desire to re-establish or improve this capacity.
Although doubts might exist on this point in relation to the award of maintenance, no-one would claim that the payment of the costs of medical or hospital treatment is the same as the award of an invalidity pension. The former constitute benefits in kind, forming part of the scheme applying to the risk of sickness.

— Secondly, it is noticeable that in most of the Member States the protection of persons insured with State insurance schemes against the risk of tuberculosis follows the rules affecting sickness benefits, except for the fact that, as is the case in France, the protection is more complete and, if necessary, extends over a longer period. This shows the importance which is attached to the fight against this particularly serious and contagious infection.
Although a special scheme for insurance against tuberculosis exists in Italy, run by the INPS (Italian State Insurance Office), it follows the general rules on sickness insurance. The aggregation of insurance periods is carried out by the Italian authorities in relation to Community workers on the basis of Articles 16 and 17 of Regulation No 3.

— Thirdly, as the Commission points out, since 1969 the German authorities have themselves referred to an increase in the expenses incurred by the hospital treatment of cases of tuberculosis among migrant workers or the members of their families in order to justify the increase in the average costs of the benefits in kind payable *by way of sickness insurance.*

Finally, it must be remembered that before the Treaty of Rome was drafted and, therefore, before the entry into force of Regulation No 3, a social security convention existed between the Italian Republic and the Federal Republic of Germany, which was signed in Rome on 5 May 1953. Article 7 of this convention guarantees the citizens of each State who are in the territory of the other a right to the social security benefits payable in the host country, and treats tuberculosis benefits as in the same class as those payable under the general sickness insurance scheme.
On the basis of this provision in the convention, the Bundessozialgericht held, in a judgment given on 26 October 1967, that the benefits referred to in Article 1244a relate to insurance against illness and accepted that it was necessary to take into account periods of insurance against tuberculosis completed in Italy, for the purposes of acquiring in Germany a right to the benefits paid in this sphere.
The convention is one of those referred to in Article 6(2)(e) of Regulation No 3 which provides that such other 'provisions of social security Conventions as are listed in Annex D to this Regulation' shall remain applicable. The original text of this annex contained Article 7 of the Germano-Italian Convention of 5 May 1953. The fact that this article has not appeared therein since the adoption of Regulation 130/63 of the Council cannot be interpreted as having deprived the migrant workers of these two countries of the benefit of this provision. It simply duplicated the pro-

visions of Regulation No 3, even if it was not considered less favourable than them. For all these reasons I consider that the court referring the matter must base itself on Article 16 in order to accept the aggregation of the insurance periods.

As you are aware, Article 16 provides that 'For the acquisition, maintenance or recovery of the right to benefit, where a wage-earner or assimilated worker has been successively or alternately subject to the legislation of two or more Member States, the insurance periods and assimilated periods completed under the legislation of each of the Member States shall be aggregated in so far as they do not overlap'.

It would therefore be sufficient for the workers involved in the main actions to show that they have completed the minimum insurance periods required by the regulation on social insurance by aggregating the insurance periods completed in both the Federal Republic of Germany and another Member State, so as to acquire a right to the benefits provided for in Article 1244a of that regulation, or, as a result, so that the pension insurance organizations to which they are affiliated are obliged to bear the burden of these benefits.

However, the second subparagraph of Article 17(1) of Regulation No 3 restricts the aggregation principle by requiring that a period of not more than one month shall have elapsed between the end of the insurance period completed in the State in whose territory the worker was last employed and the start of the insurance period in the Member State to whose territory he proceeds.

This fact appears to give rise to a difficulty in Case 14/72. If a break in the insurance period of more than one month were established—which appears to be the case as regards Mr Heinze (who terminated his employment in Luxembourg in 1960 and does not appear to have taken up further employment in Germany subject to compulsory insurance)—then, in such a case, it would not be possible to aggregate the insurance periods, at least on the basis of Regulation No 3.

Although the Bundessozialgericht has not referred this problem to you and you are therefore not required to consider it, I think it is useful to point out, as the Commission has done in its written observations, that as regards sickness benefits Article 18 of Regulation No 1408/71, which repeals and replaces Regulation No 3, attaches no limitation to a break in insurance, except as regards seasonal workers.

This new regulation came into force on 1 October 1972. It is true that in Article 94 it provides that no right shall be acquired under that regulation for a period prior to the date of its entry into force. In other words, it has no retroactive effect; it does not allow the reconsideration of questions which were finally settled from an administrative or legal point of view before that date. However, Article 94(3) provides that, subject to the provisions of paragraph 1, a right shall be acquired though relating to a contingency (that is, a risk) which materialized earlier. I consider, therefore, that, if this provision is to be effective, it must be understood to apply to rights acquired as a result of risks which materialized before the entry into force of the regulation, but on which no final decision has yet been taken. I thought it useful to point out this difficulty in passing.

III — *Secondary questions*

Since, if you accept my opinion, the principal question common to the three cases referred to you must be answered in the affirmative, I must finally consider the secondary questions raised in Cases 15/72 and 16/72.

I believe that your case-law will enable you to settle the first of these cases without difficulty. The first sentence of Article 28(2) of Regulation No 4 of the Commission states that 'If the insurance periods and assimilated periods, completed under the legislation of one Member State, do not together total six months no benefit shall be granted under the said legislation'. The article adds: 'the abovementioned periods shall be taken into account for the acquisition, maintenance and recovery of the right to benefits from other Member States, but not determining the proportionate

amount due in accordance with Article 28(1)(b)' of Regulation No 3 concerning social security for migrant workers. Neither the object nor the effect of this provision is to deprive migrant workers of the benefit of the aggregation of periods of less than six months. It has no aim other than to enable the operations involved in payment of the pension to be simplified and, in particular, to avoid the institution which pays the pension incurring expenses of calculation and, possibly, transfer which may, in certain cases, exceed the amount of the pension itself.

You gave a clear ruling on this point in your judgment of 1 December 1970 in Case 32/70, *Union Nationale des Mutualités Socialistes* v *Mrs Stéphanie Cacciatore, née La Marca*, [1970] ECR 987, on a preliminary question from the Commission de Réclamation of Liège concerning obligatory insurance against sickness and invalidity, when you recalled that:

'Although ... the object of Article 28(2) of Regulation No 4 is to simplify administration, this can only be done, no matter what the circumstances, within the context and limits of the obligation to undertake an aggregation imposed by Article 51 of the Treaty and it cannot be allowed to affect adversely the rights stemming from that Article in favour of individuals.'

The main action involving Mr Buscema also concerns benefits in kind, for which no *pro rata* apportionment is possible; Article 28(2) of Regulation No 4 is, therefore, inapplicable.

The reply to the question referred can only be in the negative.

In Case 16/72 the Bundessozialgericht has finally submitted to you, as a secondary question, the problem whether, for the purposes of the aggregation provided for in Regulation No 3, it is necessary to take account of insurance periods which a Member State other than Germany (in this instance Italy) is obliged to take into account in calculating benefits under an agreement concluded with a third country, Switzerland.

In my opinion the reply to this question is dictated by the wording of Regulation No 3, by the territorial area of application of the Treaty establishing the European Economic Community and by the spirit of Article 51.

To take the wording first: in all its provisions concerning the aggregation of insurance periods, whether Article 16 or Articles 27, 32 and 33, the regulation only refers to periods completed 'under the *legislation of each of the Member States*' and clearly not to third States.

Secondly, the territorial area of application of the Treaty is necessarily limited, whether as regards social security for migrant workers, the right of establishment, or any other provision.

In particular, Articles 48 to 51 cannot be applied outside the Community, any more than can the rules governing aggregation in Regulation No 3 apply to insurance periods completed in the territory of a third State. Finally, although the aim of Article 51 is to ensure the free movement of Community workers, it is clear that this is exclusively within the territory of Member States.

Let me add that, although in social security matters the Treaty of Rome has not called into question the power of a Member State to conclude an agreement with a third State and to take into account insurance periods completed by its nationals in that State, it would be inconceivable for such a bilateral agreement to be used by a State in order to impose obligations on its partners which exceed those laid down by Community law. I therefore consider that a negative reply must be given to the final question.

I conclude that you should rule:

1) On the question common to Cases 14, 15 and 16/72

that the legislative provisions which, in the Federal Republic of Germany, give

rise to a right to benefits on the part of workers and their dependants who are suffering from contagious tuberculosis requiring treatment, on condition that such workers can show that they have completed the minimum insurance periods required by these provisions, fall within the area of application of Regulation No 3 of the Council and must be classified as '*sickness benefits*' within the meaning of Article 2 (1) (a) of that regulation;

that, consequently, the insurance periods completed in the various Member States must therefore be aggregated in pursuance of Article 16 *et seq.* of Regulation No 3.

2) *On the second question in Case 15/72*

that the provisions of Article 28 (2 of) Regulation No 4, according to which 'If the insurance periods ..., completed under the legislation of one Member State, do not together total six months, no benefit shall be granted under the said legislation' are not applicable to the benefits provided for by the above-mentioned legislation of the Federal Republic of Germany.

3) *On the second question in Case 16/72*

that a Member State is not obliged to have regard to insurance periods which another Member State is itself obliged to take into account under an agreement which it has concluded with a third State.