JUDGMENTS

of the
Court of Justice of the European Communities

related to
social security for migrant workers

A systematic survey

Cataloguing data can be found at the end of this publication.

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Introduction

This survey contains summaries of 224 judgments of the European Court of Justice in the field of social security for migrant workers. Summaries have been included of all the important judgments up to 29 June 1994 which relate to Council Regulations (EC) Nos 1408/71 and 574/72. The survey also contains summaries of judgments concerning Council Regulation (EC) No 1612/68 and the EC Treaty whenever Articles from these instruments are mentioned in the index of a judgment relating to Regulation (EC) No 1408/71 or 574/72. Summaries of two judgments relating to the Cooperation Agreement between the Community and Morocco have also been included.

Information is laid out in six columns as follows:

1. Relevant Article (highlighted) plus other Articles from the same Regulation or other Regulations cited in the same case;
2. Summary of the part of the judgment which relates to the Article mentioned in column 1;
3. Member State implicated in the case;
4. Date of the judgment;
5. Name and number of the case;
6. Reference to the ECJ law reports.

Please note that a particular case can also concern other legal provisions besides those referred to in this survey. However, only those Articles which are considered important in each case have been referred to.

When using the survey one should also be aware of the fact that Regulations (EC) Nos 1408/71 and 574/72 have been amended several times, therefore the Article references may not always correspond exactly to the current version of the Regulations.

The following abbreviations are used in the summaries:

MS	Member State(s)
soc. sec.	social security
leg.	legislation
Reg.	Regulation
Co	European Commission
Art.	Article
ECJ	European Court of Justice

Reg. 1408/71

Reg. 1408/71 in general	Summary	Country	Date	Case	ECJ law report
Reg. 1408/71 Reg. 3	It is for the legislature of each MS to lay down the condition creating the right or the obligation to become affiliated to a soc. sec. scheme or to a particular branch under such a scheme. A national provision of a MS which provides that a married woman residing in that MS whose husband is not insured there for the purpose of an old-age pension because he is so insured under the leg. of another MS, is not insured for those purposes either, even if she has resided in the territory of the first-mentioned MS and has been employed there, is not incompatible with the provisions of Community law in force, if those provisions as they stand at present do not preclude the MS from making the right of either spouse to derive benefits under a soc. sec. scheme dependent on the affiliation of the other spouse to the same scheme.	NL	23.9.1982	275/81 (Koks)	1982, 3013
Reg. 1408/71 Art. 78(2)(b)(i)	The Reg. on soc. sec. for migrant workers did not set up a common scheme of soc. sec but allowed different schemes to exist, creating different claims on different institutions against which the claimant possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by Community law relating, in particular, to the lifting of conditions of residence. The Community rules cannot, therefore, in the absence of an express exception consistent with the aims of the Treaty, be applied in such way as to deprive a migrant workers or his dependants of the benefit of a part of the leg. of a MS, nor may they bring about a reduction in the benefits awarded by virtue of that leg.	D	9.7.1980	807/79 (Gravina)	1980, 2205
Reg. 1408/71 EC Treaty Art. 51	Art. 51 of the EC Treaty and Reg. 1408/71 provide only for the aggregation of insurance periods completed in different MS. They do not, however, regulate the conditions under which those insurance periods are constituted. The conditions governing the right or obligation to become a member of a soc. sec. scheme are a matter to be determined by the leg. of each MS [see the judgments of 12 July 1979 in Case 266/78 (Brunori) and of 24 April 1980 in Case 110/79 (Coonan)]. They are not therefore applicable for the purpose of determining the conditions of affiliation to a soc. sec. scheme, whether compulsory or voluntary.	D	28.2.1989	29/88 (Schmitt)	1989, 581
Reg. 1408/71 Annex VI, Part I, point 2(c) EC Treaty Art. 51	It is for the legislature of each MS to lay down the conditions creating the right or the obligation to become affiliated to a soc.sec. scheme or to one or other branches of such a scheme, provided always that in this connection there is no discrimination between nationals of the host state and nationals of other MS.	NL	25.2.1986	254/84 (De Jong)	1986, 671

Reg. 1408/71 Art. 77(2)(b)(i)	The Reg. on soc. sec. for migrant workers did not set up a common scheme of soc. sec., but allowed different schemes to exist, creating different claims on different institutions against which the claiment possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by Community law. The Community rules cannot, therefore, in the absence of an express exception consistent with the aims of the Treaty, be applied in such a way as to deprive a migrant worker or his dependants of the benefit of a part of the leg. of a MS, nor may they bring about a reduction in the benefits awarded by virtue of that leg. supplemented by Community law.	B	12.6.1980	733/79 (Laterza)	1980, 1915
Reg. 1408/71 Arts 4(1)(a), 19, 28 EC Treaty Art. 51	The essential object of Reg. 1408/71 adopted under Art. 51 of the Treaty is to ensure that soc. sec. schemes governing workers in each MS moving within the Community are applied in accordance with uniform Community criteria. To this end it lays down a hole set of rules founded in particular upon the prohibition of discrimination on grounds of nationality or residence and upon the maintenance by a worker of his rights acquired by virture of one or more soc. sec. schemes which are or have been applicable to him. To interpret the Reg. as prohibiting national leg. to grant a worker soc. sec. broader than that provided by the application of the said Reg. would therefore be going beyond that objective, and also outside the purpose and scope of Art. 51	NL	10.1.1980	69/79 (Jordens-Vosters)	1980, 75
Reg. 1408/71 Annex VI, Part I, Point 2(c) EC Treaty Art. 51	It is for the legislature of each MS to lay down the conditions creating the right or the obligation to become affiliated to a soc.sec. scheme or to a particular branch of such a scheme, provided always that in this connection there is no discrimination between nationals of the host State and nationals of other MS.	NL	24.09.1987	43/86 (De Rijke)	1987, 3611

Title I:

General provisions

(Arts 1 to 12)

Reg. 1408/71	Summary	Country	Date	Case	ECJ law report
Art. 1 Arts 4(1)(g), 71(b)(ii)	It must be accepted that the status of worker within the meaning of the Reg. is acquired when the worker complies with the substantive conditions laid down objectively by the soc. sec. scheme applicable to him even if the steps necessary for affiliation have not been completed.	NL	15.12.1976	39/76 (Mouthaan)	1976, 1901
Art. 1(a) Arts 2(1), 77	A person who has been compulsorily insured as a self-employed worker in one MS but who is compulsorily insured as an employed worker in another MS must be considered as a worker within the meaning of Art. 1(a) and 2(1) throughout the Community.	UK	31.3.1981	99/80 (Galinsky)	1981, 941
Art. 1(a) Arts 2(1), 13(2)(a)	A person must be considered to be covered by the Reg. if he meets the conditions laid down in Art. 1(a) in conjunction with Art. 2(1) of the Reg., irrespective of the amount of time which he devotes to his activities.	NL	3.5.1990	C-2/89 (Kits van Heijningen)	1990, I-1755
Art. 1(a) Arts 1(j), 2(1), 3(1)	A person insured under a voluntary insurance scheme, such as that established by the Belgian law of 17 July 1963 for persons carrying on their activity in a State which is not a member of the Community, who, during the period in which he participated in that insurance scheme, pursued an activity as an employed or self-employed person is to be regarded as a 'worker', and the survivor of such a person is to be regarded as the survivor of a worker for the purposes of the Reg.	B	9.7.1987	Joined cases 82 and 103/86 (Sabato)	1987, 3401
Art. 1(a) Art. 3 Reg. 1612/68	Arts 1(a) and 3 of Reg. 1408/71 must be interpreted as meaning that it is for the legislature of each MS to lay down the conditions creating the right or the obligation to become affiliated to a soc. sec. scheme or to a particular branch under such a scheme provided always that in this connection there is no discrimination between nationals of the host State and nationals of the other MS. Consequently if national leg. makes affiliation to a soc. sec. scheme or to a particular branch under that scheme conditional in certain circumstances on prior affiliation by the person concerned to the national soc. sec. scheme the Reg. does not compel MS to treat as equivalent insurance periods completed in another MS and those which were completed previously on national territory.	UK	24.4.1980	110/79 (Coonan)	1980, 1445
Art. 1(a) Art. 86 Reg. 574/72 Art. 8	A person who is entitled under the leg. of a MS to benefits covered by the Reg. by virtue of contributions previously paid compulsorily does not lose his status as a 'worker' within the meaning of Regs 1408/71 and 574/72 by reason only of the fact that at the time when the contingency occurred he was no longer paying contributions and was no longer bound to do so.	UK	22.5.1980	143/79 (Walsh)	1980, 1639

Art. 1(a) Arts 22(1)(c) and 2	The definition of the concept of 'worker' in Art. 1(a) of the Reg. for the purposes of the application of the Reg. has a general scope, and in the light of that consideration covers any person who has the capacity of a person insured under the soc. sec. leg. of one or more MS, whether or not he pursues a professional or trade activity. It follows that, even if they do not pursue a professional or trade activity, pensioners entitled to draw pensions under the leg. of one or more MS come within the provisions of the Reg. concerning 'workers' by virtue of their insurance under a soc. sec. scheme, unless they are subject to special provisions laid down regarding them.	NL	31.5.1979	182/78 (Pierik II)	1979, 1977
Art. 1(a)(i) and (ii) Art. 73(1) EC Treaty Art. 52	A self-employed person who, in the event of his involuntarily ceasing to work, is entitled to unemployment benefits by virtue of contributions paid or credited as an employed person is not an 'employed person' for the purpose of Art. 73(1) of the Reg. as amended by Reg. 1390/81, read in conjunction with Art. 1(a)(i) and (ii) of that Reg.	UK	4.10.1991	C-15/90 (Middleburgh)	1991, I-4655
Art. 1(a)(ii) Art. 18 Annex V	A national of a MS who, in another MS, has been subject to a soc. sec. scheme which is applicable to all residents can benefit from the provisions of the Reg. only if he can be identified as an employed person within the meaning of Art. 1(a)(ii). As regards the UK in particular, in the absence of any other criterion, such identification depends by virtue of Annex V on whether he was required to pay soc. sec. contributions as an employed person.	F	19.1.1978	84/77 (Tessier, born Recq)	1978, 7
Art. 1(a)(ii) Art. 22(1)(ii) Annex V, point I, paragraph 1	A person who: - was compulsorily insured against the contingency of 'sickness' successively as an employed person and as a self-employed person under a soc. sec. scheme for the whole working population; - was a self-employed person when this contingency occurred; - at the said time and under the provisions of the said scheme, nevertheless could have claimed sickness benefits in cash at the full rate only if there were taken into account both the contributions paid by him or on his behalf when he was an employed person and those which he made as a self-employed person; constitutes, as regards British leg., a 'worker' within the meaning of Art. 1(a)(ii) for the purposes of the application of the first sentence of Art. 22(1)(ii).	UK	29.9.1976	17/76 (Brack)	1976, 1429
Art. 1(a)(iv) Art. 1(j) Reg. 1390/81 Art. 2(4)	The expression 'self-employed person' within the meaning of Art. 1(a)(iv) of the Reg., as amended by Reg. 1390/81, applies to persons who are pursuing or have pursued, otherwise than under a contract of employment or by way of self-employment in a trade or profession, an occupation in respect of which they receive income permitting them to meet all or some of their needs, even if that income is supplied by third parties benefiting from the services of a missionary priest.	NL	23.10.1986	300/84 (Van Roosmalen)	1986, 3097

Art. 1(b) Art. 71(1)(a)(ii) Art. 71(1)(b)(ii)	Only workers who, on the one hand, reside in a MS other than the State of employment and who, on the other hand, return regularly and frequently, in other words, daily or at least once a week, to their State of residence may be considered as having the status of frontier worker. It follows that the worker who, after transferring his residence to a MS other than the State of employment, no longer returns to the State to pursue his occupation, is not covered by the term 'frontier worker' within the meaning of Art. 1(b) of the Reg. and cannot rely on Art. 71(1)(a)(ii) of that Reg.	D	22.9.1988	236/87 (Bergemann)	1988, 5125
Art. 1(b) Art. 71(1)(a)(ii) and (b)	Art. 71(1)(a)(ii) of the Reg. must be interpreted as meaning that a wholly unemployed frontier worker who comes within the scope of that provision may claim benefits only from the MS in which he resides even though he fulfils the conditions for entitlement to benefits laid down by the leg. of the MS in which he was last employed. A worker who is wholly unemployed and who, although he satisfies the criteria laid down in Art. 1(b) of the Reg., has maintained in the MS in which he was last employed personal and business links of such a nature as to give him a better chance of finding new employment there, must be regarded as a 'worker other than a frontier worker' and therefore comes within the scope of Art. 71(1)(b). It is for the national court alone to determine whether a worker is in that position.	D	12.6.1986	1/85 (Miethe)	1986, 1837
Art. 1(f) Art. 2(1) Reg. 1612/68 Art. 7 EC Treaty Art. 177	Pursuant to the Reg., national leg. which, in a MS, gives a legally protected right to an allowance for handicapped adults to the nationals of that State who reside there also applies to a handicapped adult national of another MS who has never worked in the State which has adopted the legislation in question, but who resides there and is dependent upon his father who is employed there as a worker within the meaning of the said Reg.	F	16.12.1976	63/76 (Inzirillo)	1976, 2057
Art. 1(j) Arts 4, 77(2)(a)	The fact that Art. 1(j) refers only to Art. 4(1) and (2) does not remove the significance of the limitation contained in paragraph 4 of that Art. which *inter alia* excludes from the sphere of application of the Reg. special schemes for civil servants and persons treated as such.	NL	8.3.1979	129/78 (Lohmann)	1979, 853
Art. 1(j) Arts 4, 13(2), 14 to 17, 33	Supplementary pensions paid under schemes established by industrial agreements, which do not constitute leg. within the meaning of Art. 1(j) of the Reg., do not come within the scope *ratione materiae* of the Reg.	B	6.2.1992	C-253/90 (Co v Belgium)	1992, I-531
Art. 1(j) Arts 1(n), 93	The Reg. does not apply to 'industrial agreements' (*dispositions conventionnelles*). Therefore the relationship existing between an insured person and an insurance company under insurance having a purely contractual basis does not, by reason of its nature, fall within the scope of the Reg.	NL	15.3.1984	313/82 (Tiel Utrecht)	1984, 1389

Art. 1(j) Arts 13(2), 14 to 17, 33	**National soc. sec. schemes introduced under agreements concluded by the competent authorities with trade or inter-trade bodies or under collective agreements concluded between both sides of industry which have not been the subject of a declaration mentioned in paragraph 2 of Art. 1(j) of the Reg. do not constitute leg. within the meaning of paragraph 1 of Art. 1(j) and the benefits which they provide do not come within the matters covered by that Reg. Art. 33 of the Reg., which prohibits MS from making deductions from statutory pensions received by nationals of EC countries where the cost of the benefits received in return is not borne by one of their institutions, cannot therefore be invoked against a MS which, under its sickness and maternity scheme, introduces a contribution which is deducted from payments of early retirement or supplementary pensions provided for under industrial agreements, where such payments are made to persons resident in another MS who enjoy sickness benefits under the leg. of that other State.**	F	16.1.1992	C-57/90 (Co v France)	1992, I-75
Art. 1(j) Arts 1(a), 2(1), 3(1)	**The essential criterion for determining the scope of the term 'legislation of a MS' within the meaning of Art. 1(j) of the Reg. is not the place in which the occupation was pursued but the link which exists between the worker, regardless of the place in which he pursued or is pursuing his occupation, and the soc. sec. scheme in a MS under which he has completed periods of insurance.** **Since the decisive criterion is the affiliation of an insured person to a soc. sec. scheme of a MS, the fact that the insurance periods completed under that scheme were completed in a non-MS is unimportant.** **It follows that national rules such as those contained in the Belgian law of 17 July 1963 establishing an optional insurance scheme for persons pursuing their activity in a State which is not a member of the Community are covered by the Reg. as leg. of a MS, even if the benefits for which they provide can be based only on periods of activity completed in a non-MS, and the provisions of the Reg., in particular Art. 3(1), are applicable to workers who are, or have been, subject to such rules.**	B	9.7.1987	Joined cases 82 and 103/86 (Sabato)	1987, 3401
Art. 1(j) Art. 1(a)(iv) Reg. 1390/81 Art. 2(4)	**The essential criterion for determining the scope of the term 'legislation' in Art. 1(j) of the Reg. is not the place in which the occupation is pursued but the link which exists between the worker, regardless of the place in which he pursued or is pursuing his occupation, and the soc. sec. scheme in a MS under which he has completed periods of insurance. Since the decisive criterion for the applicability of the Reg. is the fact that the insured person is affiliated to a soc. sec. scheme in a MS, it is of no importance that he pursued his activities wholly or partly outside the territory of the MS of the Community.**	NL	23.10.1986	300/84 (Van Roosmalen)	1986, 3097

Art. 1(j)	**It is clear from the provisions of the Reg. that as regards international soc. sec. conventions only those conventions fall within the scope of the Reg. to which at least two MS are contracting parties and that with regard to conventions concluded with one or more non-MS the Reg. applies only to the extent that the relations between MS are concerned. On the other hand, there are no provisions in the Reg. relating to conventions concluded between one MS and one or more non-MS, either with regard to the question whether and to what extent the provisions of the Reg. must replace them or as regards the application of the principle of equality of treatment. Consequently, it must be concluded that the Reg. was intended to exclude these conventions from its scope. This being so, Art. 1(j) of the Reg. must be interpreted as meaning that the concept of 'legislation' referred to in this Art. does not encompass the provisions of international soc. sec. conventions concluded between a single MS and a non-MS. This interpretation is not invalidated by the circumstance that these conventions have with force of law been integrated into the domestic legal system of the MS concerned.**	D	2.8.1993	C-23/92 (Grana-Novoa)	**1993, I-4505**
Art. 1(j) **Art. 46** **Annex V, Part H, paragraph 4** Reg. 574/72 Art. 15	**The words 'present or future' within the meaning of Article 1(j) of the Reg. must not be interpreted as excluding measures which were no longer in force at the time of the adoption of that Reg. and of the Reg. implementing it. The objective of Art. 51 of the Treaty would not be attained if the worker lost the status of an insured person within the meaning of the Community Reg. solely because of the fact that, when those Regs were adopted, the national legislation in force at the time at which the worker was insured had been replaced by different leg.**	NL	2.2.1984	285/82 (Derks)	**1984, 433**
Art. 1(j) **Arts 4(4), 5, 9(2)**	**Leg., such as the German law on the reparation of injustice perpetrated under national socialism in the field of social insurance, which forms part of the body of law governing the social insurance of workers in a MS and which makes no provision for a discretionary assessment of the personal situation and needs of the individual concerned, comes within the scope of the Reg. and is not excluded by virtue of the provisions of Art. 4(4) of that Reg.**	D	27.1.1981	70/80 (Vigier)	**1981, 229**
Art. 1(j) **Arts 2(1), 3(1), 10(1)** **Annex V**	**The Belgian law of 16 June 1960 placing under the control and guarantee of the Belgian State the institutions administering soc. sec. for workers from the Belgian Congo and Ruanda-Urundi and providing a guarantee by the Belgian State of soc. sec. benefits in favour of such persons, constitutes 'legislation of a MS' within the meaning of the Reg. Accordingly the Belgian State cannot impose conditions of nationality or residence on workers who are nationals of the MS of the Community and who come within the sphere of application of the said Reg. for the grant of the soc. sec. benefits provided for by that law.**	B	11.7.1980	150/79 (Co v Belgium)	**1980, 2621**

Art. 1(j) **Arts 40, 45(3)**	**The structure of the system of harmonization of national leg. established by the Reg. is based upon the principle that a worker must not be deprived of the right to benefits merely because of an alteration in the type of leg. in force in a MS. Therefore the concept of 'present or future' measures within the meaning of Art. 1(j) of the Reg. must not be interpreted in such a way as to exclude measures which were previously in force but had ceased to be so when the said Community Regulations were adopted.**	NL	9.6.1977	109/76 (Blottner)	1977, 1141
Art. 1(j) **Art. 10(1)**	**The expression 'legislation' within the meaning of Art. 1(j) of the Reg. includes all provisions laid down by law, regulation and administrative action by the MS and must be taken to cover all the national measures applicable in this case, not only within the metropolitan territories but also in territories maintaining special relations with those States.**	B	31.3.1977	87/76 (Bozzone)	1977, 687
Art. 1(n) **Art. 1(j), 93**	**The term 'institution' in Art. 93 of the Reg. means, in respect of each MS, the body or authority responsible for administering all or part of the MS leg. relating to the branches or schemes of soc. sec. mentioned in that Reg.**	NL	15.3.1984	313/82 (Tiel Utrecht)	1984, 1389
Art. 1(r) **Art. 39(1) and (2)** **Reg. 36/63** **Arts 1(1)(c),** **6(1) and 19(1)** **Reg. 3** **Art. 1(p)** EC Treaty Arts 48-51	**The period during which a frontier worker is wholly unemployed and required, pursuant to Art. 19(1) of Reg. 36/63, to claim unemployment benefits in the MS of residence, although not recognized in that MS as an insurance period or equivalent period, must be treated as such in the MS in which the person concerned was last employed, where the leg. applicable at the material time treated periods of unemployment completed on its territory as periods of sickness insurance.** **That is the appropriate solutions notwithstanding the provisions of Reg. 3 and Reg. 1408/71 which state that 'insurance periods' means periods defined or treated as such by the leg. under which they were completed, and which, if applied in such case, would, because they would have the effect of depriving a migrant worker of advantages which he would have been able to claim under the leg. of a single MS, be contrary to the objective pursued by Arts 48 to 51 of the Treaty.**	B	15.10.1991	C-302/90 (Faux)	1991, I-4875
Art. 1(r) **Reg. 3** **Art. 1(r)** EC Treaty Arts 48-51	**Art. 1(r) of Reg. 3 and Art. 1(r) of Reg. 1408/71 must be interpreted as meaning that periods treated as periods of insurance are to be determined solely in accordance with the criteria laid down in the national leg. under which those periods were completed, provided that the national leg. observes the provision of Arts 48 to 51 of the Treaty [See judgment of 6 June 1972 in case 2/72 (Murru)].**	B	7.2.1990	324/88 (Vella)	1990, I-257

Art. 1(r) Art. 67(1)	It is clear from Art. 1(r) of the Reg. that, in order to ascertain whether a period of employment may be assimilated to a period of insurance for the purposes of the application of the rule concerning aggregation set out in Art. 67(1), reference must be made to the leg. under which such period was completed. Thus a period of employment completed under the leg. of a MS other than that in which the competent institution is established, and defined or recognized as an insurance period under that leg., is not subject to the condition laid down in Art. 67(1) *in fine* of the Reg.	B	15.3.1978	126/77 (Frangiamore)	1978, 725
Art. 1(r) and (s) Art. 67(1)	Where entitlement to unemployment benefits is concerned, the term 'periods of insurance' in Art. 1(r) of the Reg. must be understood as referring not only to periods in which contributions to an unemployment insurance scheme were paid but also to periods of employment considered by the leg. under which they were completed as equivalent to periods of insurance, that is to say periods in which insurance cover by such a scheme is guaranteed. The term 'periods of employment' defined in Art. 1(s) of the Reg. thus covers only periods of work which, according to the leg. under which they were completed are not regarded as periods conferring entitlement to affiliation to a scheme providing unemployment benefits.	NL	12.5.1989	388/87 (Warmerdam-Steggerda)	1989, 1203
Art. 1(s) Arts 45(1), 69 Reg. 3 Arts 1(r), 27(1)	The insurance periods to be aggregated for the acquisition of the right to a retirement pension may include a period of unemployment which is regarded as equivalent to a period of employment by the leg. under which it was completed. On the other hand, when national leg. makes the early acquisition of the right to a retirement pension conditional upon the person concerned having been unemployed for a certain time as well as upon the completion of a period of membership of a social insurance scheme and when therefore the length of the period of unemployment is not intended to be aggregated to obtain the minimum period of membership required or to be used in the calculation of the benefit there are no grounds for taking into account a period of unemployment completed in another MS.	D	9.7.1975	20/75 (D'Amico)	1975, 891
Art. 1(u)(i) Art. 74	Benefits intended to help families to meet the cost of supporting their children aged over 16 but under 21 who are unemployed fall within the definition of 'family benefits' in Art. 1(u)(i) of the Reg.	D	22.2.1990	C-12/89 (Gatto)	1990 , I-557
Art. 1 (u)(i) Art. 73	Benefits intended to help families to meet the cost of supporting their children aged over 16 but under 21 who are unemployed fall within the definition of 'family benefits' in Art. 1(u)(i) of the Reg.	D	22.2.1990	228/88 (Bronzino)	1990, I-531

Art. 1(u)(ii) **Art. 77** EC Treaty Arts 7, 48, 51	**Art. 77 of the Reg. must be interpreted as giving a person entitled to family benefits who is a national of a MS and has dependent children but resides in another MS entitlement to payment by the soc. sec. institutions of his country of origin only of 'family allowances', as defined in Art. 1(u)(ii) of the Reg., to the exclusion of other family benefits such as the *rentrée scolaire* (school expenses) allowances and the *salaire unique* (single wage) allowances provided for by French leg.**	F	27.9.1988	313/86 (Lenoir)	1988, 5391
Art. 1(u)(ii) **Art. 73** EC Treaty Art. 51	**Since it relates only to employed persons, Art. 51 of the Treaty does not require a MS on whose territory a self-employed person works to pay family allowances within the meaning of Art. 1(u)(ii) of the Reg. if the members of the person's family reside in another MS. However, with effect from 15 January 1986, in accordance with Art. 73 of the Reg. as amended by Reg. 3427/89, a self-employed person subject to the leg. of a MS is entitled, in respect of members of his family who are residing in another MS to the family benefits provided for by the leg. of the former State, as if they were residing in that State.**	F	5.12.1989	114/88 (Delbar)	1989, 4067
Art. 1(u)(ii) Arts 2, 78, 79(3)	**In the system established by the Reg. family allowances are generated by an actual occupation (even if the worker is no longer engaged in such occupation) and the direct and sole recipient is the worker himself.**	D	16.3.1978	115/77 (Laumann)	1978, 805
Art. 1(v) EC Treaty Art. 177	**Death grant is not covered by the expression 'pension'.** **The settlement grant to be paid to a widow in the event of remarriage must be regarded as in lieu of the widow's pension and must be treated as a pension.**	D	27.11.1973	130/73 (Vandeweghe)	1973, 1329
Art. 2 Arts 1(u)(ii), 78, 79(3)	**The application of the Reg. is not limited to workers or their survivors who have been employed in several MS or who are, or have been, employed in one State whilst residing in another. The Reg. also applies even when the residence in another MS was not of the worker himself but of a survivor of his.**	D	16.3.1978	115/77 (Laumann)	1978, 805
Art. 2 Arts 73, 77(2)(a) and (b)(i), 78(2)	**It is apparent from the terms of Art. 78(2) of the Reg. that that provision overrides the conditions concerning residence in national territory only as regards 'the orphan of a deceased worker'. Art. 2, which defines the persons to whom the Reg. applies, draws a clear distinction between workers themselves on the one hand and members of their families and their survivors on the other. The expression 'orphan of a deceased worker' cannot therefore be taken to cover the case of children who have become orphans as a result of the death of a member of a worker's family who was not himself a worker. It follows that Art. 78(2) covers only the case of an orphan whose deceased father or mother personally had the status of worker.**	B	14.3.1989	1/88 (Baldi)	1989, 667

Art. 2 **Art. 4** **Reg. 1612/68**	**Reg. 1408/71 does not exclude from its scope *ratione materiae* a supplementary allowance paid by a national solidarity fund and granted to recipients of old-age, survivor's or invalidity pensions with a view to providing them with a minimum means of subsistence, provided that the persons concerned have a legally protected right to the grant of such an allowance.** **Members of the family of a worker can only claim derived rights under Reg. 1408/71, that is to say the rights acquired through their status as members of the worker's family. It follows that a member of the family of a worker who is a national of a MS cannot rely on Reg. 1408/71 in order to claim a supplementary allowance connected with a pension which he receives in that MS in a capacity other than that of a member of a worker's family.**	F	17.12.1987	147/87 (Zaoui)	1987, 5511
Art. 2 **Art. 3** **Reg. 1612/68** **Art. 7(2)**	**Arts 2 and 3 of the Reg. must be construed as meaning that they cannot be invoked by a migrant worker's dependent descendant to claim an allowance for handicapped persons provided for by national leg. as a personal right instead of as a member of a worker's family.** **Under the Reg. the members of a worker's family could lay claim only to derived rights, i.e. rights acquired in their capacity of members of a worker's family.**	B	27.5.1993	C-310/91 (Schmid)	1993, I-3011
Art. 2 **Art. 3**	**Arts. 2 and 3 of the Reg. must be interpreted as meaning that they cannot be relied on by a national of a non-member country, the spouse of a worker who is a national of a MS, to claim a handicapped person's allowance which the national leg. grants as a personal right and not by reason of the status of the member of a worker's family.** **The members of the family of a worker are entitled under the Reg. only to derived rights, that is to say, those acquired in their capacity as members of the family of a worker.**	B	8.7.1992	C-243/91 (Taghavi)	1992, I-4401
Art. 2(1) **Art. 3(1)** EC Treaty Art. 177	**It appears from Art. 3(1) of the Reg., read in conjunction with Art. 2(1), that in the framework of the matters covered by the Reg. and in the absence of a specific provision to the contrary, the members of an employed person's family must be allowed the benefit of the leg. of the State of their residence under the same conditions as the nationals of that State.** **If a handicapped child who by reason of his handicap is prevented from acquiring the status of a worker within the meaning of the Reg. fulfils from his minority the conditions required in order to be entitled as a member of a worker's family to benefits for the handicapped, the equality of treatment cannot cease at the end of his minority.**	B	17.6.1975	7/75 (Fracas)	1975, 679

Art. 2(1) **Art. 1(f)** **EC Treaty** **Art. 177** **Reg. 1612/68** **Art. 7**	**Pursuant to the Reg., national leg. which, in a MS, gives a legally protected right to an allowance for handicapped adults to the nationals of that State who reside there also applies to a handicapped adult national of another MS who has never worked in the State which has adopted the leg. in question, but who resides there and is dependent upon his father who is employed there as a worker within the meaning of the said Reg.**	F	16.12.1976	63/76 (Inzirillo)	1976, 2057
Art. 2(1) **Arts 1(a), 77**	**A person who has been compulsorily insured as a self-employed worker in one MS but who is compulsorily insured as an employed worker in another MS must be considered as a worker within the meaning of Arts 1(a) and 2(1) of the Reg. throughout the Community.**	UK	31.3.1981	99/80 (Galinsky)	1981, 941
Art. 2(1) **Art. 7(1)(b)** **Reg. 1612/68** **Art. 7(2)**	**The members of the family of a worker or his survivors can only claim derived rights under the Reg., that is to say rights acquired through their status as a member of the worker's family or as his survivor. A relative in the ascending line of a migrant worker cannot therefore claim the benefit of a special old-age allowance paid to the old persons whether or not they are related to a worker.**	F	6.6.1985	157/84 (Frascogna I)	1985, 1739
Art. 2(1) **Art. 3(1)** **Reg. 1612/68** **Art. 7(2)**	**A national of a non-member country who is a member of the family of a worker who is a national of a MS cannot rely on Reg. 1408/71, and in particular Art. 2(1) and Art. 3(1) thereof, in order to claim unemployment benefits granted, under the leg. of the MS in whose territory that worker is employed, to young persons seeking employment, when they are granted on the basis of the beneficiary's own situation and not by reason of the fact that he is a member of a worker's family.**	B	20.6.1985	94/84 (Deak)	1985, 1873
Art. 2(1) **Arts 1(a), 1(j), 3(1)**	**A person insured under a voluntary insurance scheme, such as that established by the Belgian law of 17 July 1963 for persons carrying on their activity in a State which is not a member of the Community, who, during the period in which he participated in that insurance scheme, pursued an activity as an employed or self-employed person is to be regarded as a 'worker', and the survivor of such a person is to be regarded as the survivor of a worker for the purposes of the Reg.**	B	9.7.1987	Joined cases 82 and 103/86 (Sabato)	1987, 3401
Art. 2(1) **Arts 1(j), 3(1), 10(1)** **Annex V**	**The Belgian law of 16 June 1960 placing under the control and guarantee of the Belgian State the institutions administering soc. sec. for workers from the Belgian Congo and Ruanda-Urundi and providing a guarantee by the Belgian State of soc. sec. benefits in favour of such persons, constitutes 'legislation of a MS' within the meaning of the Reg. Accordingly the Belgian State cannot impose conditions of nationality or residence on workers who are nationals of the MS of the Community and who come within the sphere of application of the said Reg. for the grant of the soc. sec. benefits provided for by that law.**	B	11.7.1980	150/79 (Co v Belgium)	1980, 2621

Art. 2(1) **Arts 3(1), 10** EC Treaty Arts 7, 51(b)	**The status of 'national' of 'one of the Member States' required by Art. 2(1) of the Reg. must be considered in relation to the period in which the worker pursued his occupation. That condition of nationality cannot be regarded as fulfilled where the worker in question was, at the time when he pursued his occupation and paid his contributions, a national of a State which was not yet a member of the Community and he lost the nationality of that State before its accession to the Community. Where a person entitled to soc. sec. benefits guaranteed by the leg. of a MS by reason of his having pursued an occupation as a self-employed person in a territory which at the material time maintained special relations with a MS must therefore be regarded as not fulfilling that nationality requirement, his situation not being covered by Reg. Nos 1408/71 and 574/72.**	B	14.11.1990	C-105/89 (Buhari Haji)	1990, I-4211
Art. 2(1) **Arts 1(a), 13(2)(a)**	**A person must be considered to be covered by the Reg. if he meets the conditions laid down in Art. 1(a) in conjunction with Art. 2(1) of the Reg., irrespective of the amount of time which he devotes to his activities.**	NL	3.5.1990	C-2/89 (Kits van Heijningen)	1990, I-1755
Art. 2(1) **Arts 3(1), 4(1)(c) and (2), 5, 96**	**Arts 2(1), 3(1) and 4(1)(c) and (2) of the Reg. must be interpreted as meaning that the grant of a non-contributory old-age benefit to women with children may not be made dependent either on the nationality of the person concerned or on that of her children, provided that the nationality in question is that of one of the MS.**	F	12.7.1979	237/78 (Palermo, born Toia)	1979, 2645
Art. 2(1) **Art. 94(2)**	**The criterion of nationality of one of the MS laid down by Art. 2(1) of the Reg. must be examined in direct relationship to the periods during which the worker carried on his work and not to the time when he submitted his application for benefits.** **Art. 2(1) and Art. 94(2) of the Reg., read in conjunction with one another, are to be interpreted as guaranteeing that all insurance periods and all periods of employment or residence completed under the leg. of a MS before the entry into force of that Reg. shall be taken into consideration for the purpose of determining entitlement to benefits in accordance with its provisions, subject to the condition that the migrant worker was a national of one of the MS when the periods were completed.**	D	12.10.1978	10/78 (Belbouab)	1978, 1915
Art. 2(3) **Art. 14(c) and (d)** EC Treaty Art. 48	**A professional soldier on active service in a MS is a person covered by the Reg. if, under national law, he is subject to the medical care provisions of the general sickness and invalidity insurance scheme for employed persons.** **It is immaterial that a person in that situation is subject to only one specific branch of soc. sec., if the branch of soc. sec. in question is part of leg. to which the Reg. applies within the meaning of Art. 2(3), the person covered thereby is properly subject to that leg., with the consequence that he falls within the scope *ratione personae* of the Reg.**	B	24.3.1994	C-71/93 (Van Poucke)	1994, I-1101

Art. 3 EC Treaty Art. 48	Art. 3 of the Reg. precludes a given category of workers, largely nationals of other MS, such as foreign-language assistants in universities from being excluded from the social security scheme of a MS which is in general available to other workers in that MS.	I	30.5.1989	33/88 (Allue and Coonan)	1989, 1591
Art. 3 Art. 1(a) Reg. 1612/68	Arts 1(a) and 3 of Reg. 1408/71 must be interpreted as meaning that it is for the legislature of each MS to lay down the conditions creating the right or the obligation to become affiliated to a soc. sec. scheme or to a particular branch under such a scheme provided always that in this connection there is no discrimination between nationals of the host State and nationals of the other MS. Consequently if national leg. makes affiliation to a soc. sec. scheme or to a particular branch under that scheme conditional in certain circumstances on prior affiliation by the person concerned to the national soc. sec. scheme the Reg. does not compel MS to treat as equivalent insurance periods completed in another MS and those which were completed previously on national territory.	UK	24.4.1980	110/79 (Coonan)	1980, 1445
Art. 3 Art. 2	Arts 2 and 3 of the Reg. must be interpreted as meaning that they cannot be relied on by a national of a non-member country, the spouse of a worker who is a national of a MS, to claim a handicapped person's allowance which the national leg. grants as a personal right and not by reason of the status of a member of a worker's family. The members of the family of a worker are entitled under the Reg. only to derived rights, that is to say, those acquired in their capacity as members of the family of a worker.	B	8.7.1992	C-243/91 (Taghavi)	1992, I-4401
Art. 3 Art. 84(4) EC Treaty Arts 48, 51(1)	Arts 48 and 51(1) of the EC Treaty, and Reg. 1408/71 as amended and updated by Reg. 2001/83, and in particular Arts 3 and 84(4) thereof, do not apply to situations of which every element is confined within a single MS.	B	22.9.1992	C-153/91 (Petit)	1992, I-4973
Art. 3 Reg. 1612/68 Art. 7(2)	By maintaining the requirement of a period of residence on Belgian territory which workers from other MS subject to Belgian leg. must fulfil and in order to qualify for the grant of the allowances for handicapped persons, the guaranteed income for elderly persons and the minimum means of subsistence (minimex), Belgium has failed to fulfil its obligations under the EC Treaty and, in particular, Art. 7(2) of Reg. 1612/68 and Art. 3 of Reg. 1408/71 both of which require nationals and citizens of other MS to be treated equally.	B	10.11.1992	C-326/90 (Co v Belgium)	1992, I-5517

Art. 3 **Art. 2** **Reg. 1612/68** **Art. 7(2)**	**Arts 2 and 3 of the Reg. must be construed as meaning that they cannot be invoked by a migrant worker's dependent descendant to claim an allowance for handicapped persons provided for by national leg. as a personal right instead of as a member of a worker's family.** **Under the Reg. the members of a worker's family could lay claim only to derived rights, i.e. rights acquired in their capacity of members of a worker's family.**	B	27.5.1993	C-310/91 (Schmid)	1993, I-3011
Art. 3 **Arts 9, 10(2), 13(2)(d)**	**Arts 3, 9, 10(2) and 13(2)(d) of the Reg. do not prevent the leg. of a MS which makes provision for the reimbursement of contributions paid by an employed person under compulsory insurance in the framework of a special soc. insurance scheme for civil servants in that State from excluding such a reimbursement when the person concerned starts working for the public administration of another MS.** **Under that leg. the reimbursement of contributions which may be claimed by the person concerned when he starts working for the national public administration after having paid contributions to a compulsory insurance scheme counterbalances the fact that if his contribution period were below the minimum his changeover to the civil service scheme would mean that he would forfeit all entitlement to a pension under the scheme to which he previously belonged whereas a person entering the public administration of another MS would under the leg. concerned enjoy the right to continue to be covered and pay voluntary contributions. These are two non-comparable situations in respect of which the principle of non-discrimination is not applicable.**	D	16.12.1993	C-28/92 (Leguaye-Neelsen)	1993, I-6857
Art. 3(1) **Art. 2(1)** **EC Treaty** **Art. 177**	**It appears from Art. 3(1) of the Reg., read in conjunction with Art. 2(1), that in the framework of the matters covered by the Reg. and in the absence of a specific provision to the contrary, the members of an employed person's family must be allowed the benefit of the leg. of the State of their residence under the same conditions as the nationals of that State.** **If a handicapped child who by reason of his handicap is prevented from acquiring the status of a worker within the meaning of the Reg. fulfils from his minority the conditions required in order to be entitled as a member of a worker's family to benefits for the handicapped, the equality of treatment cannot cease at the end of his minority.**	B	17.6.1975	7/75 (Fracas)	1975, 679
Art. 3(1) **Art. 2(1)** **Reg. 1612/68** **Art. 7(2)**	**A national of a non-MS who is a member of the family of a worker who is a national of a MS cannot rely on the Reg., and in particular Arts 2(1) and 3(1) thereof, in order to claim unemployment benefits granted, under the leg. of the MS in whose territory that worker is employed, to young persons seeking employment, when they are granted on the basis of the beneficiary's own situation and not by reason of the fact that he is a member of a worker's family.**	B	20.6.1985	94/84 (Deak)	1985, 1873

Art. 3(1) EC Treaty Arts 7, 48 to 51	Arts 48 to 51 of the Treaty and the leg. adopted in implementation thereof, which includes Art. 3 of Reg. 1408/71, prevent a worker from losing, as a consequence of the exercise of his right to freedom of movement, the advantages in the field of soc. sec. guaranteed to him by the laws of a single MS, since such a consequence could deter workers from exercising that right and would therefore constitute an obstacle to that freedom. Those provisions must therefore be interpreted as meaning that a migrant worker who is receiving an old-age pension under the leg. of one MS and accident insurance benefits paid by an insurance institution of another MS may not be put in a worse position, for the purpose of calculating the portion of the benefit to be suspended pursuant to the leg. of the first State, than a worker who has not exercised his right of free movement and is receiving both benefits under the leg. of a single MS. No justification for such inequality of treatment can be afforded by any practical difficulties which soc. sec. institutions may encounter when calculating entitlement to benefits.	D	7.3.1991	C-10/90 (Masgio)	1991, I-1119
Art. 3(1) Arts 1(a), 1(j), 2(1)	The essential criterion for determining the scope of the term 'legislation of a MS' within the meaning of Art. 1(j) of the Reg. is not the place in which the occupation was pursued but the link which exists between the worker, regardless of the place in which he pursued or is pursuing his occupation, and the soc. sec. scheme in a MS under which he has completed periods of insurance. Since the decisive criterion is the affiliation of an insured person to a soc. sec. scheme of a MS, the fact that the insurance periods completed under that scheme were completed in a non-MS is unimportant. It follows that national rules such as those contained in the Belgian law of 17 July 1963 establishing an optional insurance scheme for persons pursuing their activity in a State which is not a member of the Community are covered by the Reg. as leg. of a MS, even if the benefits for which they provide can be based only on periods of activity completed in non-MS, and the provisions of the Reg., in particular Art. 3(1), are applicable to workers who are, or have been, subject to such rules.	B	9.7.1987	Joined cases 82 and 103/86 (Sabato)	1987, 3401
Art. 3(1) Arts 1(j), 2(1), 10(1) Annex V	The Belgian law of 16 June 1960 placing under the control and guarantee of the Belgian State the institutions administering soc. sec. for workers from the Belgian Congo and Ruanda-Urundi and providing a guarantee by the Belgian State of soc. sec. benefits in favour of such persons, constitutes 'legislation of a MS' within the meaning of the Reg. Accordingly the Belgian State cannot impose conditions of nationality or residence on workers who are nationals of the MS of the Community and who come within the sphere of application of the said Reg. for the grant of the soc. sec. benefits provided for by that law.	B	11.7.1980	150/79 (Co v Belgium)	1980, 2621

Art. 3(1) **Arts 2(1), 4(1)(c) and (2), 5, 96**	**The rule on equality of treatment, laid down by Art. 3(1) of the Reg. prohibits not only patent discrimination, based on the nationality of the beneficiaries of soc. sec. schemes, but also all disguised forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result. Such may be the case with a provision which makes the grant of an allowance to women with children dependent on the nationality of the children of the mother in question.** **Arts 2(1), 3(1) and 4(1)(c) and (2) of the Reg. must be interpreted as meaning that the grant of a non-contributory old-age benefit to women with children may not be made dependent either on the nationality of the person concerned or on that of her children, provided that the nationality in question is that of one of the MS.**	F	12.7.1979	237/78 (Palermo, born Toia)	1979, 2645
Art. 3(1) **Arts 19(1)(b), 22(1)(a)(ii)** EC Treaty **Arts 7, 48**	**Within the scope of application of Reg. 1408/71 the first paragraph of Art. 7 of the Treaty, as implemented by Art. 48 of the Treaty and Art. (3)(1) of the Reg., is directly applicable in MS.** **Arts 7 and 48 of the Treaty and Art. 3(1) of the Reg. do not prohibit the treatment by the institutions of MS of corresponding facts occurring in another MS as equivalent to facts which, if they occur in the national territory, constitute a ground for the loss or suspension of the right to cash benefits; the decision on this matter is for the national authorities, provided that it applies without regard to nationality and those facts are not described in such a way that they lead in fact to discrimination against nationals of the other MS.**	UK	28.6.1978	1/78 (Kenny)	1978, 1489
Art. 3(1)	**A MS which maintains national rules which are incompatible with the principle of equal treatment laid down in Art. 3(1) of the Reg. fails to fulfil its obligations under that Art. in so far as makes the grant of supplementary allowances intended to increase the amount of pensions paid by way of soc. sec. to nationals of MS covered by the provisions of that Reg. who reside on its territory subject to two conditions regarding the signature of reciprocal international agreements with those States and the prior residence of the person concerned on French territory.**	F	11.6.1991	C-307/89 (Co v France)	1991, I-2903
Art. 3(1) **Arts 2(1), 10** EC Treaty **Arts 7, 51(b)**	**The principle of non-discrimination laid down in the first paragraph of Art. 7 of the EC Treaty and implemented in matters of soc. sec. by Art. 3(1) of Reg. 1408/71 is not applicable, by virtue of the very terms of that provision, where the person entitled to a soc. sec. benefit is not one of the persons covered by that Reg.**	B	14.11.1990	C-105/89 (Buhari Haji)	1990, I-4211
Art. 4 **Art. 10(2)** **Reg. 3** **Art. 2**	**Art. 2 of Reg. 3 and Art. 4 of Reg. 1408/71, which lay down the matters covered by those Regs, deal with the various national soc. sec. schemes in their entirety. The reimbursement of soc. sec. contributions therefore forms part of the matters covered by those Regs.**	D	5.5.1977	104/76 (Jansen)	1977, 829

Art. 4 **Arts 1(j), 77(2)(a)**	**The fact that 1(j) of the Reg. refers only to Art. 4(1) and (2) does not remove the significance of the limitation contained in paragraph 4 of that Art., which *inter alia* excludes from the sphere of application of the Reg. special schemes for civil servants and persons treated as such.**	NL	8.3.1979	129/78 (Lohmann)	1979, 853
Art. 4 **Art. 10(1)** EC Treaty Art. 51	**The fact that a social aid pension is granted under national law by way of assistance is not in itself sufficient to exclude that benefit, under Community law, from the field of application *rationae materiae* of Reg. 1408/71, since the distinction between benefits which are excluded from the scope of that Reg. and benefits which come within it rests essentially on the factors relating to each benefit, in particular its purpose and the conditions for its grant.** **A social aid pension which, in the first place, confers on recipients a legally defined status which is not conditional upon any discretionary individual assessment of their personal needs or circumstances, and, secondly, may be paid as a supplement to the income of recipients of soc. sec. benefits, falls in principle within the field of soc. sec. referred to in Art. 51 of the EC Treaty and is not excluded from the scope of Reg. 1408/71 by the provisions of Art. 4(4) thereof.** **A social aid pension which is paid on the basis of objective criteria to elderly nationals in order to provide them with the minimum means of subsistence must be assimilated to an old-age benefit within the meaning of Art. 4(1)(c) of the Reg. and is included amongst the benefits referred to in the first subparagraph of Art. 10(1) of the same Reg. Since the Reg. in question does not contain any specific provisions relating to that pension, the waiver of residence clauses provided for in Art. 10(1) of that Reg. must be taken to apply to the benefit in question.**	I	5.5.1983	139/82 (Piscitello)	1983, 1427
Art. 4 **Arts 1(j), 13(2), 14 -17, 33**	**Supplementary pensions paid under the schemes established by industrial agreements, which do not constitute leg. within the meaning of Art. 1(j) of the Reg., do not come within the scope *rationae materiae* of that Reg. Art. 33, which prohibits MS from making deductions from statutory pensions of Community nationals where the cost of the benefits received in return is not borne by one of their institutions, may not be relied upon against a MS which, under its sickness scheme, provides for a contribution to be deducted from supplementary pensions based on industrial agreements and paid to persons residing in another MS who receive sickness benefits pursuant to the leg. of that State.**	B	6.2.1992	C-253/90 (Co v Belgium)	1992, I-531

Art. 4 **Art. 18** **Reg. 1612/68** **Art. 7(2)** EC Treaty Art. 52	**The distinction between benefits excluded from the Reg. and benefits within its scope is essentially based on the constituent elements of each benefit, in particular its purpose and qualifying conditions, and not on whether a benefit is termed a soc. sec. benefit by national leg. A maternity allowance must be regarded as a soc. sec. benefit falling within the scope of the Reg. and must as such be subject to the application of the rules on the aggregation of residence periods laid down in Art. 18 of the Reg. as it is granted without a means test on the basis of a situation defined by law and as maternity benefits are expressly referred to in Art. 4(1)(a) of the Reg. The fact that it is granted without any contribution condition is of no relevance as the application of the Reg. to non-contributory schemes is provided for in Art. 4(2).**	L	10.3.1993	C-111/91 (Co v Luxembourg)	**1993, I-817**
Art. 4	**The fact that a provision creating benefits for victims of war or its consequences is inserted in national soc. sec. leg. is not by itself decisive in determining that the benefit referred to in the above-mentioned provision is a soc. sec. benefit within the meaning of the Reg., as the distinction between benefits which are excluded from the field of application of that Reg. and benefits which come within it rests entirely on the factors relating to each benefit, in particular its purposes and the conditions for its grant.** **Art. 4(4) of the Reg. must be interpreted as meaning that the Reg. does not apply to benefits for former prisoners of war consisting in the grant, to workers who prove that they underwent a long period of captivity, of an advanced old-age pension, the essential purpose of such benefits being to provide for former prisoners of war testimony of national gratitude for the hardships endured between 1939 and 1945 on behalf of France and its allies and those granting them, by the provision of a social benefit, a quid pro quo for the services rendered to those states.**	F	6.7.1978	9/78 (Gillard)	**1978, 1661**
Art. 4 **Art. 2** **Reg. 1612/68**	**Reg. 1408/71 does not exclude from its scope *ratione materiae* a supplementary allowance paid by a national solidarity fund and granted to recipients of old-age, survivors' or invalidity pensions with a view to providing them with a minimum means of subsistence, provided that the persons concerned have a legally protected right to the grant of such an allowance.** **Members of the family of a worker can only claim derived rights under Reg. 1408/71, that is to say the rights acquired through their status as members of the worker's family. It follows that a member of the family of a worker who is a national of a MS cannot rely on Reg. 1408/71 in order to claim a supplementary allowance connected with a pension which he receives in that MS in a capacity other than that of a member of a worker's family.**	F	17.12.1987	147/87 (Zaoui)	**1987, 5511**

Art. 4 Art. 68(2)	**The distinction between benefits excluded from the scope of the Reg. and benefits covered by it is essentially based on the constituent elements of each benefit, in particular its purpose and qualifying conditions, and not on whether a benefit is termed a soc. sec. benefit by national leg.** **A benefit is to be regarded as an unemployment benefit within the meaning of the Reg. if it is granted, without any discretionary individual means test, on the basis of a situation defined by law, is intended only for elderly unemployed persons or those with partial incapacity for work, and where appropriate for their spouse, replaces the public unemployment allowance, is paid up to statutory retirement age, and requires that the beneficiary remains available for employment. The fact that such a scheme is financed by the public authorities is of no relevance as the application of the Reg. to non-contributory schemes is provided for in its Art. 4(2).**	NL	2.8.1993	C-66/92 (Acciardi)	1993, I-4567
Art. 4 Reg. 1612/68 Art. 7(2)	**The fact that a provision providing for benefits for victims of war or its consequences comes within national soc. sec. leg. is not by itself determining for the purpose of concluding that the benefit laid down in that provision is in the nature of a soc. sec. benefit within the meaning of Reg. 1408/71, since the distinction between benefits which are excluded from the field of application of that Reg. and benefits which come within it rests entirely on the factors relating to each benefit, in particular its purposes and the conditions for its grant.** **Art. 4(4) of the Reg. must be interpreted as also excluding from the field of application of that Reg. special national schemes (such as that referred to in Art. 1(4) of the Belgian Royal Decree of 27 June 1969), the essential objective of which is to offer to workers who fought in the allied forces between 1940 and 1945 and who suffer incapacity for work attributable to an act of war a testimony of national recognition for the hardships suffered during that period and to grant them, by increasing the rate of early retirement pension, a benefit by reason of the services thus rendered to their country.**	B	31.5.1979	207/78 (Even)	1979, 2019
Art. 4(1) Arts 10(1), 81(d)	**The soc. sec. rules within the meaning of the Reg. cover a supplementary allowance paid by a national solidarity fund, financed out of tax revenue and granted to recipients of old-age, survivors' or invalidity pensions in order to provide them with the minimum means of subsistence, provided that the persons concerned have a legally protected right to the grant of such allowance. The fact that payment of such an allowance is linked to a specified economic and social environment cannot, under Community law as it now stands, constitute a ground for distinguishing it from the pension to which it is an automatic supplement.**	F	12.7.1990	236/88 (Co v France)	1990, I-3163

Art. 4(1) Reg. 1612/68 Art. 7(2)	**The distinction between benefits which are excluded from the scope of Reg. 1408/71 and benefits which come within it rests entirely on the factors relating to each benefit, in particular its purpose and the conditions for its grant, and not on whether the national leg. describes the benefit as a soc. sec. benefit or not. In order to fall within the field of soc. sec. covered by Reg. 1408/71, leg. must in any event satisfy, in particular, the condition of covering one of the risks specified in Art. 4(1) of the Reg. It follows that the list of risks contained in that paragraph is exhaustive and that as a result a branch of soc. sec. not mentioned in the list does not fall within that category even if it confers upon individuals a legally defined position entitling them to benefits. A social benefit guaranteeing a minimum means of subsistence in a general manner cannot be classified under one of the branches of soc. sec. listed in Art. 4(1) of the Reg. and therefore does not constitute a soc. sec. benefit within the specific meaning of that Reg.**	B	27.3.1985	249/83 (Hoeckx)	1985, 973
Art. 4(1) Reg. 1612/68 Art. 7(2)	The distinction between benefits which are excluded from the scope of Reg. 1408/71 and benefits which come within it rests entirely on the factors relating to each benefit, in particular its purpose and the conditions for its grant, and not on whether the national leg. describes the benefit as a soc. sec. benefit or not. In order to fall within the field of soc. sec. covered by Reg. 1408/71, leg. must in any event satisfy, in particular, the condition of covering one of the risks specified in Art. 4(1) of the Reg. It follows that the list of risks contained in that paragraph is exhaustive and that as a result a branch of soc. sec. not mentioned in the list does not fall within that category even if it confers upon individuals a legally defined position entitling them to benefits. A social benefit guaranteeing a minimum means of subsistence in a general manner cannot be classified under one of the branches of soc. sec. listed in Art. 4(1) of the Reg. and therefore does not constitute a soc. sec. benefit within the specific meaning of that Reg.	B	27.3.1985	122/84 (Scrivner)	1985, 1027
Art. 4(1) Art. 14(2)(c)	The Reg., which applies only to the leg. relating to the various branches of soc. sec., contains no conflicting rules concerning the leg. applicable to the employment relationship between worker and employer.	B	4.10.1991	C-196/90 (De Paep)	1991, I-4815

Art. 4(1)(a) Arts 19, 28(1) EC Treaty Art. 51	The concept of 'sickness and maternity benefits' appearing in Art. 4(1)(a) of the Reg. is to be determined for the purpose of applying the Reg., not according to the type of national leg. containing the provisions giving those benefits, but in accordance with Community rules which define what those benefits shall consist of. It follows that the words 'sickness and maternity benefits' within the meaning of Art. 4(1)(a) and Chapter 1 of Title III of the Reg. must be interpreted as including benefits under leg. concerning invalidity which are in the nature of medical or surgical benefits. Reg. 1408/71, having regard also to Arts 19 and 28(1) thereof, does not fetter the power of the competent institution of a MS to grant sickness or maternity benefits, within the meaning of Art. 4(1)(a) of the said Reg., including benefits of medical or surgical nature, to a person who is in receipt of an invalidity pension under the leg. of that MS and who resides in the territory of another MS.	NL	10.1.1980	69/79 (Jordens-Vosters)	1980, 75
Art. 4(1)(b) Art. 7(1)(b)	The benefits mentioned in Art. 4(1)(b) of the Reg. embrace those provided by the national provisions granting benefits to handicapped persons, in so far as these provisions relate to the workers within the meaning of Art. 1(a) of this Reg. and confer upon them a legally protected entitlement to the grant of these benefits.	B	28.5.1974	187/73 (Callemeyn)	1974, 553
Art. 4(1)(b) Art. 10(1)	In the case of persons who are or have been subject as employed or self-employed persons to the leg. of a MS, an allowance is provided for under the leg. of that MS which is granted on the basis of objective criteria to persons suffering from physical disablement affecting their mobility and to the grant of which the persons concerned have a legally protected right must be treated as an invalidity benefit within the meaning of Art. 4(1)(b) of the Reg. Where an allowance for handicapped persons constitutes an invalidity benefit within the meaning of Art. 4(1)(b) of the Reg., Art. 10 of that Reg. precludes the withdrawal of that benefit on the sole ground that the recipient resides in the territory of a MS other than that in which the institution responsible for payment is situated.	UK	20.6.1991	C-356/89 (Stanton Newton)	1991, I-3017
Art. 4(1)(c) Arts 12(2), 46 EC Treaty Arts 48, 51 (continued below)	The essential characteristic of the old-age benefits referred to in Arts 4(1)(c) and 46 of the Reg. 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 Art. 46 is based on the assumption that the benefits are financed and 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.	F	5.7.1983	171/82 (Valentini)	1983, 2157

	Whilst benefits such as those paid under a guaranteed income retirement scheme to workers over 60 years of age who retire 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 Reg. 1408/71. They also differ in so far as they pursue an objective 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. It follows that such benefits may not be regarded as being of the same kind as the old-age benefits referred to in Art. 46 of the Reg.				
Art. 4(1)(g) Arts 1, 71(1)(b)(ii)	The unemployment benefits referred to in Art. 4(1)(g) of the Reg. are essentially intended to guarantee to an unemployed worker the payment of sums which do not correspond to contributions made by that worker in the course of his employment. Benefits such as those under Title III A of the Dutch law on unemployment the aim of which is to enable a worker who is owed wages following the insolvency of his employer to recover the amounts due to him within the limits laid down by that law do not constitute 'unemployment benefits' within the meaning of Art. 4(1)(g) of the Reg.	NL	15.12.1976	39/76 (Mouthaan)	1976, 1901
Art. 4(1)(g)	Assistance for vocational training which concerns either persons who are already unemployed or persons who are still in employment but are actually threatened by unemployment is to be regarded as an 'unemployment benefit' for the purpose of Art. 4(1)(g) of the Reg.	D	4.6.1987	375/85 (Campana)	1987, 2387
Art. 4(1)(h) Art. 73	A benefit which is granted automatically to families meeting certain objective criteria concerning in particular their size, income and capital resources must be considered a family benefit for the purposes of Art. 4(1)(h) of the Reg. The fact that the grant of the benefit was not subject to any contribution requirement did not affect its classification as a soc. sec. benefit. The method by which a benefit was financed was immaterial for the purposes of its classification as a soc. sec. benefit under Reg. 1408/71.	UK	16.7.1992	C-78/91 (Hughes)	1992, I-4839
Arts 4(1) and (2) Arts 2(1), 3(1), 5, 96	Arts 2(1), 3(1) and 4(1)(c) and (2) of the Reg. must be interpreted as meaning that the grant of a non-contributory old-age benefit to women with children may not be made dependent either on the nationality of the person concerned or on that of her children, provided that the nationality in question is that of one of the MS.	F	12.7.1979	237/78 (Palermo, born Toia)	1979, 2645

Art. 4(4) Arts 1(j), 5, 9(2)	**Leg., such as the German law on the reparation of injustice perpetrated under national socialism in the field of social insurance, which forms part of the body of law governing the social insurance of workers in a MS and which makes no provision for a discretionary assessment of the personal situation and needs of the individual concerned, comes within the scope of Reg. 1408/71 and is not excluded by virtue of the provisions of Art. 4(4) of that Reg.**	D	27.1.1981	70/80 (Vigier)	1981, 229
Art. 4(4) Art. 10(1)	**Art. 4(4) of the Reg. must be interpreted as not excluding from the scope of that Reg. a supplementary allowance paid by a *fonds national de solidarité* (National Solidarity Fund) financed from tax revenue and granted to the recipients of old-age, survivors' or invalidity pensions with a view to providing them with a minimum means of subsistence, provided that the persons concerned have a legally protected right to the grant of such an allowance.**	F	24.2.1987	Joined cases 379/85 (Giletti) 380/85 (Giardini) 381/85 (Tampan) 93/86 (Severini)	1987, 955
Art. 4(4) EC Treaty Art. 51	**Leg. which confers on the beneficiaries a legally defined position which involves no individual and discretionary assessment of need or personal circumstances comes in principle within the field of soc. sec. within the meaning of Art. 51 of the Treaty and of Regs 3 and 1408/71.** **Where the competent insurance institutions to which the persons referred to by German leg. had been affiliated before 1945 no longer exist or are situated outside the territory of the Federal Republic of Germany and the purpose of such leg. is to alleviate certain situations which arose out of events connected with the national socialist regime and the Second World War and where the payment of the benefits in question to nationals is of a discretionary nature where such nationals are residing abroad, those benefits are not to be regarded as in the nature of soc. sec.**	D	31.3.1977	79/76 (Fossi)	1977, 667
Art. 5	**The fact that a national law or Reg. has not been specified in the declarations referred to in Art. 5 of the Reg. is not in itself proof that that law or Reg. does not fall within the field of application of the said Reg.; on the other hand, the fact that a MS has specified a law in its declaration must be accepted as proof that the benefits granted on the basis of that law are soc. sec. benefits within the meaning of Reg. 1408/71.**	B	29.11.1977	35/77 (Beerens)	1977, 2249
Art. 5 Arts 2(1), 3(1), 4(1)(c) and (2), 96	**The fact that a MS has mentioned a given allowance in its declaration notified and published in accordance with the provisions of Arts 5 and 96 of the Reg. must be accepted as proof that the benefits relating to that allowance are soc. sec. benefits within the meaning of the Reg.**	F	12.7.1979	237/78 (Palermo, born Toia)	1979, 2645
Art. 5 Arts 1(j), 4(4), 9(2)	**The fact that a domestic law is not mentioned in the declaration made by a MS pursuant to Art. 5 of the Reg. does not mean that that law must be deemed to lie outside the scope of the Reg.**	D	27.1.1981	70/80 (Vigier)	1981, 229

Art. 5 Arts 77, 78, 81(a) EC Treaty Art. 5	**The fact that certain benefits provided for under a national law or national rules for the dependent children of pensioners were not mentioned in the declaration referred to in Art. 5 of the Reg. does not in itself establish that those benefits do not constitute benefits for the purposes of Art. 77 of that Reg.; however, where such benefits were mentioned in that declaration, they are to be regarded as benefits for the purposes of Art. 77 of the Reg.**	D	11.6.1991	C-251/89 (Athanasopoulos)	1991, I-2797
Art. 6 Art. 7 Reg. 3 Arts 5, 6(2)	**Under Arts 5 and 6 of Reg. 3, that Reg. replaced the provisions of soc. sec. conventions concluded between MS. This rule is mandatory in nature and allows for no exceptions, save for those cases expressly stipulated in the Reg. The fact that such conventions are more advantageous to persons covered by Reg. 3 than the Reg. itself is not sufficient to justify an exception to this rule. Arts 6 and 7 of Reg. 1408/71, by virtue of their content and purpose, are analogous in scope and effect to Arts 5 and 6 of Reg. 3.**	NL	7.6.1973	82/72 (Walder)	1973, 599
Art. 6 Art. 7 EC Treaty Arts 48(2), 51	**Arts 48(2) and 51 of the EC Treaty must be interpreted as precluding the loss of soc. sec. advantages for workers who have exercised their right to freedom of movement which would result from the inapplicability, following the entry into force of Reg. 1408/71, of conventions operating between two or more MS and incorporated in their national law. Although the replacement of the soc. sec. conventions between MS by Reg. 1408/71 is mandatory in nature, it cannot have the effect of allowing the purpose of Art. 48 to 51 of the EC Treaty to be disregarded; that would be the case if workers who had availed themselves of their right to freedom of movement were to lose the soc. sec. advantages previously conferred on them by national leg., whether alone or in conjunction with international soc. sec. conventions operating between two or more MS.**	D	7.2.1991	C-227/89 (Rönfeldt)	1991, I-323
Art. 7 Art. 6 Reg. 3 Arts 5, 6(2)	**Under Arts 5 and 6 of Reg. 3, that Reg. replaced the provisions of soc. sec. conventions concluded between MS. This rule is mandatory in nature and allows for no exceptions, save for those cases expressly stipulated in the Reg. The fact that such conventions are more advantageous to persons covered by Reg. 3 than the Reg. itself is not sufficient to justify an exception to this rule. Arts 6 and 7 of Reg. 1408/71, by virtue of their content and purpose, are analogous in scope and effect to Arts 5 and 6 of Reg. 3.**	NL	7.6.1973	82/72 (Walder)	1973, 599

Art. 7 **Art. 6** EC Treaty **Arts 48(2), 51**	**Arts 48(2) and 51 of the EC Treaty must be interpreted as precluding the loss of soc. sec. advantages for workers who have exercised their right to freedom of movement which would result from the inapplicability, following the entry into force of Reg. 1408/71, of conventions operating between two or more MS and incorporated in their national law. Although the replacement of the soc. sec. conventions between MS by Reg. 1408/71 is mandatory in nature, it cannot have the effect of allowing the purpose of Arts 48 to 51 of the EC Treaty to be disregarded; that would be the case if workers who had availed themselves of their right to freedom of movement were to lose the soc. sec. advantages previously conferred on them by national leg., whether alone or in conjunction with international soc. sec. conventions operating between two or more MS.**	D	7.2.1991	C-227/89 (Rönfeldt)	1991, I-323
Art. 7(1)(b) **Art. 2(1)** **Reg. 1612/68** **Art. 7(2)**	**Within its field of application the Reg. takes precedence over the European Interim Agreement on soc. sec. schemes in respect of old-age, invalidity and survivors, to the extent to which that Reg. is more favourable than the said agreement for those entitled.**	F	6.6.1985	157/84 (Frascogna I)	1985, 1739
Art. 7(1)(b) **Art. 4(1)(b)**	**In the framework of its field of application to persons and to matters covered, Reg. 1408/71 takes precedence over the European Interim Agreement on soc. sec. schemes in respect of old age, invalidity and survivors signed in Paris on 11 December 1953 and referred to in Art. 7(1)(b) of the Reg., in so far as it is more favourable for those entitled, than the agreement.**	B	28.5.1974	187/73 (Callemeyn)	1974, 553
Art. 7(2)(c)	**Under Art. 2 of Complementary Agreement No 4 between the Federal Republic of Germany and the Netherlands on the settlement of rights acquired under the German soc. insurance scheme by Dutch workers between 13 May 1940 and 1 September 1945, signed in the Hague on 21 December 1956, it is compatible with Community law for forced labour performed by Dutch nationals in Germany during the Second World War to confer no entitlement under the German pension insurance scheme, but to be accounted for under the Dutch scheme as if it had been performed in the Netherlands.**	D	28.4.1994	C-305/92 (Hoorn)	1994, I-1525
Art. 9 EC Treaty **Arts 48, 51**	**Art. 9 of the Reg. must be construed as meaning that the requirement of affiliation to a compulsory insurance scheme in a MS, which, according to the leg. of that State, must be fulfilled at the time of the submission of an application to make retroactive payment of voluntary pension-insurance contributions, cannot be considered to be satisfied if the person making the application is at that date affiliated to a compulsory insurance scheme in another MS.**	D	18.5.1989	368/87 (Hartmann-Troiani)	1989, 1333

Art. 9 **Arts 3, 10(2), 13(2)(d)**	**Arts 3, 9, 10(2) and 13(2)(d) of the Reg. do not prevent the leg. of a MS which makes provision for the reimbursement of contributions paid by an employed person under compulsory insurance in the framework of a special soc. insurance scheme for civil servants in that State from excluding such a reimbursement when the person concerned starts working for the public administration of another MS.** **Under that leg. the reimbursement of contributions which may be claimed by the person concerned when he starts working for the national public administration after having paid contributions to a compulsory insurance scheme counterbalances the fact that if his contribution period were below the minimum his changeover to the civil service scheme would mean that he would forfeit all entitlement to a pension under the scheme to which he previously belonged whereas a person entering the public administration of another MS would under the leg. concerned enjoy the right to continue to be covered and pay voluntary contributions. These are two non-comparable situations in respect of which the principle of non-discrimination is not applicable.**	D	16.12.1993	C-28/92 (Leguaye-Neelsen)	1993, I-6857
Art. 9(2)	**The expression 'voluntary or optional continued insurance' appearing in Art. 9(2) of the Reg. covers assimilation to periods of employment for the purposes of insurance for periods of study whether there is any continuance of existing insurance or not.**	B	16.3.1977	93/76 (Liégeois)	1977, 543
Art. 9(2) **Arts 1(j), 4(4), 5**	**Where national leg. makes affiliation to a soc. sec. scheme conditional on prior affiliation by the person concerned to the national soc. sec. scheme, the Reg. does not compel MS to treat as equivalent insurance periods completed in another MS and those which must have been completed previously on national territory.** **Consequently, Art. 9(2) of the Reg. must be construed as meaning that it does not require a social insurance institution of a MS to take into account periods of insurance completed under the leg. of another MS when the worker concerned has never paid, in the first MS, the contribution required by law in order to create his status as an insured person under the leg. of that MS.**	D	27.1.1981	70/80 (Vigier)	1981, 229
Art. 9(2) EC Treaty Art. 8a	**Art. 9(2) of the Reg. does not oblige a MS to admit to its soc. sec. schemes persons who have been subject to compulsory insurance in a MS and who do not meet the conditions for coverage under the said scheme in the first MS.** **It is for the leg. of each MS to determine the legal conditions or the legal obligation to join a soc. sec. scheme or any particular branch of such a scheme so long as in this respect there is no discrimination between the nationals of that MS and nationals of other MS.** **Nor does Community law oblige a MS under whose leg. its nationals who have worked in a third country can join the soc. sec. scheme, to provide the same treatment to its nationals who have worked in another MS.**	I	20.10.1993	C-297/92 (Baglieri)	1993, I-5211

Art. 10 Art. 46(3) EC Treaty Art. 51	Since the waiving of residence clauses pursuant to Art. 10 of the Reg. has no effect on the acquisition of the right to benefit, it cannot involve the application of Art. 46(3) of the Reg.	D	20.10.1977	32/77 (Giuliani)	1977, 1857
Art. 10 Arts 2(1), 3(1) EC Treaty Arts 7, 51(b)	According to Art. 51(b) of the EC Treaty, which was implemented by Art. 10 of Reg. 1408/71, the payment of benefits acquired under the soc. sec. scheme of one or more MS is guaranteed in Community law only to persons who reside in the territory of a MS. It follows that Community law does not preclude national leg. which provides that a self-employed person's retirement pension is payable abroad only to beneficiaries residing in the territory of a non-member country where a self-employed person's pension could be paid to them pursuant to a reciprocity agreement, provided that such leg. takes effect only outside the Community.	B	14.11.1990	C-105/89 (Buhari Haji)	1990, I-4211
Art. 10(1) Reg. 3 Art. 10(1)	The phrase 'by virtue of the leg. of one or more MS' in Art. 10(1) of Reg. 3 and the phrase '... under the leg. of one or more MS' in Art. 10(1) of Reg. 1408/71 refer to national laws after the effects of Community law, and particularly the principle of non-discrimination between nationals of MS, have been taken into account. The protection afforded by Art. 10(1) of Regs 3 and 1408/71 extends to benefits arising from particular schemes under national law which are given effect by increasing the value of the payment to be made to the beneficiary.	NL	7.11.1973	51/73 (Smieja)	1973, 1213
Art. 10(1) Art. 1(j)	In the absence of express provisions to the contrary, the waiving of residence clauses prescribed by the first subparagraph of Art. 10(1) of the Reg. applies to the situation of a recipient of benefits guaranteed by the leg. of a MS relating to employment exclusively in a territory which at the time maintained special relations with a MS, where that recipient, who is a national of a MS, resides in the territory of a MS other than that which is responsible for payment of soc. sec. benefits in respect of employment in the said territory.	B	31.3.1977	87/76 (Bozzone)	1977, 687
Art. 10(1) Art. 4 EC Treaty Art. 51	A social aid pension which is paid on the basis of objective criteria to elderly nationals in order to provide them with the minimum means of subsistence must be assimilated to an old-age benefit within the meaning of Art. 4(1)(c) of the Reg. and is included amongst the benefits referred to in the first subparagraph of Art. 10(1) of the same Reg. Since the Reg. in question does not contain any specific provisions relating to that pension, the waiver of residence clauses provided for in Art. 10(1) of that Reg. must be taken to apply to the benefit in question.	I	5.5.1983	139/82 (Piscitello)	1983, 1427

Art. 10(1) **Art. 4(4)**	**Art. 10 of the Reg. must be interpreted as meaning that a person may not be precluded from acquiring or retaining entitlement to the benefits, pensions and allowances referred to in that provision on the sole ground that he does not reside within the territory of the MS in which the institution responsible for payment is situated.**	F	24.2.1987	Joined cases 379/85 (Giletti) 380/85 (Giardini) 381/85 (Tampan) 93/86 (Severini)	1987, 955
Art. 10(1) **Arts 4(1), 81(d)**	**Art. 10 of the Reg. must be interpreted as meaning that a person may not be precluded from acquiring or retaining entitlement to the benefits, pensions and allowances referred to in that provision on the sole ground that he does not reside within the territory of the MS in which the institution responsible for payment is situated.**	F	12.7.1990	236/88 (Co v France)	1990, I-3163
Art. 10(1) **Arts 1(j), 2(1), 3(1)** **Annex V**	**The Belgian law of 16 June 1960 placing under the control and guarantee of the Belgian State the institutions administering soc. sec. for workers from the Belgian Congo and Ruanda-Urundi and providing a guarantee by the Belgian State of soc. sec. benefits in favour of such persons, constitutes 'legislation of a MS' within the meaning of the Reg. Accordingly the Belgian State cannot impose conditions of nationality or residence on workers who are nationals of the MS of the Community and who come within the sphere of application of the said Reg. for the grant of the soc. sec. benefits provided for by that law.**	B	11.7.1980	150/79 (Co v Belgium)	1980, 2621
Art. 10(1) **Art. 4(1)(b)**	**Where an allowance for handicapped persons constitutes an invalidity benefit within the meaning of Art. 4(1)(b) of the Reg., Art. 10 of that Reg. precludes the withdrawal of that benefit on the sole ground that the recipient resides in the territory of a MS other than that in which the institution responsible for payment is situated.**	UK	20.6.1991	C-356/89 (Stanton Newton)	1991, I-3017

Art. 10(1)	**The purpose of Art. 10(1) of the Reg. concerning the waiving of residence clauses is to guarantee the person concerned his right to soc. sec. benefits even after taking up residence in a different MS and to promote the freedom of movement of workers, by insulating those concerned from the harmful consequences which might result when they transfer their residence from one MS to another. If that objective is to be attained, the protection given must necessarily extend to cover benefits which, while created within the confines of a particular scheme, are given effect by increasing the value of the pension to which the recipient is entitled.** **However, the rule in Art. 10 cannot be applied without restriction to a general old-age insurance scheme, such as the Dutch scheme, in which the mere fact of residence in the State is sufficient qualification for insurance purposes. Consequently, Point 2 of the part entitled 'Netherlands' in Annex VI to Reg. 1408/71 lays down special provisions governing the waiving of residence clauses in that system, particularly with regard to the treatment of periods prior to 1 January 1957 as periods of insurance for persons who satisfy certain conditions. Interpreted in the light of those provisions, Art. 10(1) thus does not preclude a provision of the relevant Dutch leg. from preventing a person from acquiring the right to the benefit of the transitional provisions which it lays down merely because he is not resident in the territory of the State.**	NL	2.5.1990	293/88 (Winter-Lutzins)	1990, I-1623
Art. 10(2) **Arts 3, 9, 13(2)(d)**	**Arts 3, 9, 10(2) and 13(2)(d) of the Reg. do not prevent the leg. of a MS which makes provision for the reimbursement of contributions paid by an employed person under compulsory insurance in the framework of a special soc. insurance scheme for civil servants in that State from excluding such a reimbursement when the person concerned starts working for the public administration of another MS.** **Under that leg. the reimbursement of contributions which may be claimed by the person concerned when he starts working for the national public administration after having paid contributions to a compulsory insurance scheme counterbalances the fact that if his contribution period were below the minimum his changeover to the civil service scheme would mean that he would forfeit all entitlement to a pension under the scheme to which he previously belonged whereas a person entering the public administration of another MS would under the leg. concerned enjoy the right to continue to be covered and pay voluntary contributions. These are two non-comparable situations in respect of which the principle of non-discrimination is not applicable.**	D	16.12.1993	C-28/92 (Leguaye-Neelsen)	1993, I-6857

Art. 10(2) **Art. 4** **Reg. 3** **Art. 2**	**Since Reg. 3 does not contain any specific provision relating to the reimbursement of contributions the general rules affirmed by that Reg. and by the provisions of the Treaty to which it gives effect, such as the rule on equality of treatment and that on the waiving of residence clauses, are applicable.** **Art. 10(2) of Reg. 1408/71, which constitutes a specific provision and introduces a new rule in respect of the reimbursement of contributions, cannot, however, be extended to facts which occurred outside the period covered by that Reg.**	D	5.5.1977	104/76 (Jansen)	1977, 829
Art. 12 **Arts 67, 69, 71(1)(b)(ii)** **Reg. 574/72** **Art. 84(2)**	**The prohibition of overlapping benefits laid down by Art. 12(1) of the Reg. applies in the context of Art. 71(1)(b)(ii) and of Art. 67 of the same Reg.** **Unemployment benefits constitute benefits of the same kind within the meaning of the first sentence of Art. 12(1) of the Reg. when they are intended to replace the salary lost by reason of unemployment so as to provide for the maintenance of a person, and when the differences which exist between those benefits, particularly those relating to the basis of calculation and the conditions for their grant, are the result of structural differences between the national schemes.** **The competent institution of a MS under whose leg. the acquisition and duration of a right to unemployment benefit are contingent on the completion of insurance periods must, in a situation under Art. 71(1)(b)(ii) and Art. 67 of the Reg., in accordance with the first sentence of Art. 12(1) thereof, take account, for the calculation of unemployment benefit entitlement, of the periods of insurance completed under the leg. to which the unemployed person was last subject. However, it must deduct from the period of unemployment benefit entitlement acquired the days for which benefits were received under the leg. in question.**	D	8.7.1992	C-102/91 (Knoch)	1992, I-4341

Art. 12 **Art. 73** EC Treaty **Art. 51**	**It follows from the wording of Art. 12(1) that overlapping of benefits occurs not only when one person is entitled to two different family benefits at the same time, but also when two different persons, such as for example both parents, are entitled to such benefits in respect of the same child.** **In accordance with the aim of Art. 51 of the Treaty, to which reference should be made when the Community rules do not provide for a specific situation, Arts 12 and 73 of Reg. 1408/71 must be interpreted as meaning that a worker's right to family benefits in the MS of employment in respect of members of his family residing in a second MS, when family benefits are already being paid in respect of the same members of the family to his or her spouse in a third MS in which the spouse is employed, may be exercised where the amount of family benefits actually received in the third MS is lower than the amount of benefit in the first MS, in which case the worker is entitled to an additional benefit, payable by the competent institution of the first State, equal to the difference between the two amounts.**	B	14.12.1989	168/88 (Dammer)	1989, 4553
Art. 12(2) **Art. 46, Chapter 3** **Reg. 574/72** **Arts 15, 46**	**So long as a worker is receiving a pension by virtue of national leg. alone, the provisions of Reg. 1408/71 do not prevent the national leg., including the national rules against the overlapping of benefits, from being applied to him in its entirety, provided that if the application of such national leg. proves less favourable to the worker than the application of the rules laid down by Art. 46 of Reg. 1408/71 the provisions of that Art. must be applied.** **Where a worker is in receipt of invalidity benefits converted into an old-age pension by virtue of the leg. of a MS and of invalidity benefits not yet converted into an old-age pension under the leg. of another MS, the old-age pension and the invalidity benefits are to be regarded as being of the same kind. Consequently, the provisions of Chapter 3 of Reg. 1408/71 are applicable and, by virtue of the last sentence of Art. 12(2) of the Reg., the application of national rules against overlapping is precluded.** **Where a worker is in receipt of benefits of the same kind in respect of invalidity or old-age which are awarded by the institution or two or more MS in accordance with the provisions of Art. 46 of Reg. 1408/71, the national legislative provisions for reduction, suspension or withdrawal do not apply. It follows that the amount referred to in Art. 46(1) is the amount to which the worker would be entitled under national leg. if he were not in receipt of a pension by virtue of the leg. of another MS. If under the national leg. a worker who is able to establish a certain number of years of insurance is entitled to a full pension, it is the amount of that full pension which must be taken into account.**	B	2.7.1981	Joined cases 116, 117, 119, 120, 121/80 (Strehl, Celestre and others)	1981, 1737

Art. 12(2) **Chapter 3**	**Where a worker is in receipt of invalidity benefits converted into an old-age pension by virtue of the leg. of a MS and of invalidity benefits not yet converted into an old-age pension under the leg. of another MS, the old-age pension and the invalidity benefits are to be regarded as being of the same kind. In such a case the provisions of Chapter 3 of the Reg. are applicable for the purpose of determining the rights of the worker, and, by virtue of the last sentence of Art. 12(2) of the Reg., the application of national rules against overlapping is precluded.**	B	15.10.1980	4/80 (D'Amico)	1980, 2951
Art. 12(2) EC Treaty **Arts 48 to 51**	**Art. 51 of the Treaty and Regs 1408/71 and 574/72 must be interpreted as meaning that where, under the national leg. of a MS, the right of a migrant worker to unemployment benefit depends on his fitness for work and such fitness for work has been accepted by the competent authorities of the said MS, those authorities may not refuse the worker in question unemployment benefit on the ground that he is in receipt in another MS of an aggregated and apportioned invalidity pension determined in accordance with Community rules.**	B	23.3.1982	79/81 (Baccini I)	1982, 1063
Art. 12(2) **Arts 46, 51** Reg. 574/72 Art. 107	**Irrespective of the characteristics peculiar to the various national laws, soc. sec. benefits must be considered to be of the same kind when their purpose and basis of calculation are the same. In that respect, benefits acquired under the leg. of two MS, which seeks to ensure that an aged person deprived of the income of his or her deceased spouse has sufficient means of subsistence, and the respective amounts of which are determined on the basis of the insurance and soc. sec. contributions of that spouse, must be considered to be benefits of the same kind by reason of their identical purpose and basis of calculation. When a worker receives a pension pursuant to national leg. alone, the provisions of the Reg. do not prevent that leg. from being applied to him in its entirety, including the national rules against overlapping benefits. If, however, the application of that national leg. is less favourable to the worker than the application of Art. 46 of the Reg., the provisions of that Art. must be applied. On the latter supposition, paragraph 3 of Art. 46 is applicable to the exclusion of rules against overlapping laid down by national leg.**	NL	5.5.1983	238/81 (Van der Bunt-Craig)	1983, 1385

Art. 12(2) **Arts 4(1)(c), 46** EC Treaty Arts 48, 51	**Soc. sec. 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.** **The essential characteristic of the old-age benefits referred to in Arts 4(1)(c) and 46 of the Reg. 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 Art. 46 is based on the assumption that the benefits are financed and 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.** **Whilst benefits such as those paid under a guaranteed income retirement scheme to workers over 60 years of age who retire 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 Reg. 1408/71. They also differ in so far as they pursue an objective 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.** **It follows that such benefits may not be regarded as being of the same kind as the old-age benefits referred to in Art. 46 of the Reg.** **The first sentence of Art. 12(2) of the Reg. is compatible with Art. 51 of the Treaty inasmuch as that provision does not prohibit the application of national rules against overlapping in cases where benefits are not of the same kind as benefits received in respect of invalidity, old-age, death or occupational disease within the meaning of Reg. 1408/71. In so far as those national provisions against overlapping are applied in a manner which is identical to nationals of all the MS without taking into account their nationality, there can be no discrimination within the meaning of Art. 48 of the EC Treaty.**	F	5.7.1983	171/82 (Valentini)	1983, 2157

Art. 12(2) **Art. 57** EC Treaty **Arts 48 to 51**	**Art. 12(2) of the Reg. forms the counterpart of the advantages which Community law affords workers in enabling them to require soc. sec. leg. of more than one MS to be applied simultaneously. Its purpose is to prevent them from deriving advantages from that possibility which in national law are considered excessive.** **However, although limitations may be imposed on migrant workers to balance the soc. sec. advantages which they derive from the Community Regs and which they could not obtain without them, the aim of Arts 48 to 51 of the Treaty would not be attained if the soc. sec. advantages which a worker may derive from the leg. of a single MS were to be withdrawn or reduced as a result of the application of those Regs.** **It must therefore be accepted that the application, pursuant to Art. 12(2) of the Reg., of a provision designed to prevent the overlapping of national benefits alone to a benefit payable under the leg. of another MS is not justified unless the benefit to be reduced was acquired by virtue of the application of the provisions of that Reg.** **The first sentence of Art. 12(2) of the Reg. must be construed as excluding the reduction or suspension of a benefit acquired solely under the leg. of one MS even if the benefits to be taken into account in effecting the reduction, being acquired under the leg. of another MS, were awarded in application of Art. 57 of the Reg. and if the competent institution of the first MS contributes to the cost of those benefits upon the terms set out in Art. 57(3)(c).**	D	15.9.1983	279/82 (Jerzak)	**1983, 2603**
Art. 12(2) **Art. 46(1)**	**Pursuant to Art. 12(2) and Art. 46(1) of the Reg., the amount of a migrant worker's pension must be determined in accordance with the relevant national leg., irrespective of any entitlement to a pension which may arise under the leg. of any other MS. It follows that a national provision which reduces the additional years of notional employment from which a worker may benefit by the number of years in respect of which he may claim a pension in another MS constitutes a provision for reduction of benefit within the meaning of Art. 12(2) of the Reg. which, by virtue of its last sentence, is not to be applied when the amount of the pension is calculated under Art. 46(1) of that Reg.**	B	4.6.1985	58/84 (Romano)	1985, 1679
Art. 12(2) **Art. 46**	**So long as a worker is receiving a pension by virtue of national leg. alone, the provisions of the Reg. do not prevent the national leg., including the national rules against the overlapping of benefits, from being applied to him in its entirety, provided that if the application of such national leg. proves less favourable than the application of the rules laid down by Art. 46 of the Reg. the provisions of that Art. must be applied.**	NL	14.3.1978	105/77 (Boerboom-Kersjes)	1978, 717

Art. 12(2) **Art. 46(1)**	**Pursuant to Art. 12(2) and Art. 46(1) of the Reg., the amount of a migrant worker's pension must be determined in accordance with the relevant national leg., irrespective of any entitlement to a pension which may arise under the leg. of any other MS. It follows that a national provision which reduces the additional years of notional employment from which a worker may benefit by the number of years in respect of which he may claim a pension in another MS constitutes a provision for reduction of benefit within the meaning of Art. 12(2) of the Reg. which, by virtue of its last sentence, is not to be applied when the amount of the pension is calculated under Art. 46(1) of that Reg.**	B	4.6.1985	117/84 (Ruzzu)	1985, 1697
Art. 12(2) **Arts 45(2), 46**	**The provisions of the Reg. do not preclude the grant of benefits to which entitlement was acquired by virtue of national legislative provisions alone, when those benefits are greater than those determined pursuant to Art. 46 of the Reg.** **In such a case, Art. 12(2) of the Reg. does not preclude the application of a national rule designed to prevent the overlapping of domestic and foreign benefits, in order to determine the benefits acquired under national legislative provisions alone.**	B	13.3.1986	296/84 (Sinatra II)	1986, 1047
Art. 12(2) **Art. 46**	**Soc. sec. benefits must be regarded 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, irrespective of characteristics peculiar to the various national laws. On the other hand, characteristics which are purely formal must not be considered relevant criteria for the classification of the benefits.** **A survivor's pension acquired under the leg. of a MS and an old-age pension acquired under the leg. of another MS are 'benefits of the same kind' within the meaning of Art. 12(2) of the Reg. in so far as both pensions are intended to ensure that the surviving spouse who has attained a certain age and to whom the pensions are awarded on the basis of the periods of insurance completed by the deceased spouse has the means of subsistence.** **When a worker receives a pension pursuant to national leg. alone, the provisions of the Reg. do not prevent that leg. from being applied to him in its entirety, including the national rules against overlapping benefits. If, however, the application of that national leg. is less favourable to the worker than the application of Art. 46 of the Reg., the provisions of that Art. must be applied. On the latter supposition, Art. 46(3), which seeks to limit the overlap of acquired benefits, by the means provided in paragraphs 1 and 2 of that Art., is applicable, to the exclusion of rules against overlapping laid down by national leg.**	B	24.9.1987	37/86 (Van Gastel, born Coenen)	1987, 3589

Art. 12(2) **Art. 46** **Reg. 574/72** **Art. 7(1)(b)**	**When a worker receives a pension pursuant to national leg. alone, the provisions of the Reg. do not prevent that leg. from being applied to him in its entirety, including the national rules against overlapping benefits. That principle also applies in the case of the worker's survivors who claim a survivor's pension. However, if the application of national leg. alone proves to be less favourable to the worker than the application of the rules laid down in Art. 46 of the Reg., the provisions of that Art. must be applied.** **Soc. sec. benefits must be regarded as being of the same kind, for the purposes of the final sentence of Art. 12(2) of the Reg., when their purpose and object as well as the basis on which they are calculated and the conditions for granting them are identical. That requirement is not satisfied when the benefits are linked to different insurance records and, consequently, to different insurance periods; that is the case with, on the one hand, a personal invalidity pension which is based on the recipient's own employment record in one MS and, on the other hand, a survivor's pension based on the employment record of the recipient's deceased husband in another MS. As the final sentence of Art. 12(2) of the Reg. is not applicable, the national rules for preventing the overlapping of benefits may therefore, according to the first sentence of Art. 12(2), also be relied upon against a person receiving benefits under the rules laid down in Art. 46 of the Reg.** **The classification, for the purposes of the anti-overlapping rules applied by a MS providing a survivor's pension to which the recipient becomes entitled under the leg. of that MS alone, of an invalidity pension paid by another MS, is not governed by Community law but by national law alone.**	B	6.10.1987	197/85 (Stefanutti)	1987, 3855
Art. 12(2)	**A national rule providing that a retirement pension is to be calculated on the basis of a lower amount when the spouse of the entitled person receives a retirement or survivor's pension or a benefit regarded as equivalent thereto does not constitute a provision designed to prevent the overlapping of benefits for the purposes of Art. 12(2) of the Reg.**	B	20.4.1988	151/87 (Bakker)	1988, 2009
Art. 12(2) **Art. 46(1)**	**In determining the amount of the independent benefit referred to in Art. 46(1) of the Reg., the competent institution of a MS must, in accordance with Art. 12(2) of the Reg. disregard any national provision precluding the overlapping of benefits and therefore any period of insurance completed in another MS and take into account any administrative practice which permits derogation from the strict application of the national leg. in favour of national workers.**	B	6.6.1990	342/88 (Spits)	1990, I-2259

Art. 12(2) **Art. 46**	**Where benefits granted by the competent institutions of two or more MS overlap when a migrant worker receives a pension by virtue of a MS national leg. alone, the provisions of the Reg. do not preclude that national leg. from being applied to him in its entirety, including any rules in that leg. against the overlapping of benefits. However, if the MS national leg. alone is less favourable for the worker than the Community rules laid down in the Reg., the provisions of that Reg. must be applied in their entirety.** **Where a worker is in receipt of invalidity benefits converted into a retirement pension by virtue of the leg. of a MS and invalidity benefits not yet converted into a retirement pension under the leg. of another MS, the retirement pension and the invalidity benefits are to be regarded as benefits of the same kind within the meaning of Art. 12(2) of the Reg. pursuant to which the provisions of the leg. of a MS for reduction, suspension or withdrawal of benefit in cases of overlapping with other soc. sec. benefits acquired in the same MS or under the leg. of another MS do not apply when the person concerned receives benefits of the same kind in respect of invalidity, old age, death (pensions) or occupational disease which are awarded by the institutions of two or more MS.** **The competent institution of a MS is therefore required to apply Art. 46 of the Reg. when awarding benefits due to a migrant worker who satisfies all the conditions for entitlement to a full retirement pension in that State and also receives an invalidity pension that has not been converted into a retirement pension in another MS, even where that worker has not reached the retirement age prescribed under the leg. of the first State for entitlement to benefits in respect of periods of insurance or employment completed in the second MS.** **Pursuant to Art. 46 of the Reg., the retirement pension due to a migrant worker where the latter satisfies the conditions prescribed for entitlement to a full retirement pension under a MS national law alone, which took into consideration in establishing that pension the years during which the worker was actually employed in that MS or years treated as such, together with a number of notional years in respect of a period before he became entitled to benefits, and where, before that employment, the worker completed a period of insurance or employment in another MS, in respect of which he is entitled in that State to an invalidity pension which has not been converted into a retirement pension, must be calculated as follows:**	B	18.2.92	C-5/91 (Di Prinzio)	1992, I-897
(continued below)					

	(a) The amount of the independent pension must be determined pursuant to the first subparagraph of Art. 46(1) of the Reg., that amount being equal to that of the pension due under the leg. of the MS where the award of benefits is claimed, but without the periods completed in another MS being deductible, pursuant to a national anti-overlapping rule, from the number of notional years which, in accordance with the leg. which the competent institution administers, are added to the years of actual employment or years treated as such; (b) The amount of the pro rata benefit must be determined pursuant to Art. 46(2) of the Reg. taking into account all the notional periods prior to the materialization of the risk which, in accordance with the leg. which the competent institution administers, are added to the years of actual employment or years treated as such; (c) The amount of the independent benefit and the amount of the pro rata benefit must be compared, pursuant to the second subparagraph of Art. 46(1) of the Reg., and the competent institution must take into consideration the higher of those amounts; (d) The amount of the adjusted benefits must be determined pursuant to Art. 46(3) of the Reg., the competent institution being obliged, if necessary, to reduce the independent benefit by deducting from it the total of the benefits calculated in accordance with the provisions of Art. 46(1) and (2) of the Reg. to the extent that that total exceeds the limit referred to in the first subparagraph of Art. 46(3); (e) The amount resulting from application of the applicable national law in its entirety, including its anti-overlapping rules, must be compared with the amount arrived at after the calculation pursuant to Article 46 of the Reg. and the higher of those amounts is to be taken into consideration.				
Art. 12(2) **Art. 46** EC Treaty Arts 48, 51	Neither Arts 12(2) and 46 of the Reg. nor Arts 48 and 51 of the Treaty prevent the application of a national provision against overlapping limiting the length of an employed person's work history to 45 years and, irrespective of the nationality of the persons concerned and of the MS to which the retirement scheme belongs under which the insurance periods exceeding the length of the working life of the person concerned have been completed, leading to a reduction of the insurance period actually completed by a migrant worker in the MS of the paying institution because of insurance years completed in another MS in so far as the reduction of the migrant worker's rights acquired in the MS to which the paying institution belongs is counterbalanced by the retirement pension rights acquired through the Reg. in the second MS.	B	15.12.1993	Joined cases C-113/92 C-114/92 C-156/92 (Fabrizii, Neri and Grosso)	1993, I-6707

Art. 12(2) **Art. 46**	**Where a worker receives a pension by virtue of national leg. alone, the provisions of the Reg. do not preclude that leg. from being applied to him in its entirety, including any national rules against overlapping benefits.** **However, if the application of national leg. alone proves to be less favourable to him than that of the rules laid down in Art. 46 of that Reg., Art. 46 must be applied. In the latter case, Art. 46(3), which is designed to limit the overlapping of acquired benefits, in accordance with the rules laid down in Art. 46(1) and (2), is applicable, to the exclusion of the anti-overlapping rules laid down by the national leg.** **An early retirement pension acquired under the leg. of one MS and an invalidity pension acquired under the leg. of another MS are to be treated as benefits of the same kind within the meaning of Art. 12(2) of the Reg., according to which the provisions of the leg. of a MS for the reduction, suspension or withdrawal of a benefit in cases of overlapping with other soc. sec. benefits acquired in that same MS or under the leg. of another MS are not to apply when the person concerned receives benefits of the same kind in respect of invalidity, old-age, death (pensions) or occupational disease paid by the institutions of the different MS concerned.** **When the leg. of only one MS is applied, the classification, in the light of the anti-overlapping rules contained in that leg., of an early retirement pension awarded under the leg. of that State alone and of an invalidity pension awarded by another MS is not governed by Community law.** **[The grounds of this judgment are identical to those of the judgment of the same date, 5 April 1990, in Case C-108/89 (Pian).]**	B	5.4.1990	C-109/89 (Bianchin Ernesto)	**1990, I-1619**
Art. 12(2) **Art. 46** Reg. 574/72 Art. 46(2)	**So long as a worker is receiving a pension by virtue of national leg. alone, the provisions of the Reg. do not prevent the national leg., including the national rules against the overlapping of benefits from being applied to him in its entirety, provided that if the application of such national leg. proves less favourable than the application of the rules laid down by Art. 46 of the Reg. the provisions of that Art. must be applied.**	NL	14.3.1978	98/77 (Schaap I)	1978, 707
Art. 12(2) **Art. 46**	**Art. 46 of the Reg. must be interpreted as meaning that, for the purposes of determining a benefit due solely under its national leg., the competent institution must apply solely the national provisions against overlapping benefits. On the other hand, for the purposes of determining the benefit due under Community law, the competent institution should not take account of the national rules against overlapping pursuant to Art. 12(2) of the Reg., but, if necessary, adjust the amount of the benefit due, pursuant to Art. 46(3). The worker is entitled to the highest amount of the benefits resulting from those calculations.**	B	11.6.1992	Joined cases C-90/91 and C-91/91 (Di Crescenzo and Casagrande)	1992, I-3851

Art. 12(2) **Art. 46**	**Where a worker receives a pension by virtue of national leg. alone, the provisions of the Reg. do not preclude that leg. from being applied to him in its entirety, including any national rules against overlapping benefits.** **However, if the application of national leg. alone proves to be less favourable to him than that of the rules laid down in Art. 46 of that Reg., Art. 46 must be applied. In the latter case, Art. 46(3), which is designed to limit the overlapping of acquired benefits, in accordance with the rules laid down in Art. 46(1) and (2), is applicable, to the exclusion of the anti-overlapping rules laid down by the national leg.** **An early retirement pension acquired under the leg. of one MS and an invalidity pension acquired under the leg. of another MS are to be treated as benefits of the same kind within the meaning of Art. 12(2) of the Reg., according to which the provisions of the leg. of a MS for the reduction, suspension or withdrawal of a benefit in cases of overlapping with other soc. sec. benefits acquired in that same MS or under the leg. of another MS are not to apply when the person concerned receives benefits of the same kind in respect of invalidity, old-age, death (pensions) or occupational disease paid by the institutions of the different MS concerned.** **When the leg. of only one MS is applied, the classification, in the light of the anti-overlapping rules contained in that leg., of an early retirement pension awarded under the leg. of that State alone, and of an invalidity pension awarded by another MS is not governed by Community law.** **[The grounds of this judgment are identical to those of the judgment of the same date, 5 April 1990, in Case C-109/89 (Bianchin Ernesto).]**	B	5.4.1990	C-108/89 (Pian)	1990, I-1599
Art. 12(2) **Art. 46**	**Art. 12(2) and Art. 46 of the Reg. do not prevent the application of a national rule against overlapping in the determination of a pension under national leg. alone. These Articles, however, do prevent such application for the determination of a pension in accordance with the provisions of Art. 46.** **In connection with the calculation of a pension under Art. 46 the rule against overlapping laid down in paragraph 3 of that Art., designed to prevent unwarranted overlapping resulting in particular from coinciding insurance periods and periods treated as such, does not apply to the situation of a person who has worked in two MS in the same period and who during that period was obliged to pay old-age insurance contributions in both States.** **In this case the pension granted to him by a MS may not be reduced on the grounds that he at the same time receives a pension in another MS.**	B	2.8.1993	C-31/92 (Larsy)	1993, I-4543

Art. 12(2) **Art. 46**	**Where a worker receives a pension pursuant to national leg. alone, the provisions of the Reg. do not preclude that leg., including the national rules against the overlapping of benefits, from being applied to him in its entirety. If, however, the application of that national leg. is less favourable to the worker than the application of Art. 46 of the said Reg., the provisions of that Art. must be applied. If those provisions fail to be applied, paragraph 3 of Art. 46, which limits the overlapping of benefits acquired, in accordance with paragraphs 1 and 2 thereof, is applicable to the exclusion of rules against overlapping laid down in the national leg.** **An early retirement pension acquired under the leg. of one MS and an invalidity pension acquired under the leg. of another MS are to be regarded as benefits of the same kind within the meaning of Art. 12(2) of the Reg., according to which the legislative provisions of a MS for reduction, suspension or withdrawal of benefit in cases of overlapping with other soc. sec. benefits acquired in that MS or under the leg. of that or another MS do not apply when the person concerned receives benefits of the same kind in respect of invalidity, old-age, death (pensions) or occupational disease which are awarded by the institutions of the MS concerned, in accordance, in particular, with Art. 46 of that Reg.**	B	18.4.1989	128/88 (Di Felice)	1989, 923

Title II:

Determination of the legislation applicable

(Arts 13 to 17(a))

Title II Title III	The rules of Community law, in particular the provisions in Titles II and III of Reg. 1408/71, do not preclude a person who has worked as an employed person in the territory of one MS as a result of which he receives a retirement pension and later establishes his residence in another MS in which he does not carry on any activity from being subject to the leg. of the latter State. However, those rules do prevent such a person from being required to pay in that State, by virtue of his residing there, contributions for compulsory insurance to cover benefits payable by an institution of another MS. The same principles would apply if, before the period to which the contributions in question relate, the person concerned had carried on a professional or trade activity, whatever its importance, either as an employed person or as a self-employed person, in the territory of the MS of residence.	NL	21.2.1991	C-140/88 (Noij)	1991, I-387
Title II	The rules of Community law which are designed to achieve freedom of movement for the workers within the Community, and in particular the rules on determining the national leg. applicable set out in Title II of Reg. 1408/71, as amended by Reg. 2001/83, preclude the collection of contributions under the social leg. of the State of residence from a person who resides in one MS and, in the employment of an undertaking established in another MS, works exclusively outside the MS, on the basis of which employment he is liable to pay contributions under the social leg. of the other MS.	NL	29.6.1994	C-60/93 (Alderwereld)	1994 (not yet in the law reports)
Art. 13 Reg. 3 Art. 12	Both Art. 12 of Reg. 3 and Art. 13 of Reg. 1408/71 prevent the State of residence from requiring payment, under its social leg., of contributions on the remuneration received by a worker in respect of work performed in another MS and therefore subject to the social leg. of that State.	NL	5.5.1977	102/76 (Perenboom)	1977, 815
Art. 13(2) Arts 1(j), 14 to 17, 33	The principle of a single system of leg. applicable to workers moving within the Community only applies to the situations referred to in Articles 13(2) and 14 to 17, which lay down the conflict rules to be applied in each situation. Since recipients of an early retirement or supplementary pension are not in one of the situations referred to in Arts 13(2) or 14 to 17, the principle that a single system of leg. should apply cannot be invoked for their benefit.	F	16.1.1992	C-57/90 (Co v France)	1992, I-75
Art. 13(2) Arts 1(j), 4, 14 to 17, 33	The principle that the leg. of a single MS only is to apply to workers moving within the Community applies only to the situations referred to in Arts 13(2) and 14 to 17, which determine the conflict rules to be applied in each situation. Since recipients of supplementary pensions are not in one of the situations referred to in those Articles, the principle that the leg. of a single MS only is to apply cannot be invoked for their benefit.	B	6.2.1992	C-253/90 (Co v Belgium)	1992, I-531
Art. 13(2)(a) Art. 73(1) Chapter 7 Reg. 574/72 Art. 10(1)(a)	By virtue of Arts 73 and 13(2)(a) of the Reg. taken together a frontier worker residing with his wife and children in a MS other than the State of employment acquires an entitlement under Community law to family allowances in the latter State.	D	19.2.1981	104/80 (BECk)	1981, 503

Art. 13(2)(a)	**Art. 13(2)(a) must be interpreted as meaning that a worker who ceases to carry on an activity in the territory of a MS and who has not gone to work in the territory of another MS continues to be subject to the leg. of the MS in which he was last employed, regardless of the length of time which has elapsed since the termination of the activity in question and the end of the employment relationship. The effect of determining that a given MS leg. is the leg. applicable to a worker pursuant to Art. 13(2)(a) is that only the leg. of that MS is applicable to him.**	NL	12.6.1986	302/84 (Ten Holder)	1986, 1821
Art. 13(2)(a) **Arts 1(a), 2(1)**	**If the objective pursued by Art. 13(2)(a) is not to be frustrated, that provision must be interpreted as meaning that a person covered by that Reg. who is employed part-time in the territory of a MS is subject to the leg. of that State both on the days on which he pursues that activity and on the days on which he does not. Although Art. 13(2)(a) is not intended to lay down the conditions for affiliation to the various national soc. sec. schemes, the effect of that provision, where applicable, is to replace, as a condition of affiliation, residence in the MS concerned with employment in that MS. Therefore, as a consequence of that Art., a provision of the applicable national leg. under which membership of the insurance scheme established by that leg. is subject to the condition of residence in the MS in whose territory the activity as an employed person is pursued may not be relied on against an employed person.**	NL	3.5.1990	C-2/89 (Kits van Heijningen)	1990, I-1755
Art. 13(2)(a) **Art. 73** EC Treaty Art. 169	**Art. 13(2)(a) which is designed to resolve conflicts of leg. which may arise where, over the same period, the place of residence and the place of employment are not situated in the same MS, does not apply in the case of an employed person who, after definitively ceasing all occupational activity, receives an early-retirement pension and resides in a MS other than the one in which he was last employed. For that reason Art. 73 is also not applicable to such a person, with the result that the residence conditions governing the grant of family benefits contained in the leg. of the MS in which he was last employed may be relied on as against him, and the fact that he continues to be compulsory insured under one of the branches of the national soc. sec. scheme has no effect on this situation.**	NL	28.11.1991	C-198/90 (Co v Netherlands)	1991, I-5799
Art. 13(2)(a) **Art. 71(1)(a)(ii)**	**The Reg. must be interpreted as meaning that the periods of full unemployment completed by a frontier worker who, under Art. 71(1)(a)(ii), received unemployment benefit in accordance with the legislative provisions of the MS in whose territory he resided must, having regard to the general rule concerning the determination of the leg. applicable laid down in Art. 13(2)(a), and in the absence of any exception provided for by the Community rules or dictated by the necessities inherent in the realization of the objectives thereof, be taken into account as regards pension rights in accordance with the leg. of the State in which he worked immediately before becoming unemployed.**	D	29.6.1988	58/87 (Rebmann)	1988, 3467

Art. 13(2)(a) **Arts 18, 40(3), 46(3)**	**Only the competent institution or institutions of the MS in whose territory the worker is or was last employed are competent to aggregate the insurance periods in accordance with Art. 18 of the Reg. and only the leg. of that MS is applicable to sickness benefit by virtue of Art. 13(2)(a) of that Reg.**	UK	12.1.1983	150/82 (Coppola)	1983, 43
Art. 13(2)(b)	**The effect of determining that a given MS leg. is the leg. applicable to a self-employed person pursuant to Art. 13(2)(b) of the Reg., as amended by Reg. 1390/81, is that only that leg. is applicable to him.**	NL	10.7.1986	60/85 (Luijten)	1986, 2365
Art. 13(2)(d)	**Art. 13(2)(d) of the Reg., which is designed to resolve conflicts of leg. which may arise where, over the same period, the place of residence and the place of employment are not situated in the same MS, is not applicable to a person who has definitively stopped working for the administration of a MS and has gone to reside with his spouse in another MS in which he has no occupation and is not covered by a soc. sec. scheme in any other capacity.** **In such a case the residence requirements laid down by the leg. of a MS for affiliation to a soc. sec. scheme may be applied, in the absence of any provision in that Reg. whose application, whether directly or by analogy, would make it possible to set aside a residence requirement of that kind.** **The question whether the fact that a person is in receipt of a benefit linked to the termination of his last employment confers on him the status of a compulsorily insured person, where he has definitively stopped work and gone to reside in another MS in which he has no occupation and is not covered by a soc. sec. scheme in another capacity, is governed by the conditions for affiliation to a soc. sec. scheme and, consequently, by the applicable national leg.**	NL	21.2.1991	C-245/88 (Daalmeijer)	1991, I-555
Art. 13(2)(d) **Arts 3, 9, 10(2)**	**Arts 3, 9, 10(2) and 13(2)(d) of the Reg. do not prevent the leg. of a MS which makes provision for the reimbursement of contributions paid by an employed person under compulsory insurance in the framework of a special soc. insurance scheme for civil servants in that State from excluding such a reimbursement when the person concerned starts working for the public administration of another MS. Under that leg. the reimbursement of contributions which may be claimed by the person concerned when he starts working for the national public administration after having paid contributions to a compulsory insurance scheme counterbalances the fact that if his contribution period were below the minimum his changeover to the civil service scheme would mean that he would forfeit all entitlement to a pension under the scheme to which he previously belonged whereas a person entering the public administration of another MS would under the leg. concerned enjoy the right to continue to be covered and pay voluntary contributions.** **These are two non-comparable situations in respect of which the principle of non-discrimination is not applicable.**	D	16.12.1993	C-28/92 (Leguaye-Neelsen)	1993, I-6857

Art. 14(1)(c)(i) Reg. 3 Art. 13(c)	It follows from the provisions of Title II of Regs 3/58 and 1408/71 that the application of national leg. is determined by reference to criteria drawn from the rules of Community law. Although it is for the legislature of each MS to lay down the conditions creating the right or the obligation to become affiliated to a soc. sec. scheme or to a particular branch under that scheme the MS are not entitled to determine the extent to which their own leg. or that of another MS is applicable. Art. 13(c) of Reg. 3 and Art. 14(1)(c)(i) of Reg. 1408/71 must be interpreted as meaning that a national provision of a MS is incompatible with those provisions if its effect is such that a worker residing in that MS is not insured for the purposes of an old-age pension because he is insured for such purposes under the leg. of another MS, even if he resided in the territory of the first-mentioned MS and is there engaged in gainful employment concurrently with his activities in the territory of the other MS. That answer is not affected by the fact that the employment in the State of residence is secondary to the main activity of the person concerned which is pursued in the other MS.	NL	23.9.1982	276/81 (Kuijpers)	1982, 3027
Art. 14(2)(c) Art. 4(1)	Art. 14(2)(c) of the Reg., in the version in force in February 1980, must be interpreted as meaning that it has the effect of precluding the application to a worker employed on board a vessel flying the flag of a MS who is remunerated for that work by an undertaking whose registered office is in another MS in which the worker is himself resident or to his beneficiaries of a provision of the leg. of the latter MS under which admission to the soc. sec. scheme provided for is made subject to the condition that the vessel on board which the worker is employed is flying the flag of that MS, and also of any provision of that leg. providing that a contract is null and void to the extent to which it has the effect of leaving without soc. sec. cover any person falling within the scope of the Reg. and of preventing the conflict rule laid down in Art. 14(2)(c) aforesaid from being fully effective.	B	4.10.1991	C-196/90 (De Paep)	1991, I-4815
Art. 14a Annex I, Section I	Art. 14a of the Reg. must be construed as meaning that it is German leg. that is the leg. applicable to a German national residing in Germany who pursues half of his self-employment in Germany and the other half in the Netherlands.	NL	13.10.1993	C-121/92 (Zinnecker)	1993, I-5023

Art. 14c and d Art. 2(3) EC Treaty Art. 48	In the scheme of the Treaty civil servants are regarded as employed persons. On the one hand, the Community meaning of the term 'worker' within the meaning of Art. 48 of the Treaty must be defined in accordance with objective criteria which distinguish the employment relationship, the essential feature of which is that a person performs services for and under the direction of another person in return for which he receives remuneration. On the other hand, both the position in the Treaty and the wording of Art. 48(4) which refers to employment in the public service in order to exclude it from its scope of application, without distinguishing between employment as civil servants and employment as other staff, show that civil servants are counted as employees or salaried workers. It follows that employment as a civil servant of a person falling within the scope of Reg. 1408/71 is an activity as a person 'employed' within the meaning of Art. 14c, which lays down special rules applicable to persons simultaneously employed in the territory of one MS and self-employed in the territory of another MS. A person who is simultaneously employed in one MS and self-employed in another must, pursuant to Art. 14c and d of the Reg. be subject, as a result of the latter activity to the appropriate leg. of the first MS under the same conditions as if he was self-employed there too. The fact that, in respect of his salaried employment, the leg. to which the Reg. is applicable is limited to certain branches of soc. sec. has no effect on the application of the leg. concerning the self-employed activity. The provisions of Title II of the Reg., of which the said Art. forms part, constitute a complete and uniform system of conflict rules, the aim of which is to ensure that workers moving within the Community shall be subject to the soc. sec. scheme of only one MS, in order to prevent more than one legislative system from being applicable and to avoid the complications which may result from that situation.	B	24.3.1994	C-71/93 (Van Poucke)	1994, I-1101
Arts 14 to 17 Arts 1(j), 4, 13(2), 33	The principle that the leg. of a single MS only is to apply to workers moving within the Community applies only to the situations referred to in Arts 13(2) and 14 to 17 of the Reg., which determine the conflict rules to be applied in each situation. Since recipients of supplementary pensions are not in one of the situations referred to in those Articles, the principle that the leg. of a single MS only is to apply cannot be invoked for their benefit.	B	6.2.1992	C-253/90 (Co v Belgium)	1992, I-531

Arts 14 to 17 **Arts 1(j), 13(2), 33**	**The principle of a single system of leg. applicable to workers moving within the Community only applies to the situations referred to in Articles 13(2) and 14 to 17 of the Reg., which lay down the conflict rules to be applied in each situation.** **Since recipients of an early retirement or supplementary pension are not in one of the situations referred to in Arts 13(2) or 14 to 17, the principle that a single system of leg. should apply cannot be invoked for their benefit.**	F	16.1.1992	C-57/90 (Co v France)	1992, I-75
Art. 17 **Art. 73(1)**	**Art. 17 of the Reg. makes it possible for two MS, in the case of a worker who for a large number of years has not been affiliated to the scheme of one of those MS which was applicable to him pursuant to Arts 13 to 16 inclusive of the said Reg., by agreement to declare applicable, in respect of those years, the leg. of the other MS provided that such agreement corresponds to the interests of the worker concerned.** **Art. 73(1) of the Reg. creates, in favour of a worker who is subject to the leg. of a MS other than the State in whose territory the members of his family reside, a real entitlement to the family allowances provided for by the applicable leg. That entitlement cannot be defeated by the application of a provision of that leg. by virtue of which persons not residing in the territory of the MS in question are not to receive family allowances.** **In connection with Art. 73 it is irrelevant whether the leg. to which the worker is subject was determined by application of Arts 13 to 16 of the Reg. or on the basis of an agreement concluded pursuant to Art. 17 of that Reg.**	NL	17.5.1984	101/83 (Brusse)	1984, 2223

Title III:

Special provisions relating to the various categories of benefits

(Arts 18 to 79)

Title III **Title II**	**The rules of Community law, in particular the provisions in Titles II and III of Reg. 1408/71, do not preclude a person who has worked as an employed person in the territory of one MS as a result of which he receives a retirement pension and later establishes his residence in another MS in which he does not carry on any activity from being subject to the leg. of the latter State. However, those rules do prevent such a person from being required to pay in that State, by virtue of his residing there, contributions for compulsory insurance to cover benefits payable by an institution of another MS. The same principles would apply if, before the period to which the contributions in question relate, the person concerned had carried on a professional or trade activity, whatever its importance, either as an employed person or as a self-employed person, in the territory of the MS of residence.**	NL	21.2.1991	C-140/88 (Noij)	1991, I-387

Chapter 1. Sickness and maternity

(Arts 18 to 36)

Art. 18 Art. 1(a)(ii) Annex V	**Rights acquired by a person who can be identified as a worker within the meaning of Art. 1(a)(ii) of the Reg. during his residence in a MS must be taken into account by any other MS as if they were periods required for the acquisition of a right under his own leg.**	F	19.1.1978	84/77 (Tessier, born Recq)	1978, 7
Art. 18 Art. 4 Reg. 1612/68 Art. 7(2) EC Treaty Art. 52	**The distinction between benefits excluded from the Reg. and benefits within its scope is essentially based on the constituent elements of each benefit, in particular its purpose and qualifying conditions, and not on whether a benefit is termed a soc. sec. benefit by a national leg. A maternity allowance must be regarded as a soc. sec. benefit falling within the scope of the Reg. and must as such be subject to the application of the rules on the aggregation of residence periods laid down in Art. 18 as it is granted without a means test on the basis of a situation defined by law and as maternity benefits are expressly referred to in Art. 4(1)(a) of the Reg. The fact that it is granted without any contribution condition is of no relevance as the application of the Reg. to non-contributory schemes is provided for in Art. 4(2).**	L	10.3.1993	C-111/91 (Co v Luxembourg)	1993, I-817
Art. 18 Arts 13(2)(a), 40(3), 46(3)	**Only the competent institution or institutions of the MS in whose territory the worker is or was last employed are competent to aggregate the insurance periods in accordance with Art. 18 of the Reg. and only the leg. of that MS is applicable to sickness benefit by virtue of Art. 13(2)(a) of that Reg.**	UK	12.1.1983	150/82 (Coppola)	1983, 43
Art. 19 Arts 4(1), 28(1) EC Treaty Art. 51	**Reg. 1408/71 , having regard also to Arts 19 and 28(1) thereof, does not fetter the power of the competent institution of a MS to grant sickness or maternity benefits, within the meaning of Art. 4(1)(a) of the said Reg., including benefits of medical or surgical nature, to a person who is in receipt of an invalidity pension under the leg. of that MS and who resides in the territory of another MS.**	NL	10.1.1980	69/79 (Jordens-Vosters)	1980, 75
Art. 19	**Art. 19 of the Reg., which relates to sickness and maternity benefits payable to a worker residing in a MS other than the competent State, applies to a national of a MS who, after being in paid employment in that State and acquiring as a result the status of an insured person, went to live in another MS where he fell ill, even though he had not worked there before falling ill.**	UK	10.3.1992	C-215/90 (Twomey)	1992, I-1823
Art. 19(1)(b) Arts 3(1), 22(1)(a)(ii) EC Treaty Arts 7, 48	**Arts 7 and 48 of the Treaty and Art. 3(1) of the Reg. do not prohibit the treatment by the institutions of MS of corresponding facts occurring in another MS as equivalent to facts which, if they occur in the national territory, constitute a ground for the loss or suspension of the right to cash benefits; the decision on this matter is for the national authorities, provided that it applies without regard to nationality and those facts are not described in such a way that they lead in fact to discrimination against nationals of the other MS.**	UK	28.6.1978	1/78 (Kenny)	1978, 1489

Art. 22 (1)(a)(ii) **Arts 3(1), 19(1)(b)** EC Treaty **Arts 7, 48**	**Arts 7 and 48 of the Treaty and Art. 3(1) of the Reg. do not prohibit the treatment by the institutions of MS of corresponding facts occurring in another MS as equivalent to facts which, if they occur in the national territory, constitute a ground for the loss or suspension of the right to cash benefits; the decision on this matter is for the national authorities, provided that it applies without regard to nationality and those facts are not described in such a way that they lead in fact to discrimination against nationals of the other MS.**	UK	28.6.1978	1/78 (Kenny)	1978, 1489
Art. 22(1)(ii) **Art. 1(a)(ii)** **Annex V, point I, paragraph 1**	**A person who:** **- was compulsorily insured against the contingency of 'sickness' successively as an employed person and as a self-employed person under a soc. sec. scheme for the whole working population;** **- was a self-employed person when this contingency occurred;** **- at the said time and under the provisions of the said scheme, nevertheless could have claimed sickness benefits in cash at the full rate only if there were taken into account both the contributions paid by him or on his behalf when he was an employed person and those which he made as a self-employed person; constitutes, as regards British leg., a 'worker' within the meaning of Art. 1(a)(ii) of the Reg. for the purposes of the application of the first sentence of Art. 22(1)(ii) of that Reg.**	UK	29.9.1976	17/76 (Brack)	1976, 1429
Art. 22(1) and (2) **Art. 36** Reg. 574/72 **Annex 3** EC Treaty Art. 177 **(continued below)**	**The words 'who satisfies the conditions of the leg. of the competent State for entitlement to benefits' at the beginning of Art. 22(1) determine the persons who in principle are entitled to benefits in pursuance of the relevant national leg. The words 'the treatment in question' in the second subparagraph of Art. 22(2) refer to any appropriate treatment of the sickness or disease from which the person concerned suffers. The words 'benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence' do not refer solely to the benefits in kind due in the MS of residence, but also to benefits which the competent institution is empowered to provide. The duty laid down in the second subparagraph of Art. 22(2) to grant the authorization required under Art. 22(1)(c) covers both cases where the treatment provided in another MS is more effective than that which the person concerned can receive in the MS where he resides and those in which the treatment in question cannot be provided on the territory of the latter State.**	NL	16.3.1978	117/77 (Pierik I)	1978, 825

	The words 'institution of the place of stay or residence' in Art. 22(1)(c)(i) mean the institution empowered to provide the benefits in the State of residence or stay as listed in Annex 3 to Reg. 574/72, as amended by Reg. 878/73. **The cost relating to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence is to be fully refunded.**				
Art. 22(1)(c) and (2) **Art. 1(a)**	**By the reference to a 'worker', Art. 22(1)(c) of the Reg. does not purport to restrict its scope to active workers as opposed to inactive workers, the same reference being contained in Arts 25 and 26 of the same chapter, which respectively concern 'unemployed persons' and 'pension claimants'.** **In the case of a pensioner who is entitled to benefits in kind under the leg. of a MS and who does not pursue a professional or trade activity, the right to be authorized by the competent institution to go to another MS to receive there the treatment appropriate to his condition is governed by the provisions of Art. 22(1)(c) and (2) of the Reg.** **When the competent institution acknowledges that the treatment appropriate to the condition of a worker constitutes a necessary and effective treatment of the sickness or disease from which he suffers, the conditions for the application of the second subparagraph of Art. 22(2) of the Reg. are fulfilled and the competent institution may not in that case refuse the authorization referred to by that provision and required under Art. 22(1)(c).** **The expression 'benefit in kind provided on behalf of the competent institution by the institution of the place of stay or residence' in Art. 22(1)(c)(i) of the Reg. refers to any benefit which the institution of the MS to which the person concerned goes after obtaining the authorization referred to in Art. 22(1)(c) has the power to grant, even if it is not required to provide them under the leg. which it administers.**	NL	31.5.1979	182/78 (Pierik II)	1979, 1977
Art. 27	**Art. 27 of the Reg. refers only to sickness or maternity benefits granted by the competent institution of the State in which the retired person resides after these risks materialize, and cannot affect any right of the retired person to receive, under the leg. of another State, a benefit of the type of an allowance towards the contribution to a voluntary sickness insurance.**	D	26.5.1976	103/75 (Aulich)	1976, 697
Art. 28(1) **Arts 4(1)(a), 19** EC Treaty Art. 51	**Reg. 1408/71, having regard also to Arts 19 and 28(1) thereof, does not fetter the power of the competent institution of a MS to grant sickness or maternity benefits, within the meaning of Art. 4(1)(a) of the said Reg., including benefits of medical or surgical nature, to a person who is in receipt of an invalidity pension under the leg. of that MS and who resides in the territory of another MS.**	NL	10.1.1980	69/79 (Jordens-Vosters)	1980, 75

Art. 33 EC Treaty Art. 169	**The deduction by a MS of contributions from statutory old-age, retirement, service-related and survivors' pensions in respect of Community nationals residing in another MS, constitutes a failure to fulfil the obligations under Art. 33 of the Reg.**	B	28.3.1985	275/83 (Co v Belgium)	1985, 1097
Art. 33 **Arts 1(j), 13(2), 14 to 17**	**National soc. sec. schemes introduced under agreements concluded by the competent authorities with trade or inter-trade bodies or under collective agreements concluded between both sides of industry which have not been the subject of a declaration mentioned in the second paragraph of Art. 1(j) do not constitute leg. within the meaning of the first paragraph of Art. 1(j) and the benefits which they provide do not come within the matters covered by that Reg. Art. 33 of the Reg., which prohibits MS from making deductions from statutory pensions received by nationals of EC countries where the cost of the benefits received in return is not borne by one of their institutions, cannot therefore be invoked against a MS which, under its sickness and maternity scheme, introduces a contribution which is deducted from payments of early retirement or supplementary pensions provided for under industrial agreements, where such payments are made to persons resident in another MS who enjoy sickness benefits under the leg. of that other State.**	F	16.1.1992	C-57/90 (Co v France)	1992, I-75
Art. 33 **Arts 1(j), 4, 13(2), 14-17**	**Supplementary pensions paid under the schemes established by industrial agreements, which do not constitute leg. within the meaning of Art. 1(j) do not come within the scope *ratione materiae* of that Reg. Art. 33, which prohibits MS from making deductions from statutory pensions of Community nationals where the cost of the benefits received in return is not borne by one of their institutions, may not be relied upon against a MS which, under its sickness scheme, provides for a contribution to be deducted from supplementary pensions based on industrial agreements and paid to persons residing in another MS who receive sickness benefits pursuant to the leg. of that State.**	B	6.2.1992	C-253/90 (Co v Belgium)	1992, I-531
Art. 36 **Arts 22(1) and (2)** EC Treaty Art. 177 Reg. 574/72 Annex 3	**The cost relating to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence is to be fully refunded.**	NL	16.3.1978	117/77 (Pierik I)	1978, 825

Chapter 2. Invalidity

(Arts 37 to 43)

Art. 39 Arts 71, 86 Reg. 574/72 Arts 35, 114	The factor which determines whether Art. 71 of Reg. 1408/71 applies at all is the residence of the person concerned in a MS other than that to whose leg. he was subject during his last employment. The first sentence of Art. 71(1)(b)(ii) for that reason does not apply to a worker who moves with his family to a MS where he resided and worked and where he suffered incapacity for work followed by invalidity, and who subsequently moved to another MS without working there, before finally taking up residence in a third MS, where, owing to his invalidity, he does not work or register for employment. Such a worker is consequently not covered by Art. 39(5) of that Reg. and must come within the general rule under Art. 39(1), which provides that, with regard to invalidity benefit, the competent MS is the State whose leg. was applicable at the time when incapacity for work followed by invalidity occurred, in this case the State of last employment.	UK	27.1.1994	C-287/92 (Maitland Toosey)	1994, I-279
Art. 39(1) and (2) before the amendments introduced by Reg. 2793/81 Art. 1(r) Reg. 36/63 Arts 1(1)(c), 6(1), 19(1) Reg. 3 Art. 1(p) EC Treaty Arts 48 to 51	Under Reg. 36/63 and then Reg. 1408/71 before its amendment by Reg. 2793/81, a wholly unemployed frontier worker could claim benefits for incapacity for work by virtue of Art. 6(1) of Reg. 36/63 and thereafter invalidity benefits by virtue of Art. 39(1) and (2) of Reg. 1408/71 from the MS in which he was last employed. The period during which a frontier worker is wholly unemployed and required, pursuant to Art. 19(1) of Reg. 36/63, to claim unemployment benefits in the MS of residence, although not recognized in that MS as an insurance period or equivalent period, must be treated as such in the MS in which the person concerned was last employed, where the leg. applicable at the material time treated periods of unemployment completed on its territory as periods of sickness insurance. That is the appropriate solutions notwithstanding the provisions of Reg. 3 and Reg. 1408/71 which state that 'insurance periods' means periods defined or treated as such by the leg. under which they were completed, and which, if applied in such case, would, because they would have the effect of depriving a migrant worker of advantages which he would have been able to claim under the leg. of a single MS, be contrary to the objective pursued by Arts 48 to 51 of the Treaty.	B	15.10.1991	C-302/90 (Faux)	1991, I-4875
Art. 40 Arts 44(2), 46 Reg. 574/72 Art. 36(4)	The second subparagraph of Art. 46(1) of Reg. 1408/71 and Art. 36(4) of Reg. 574/72 do not prevent the institution of a MS, upon receiving from the institution of another MS a claim for an invalidity benefit based on Art. 40 of Reg. 1408/71 from granting a worker an old-age pension in lieu of the invalidity benefit which the person concerned has waived in order to receive a more favourable old-age pension.	B	3.2.1993	C-275/91 (Iacobelli)	1993, I-523

Art. 40 Arts 1(j), 45(3)	**The concept of 'legislation' contained in Art. 45(3) must be widely interpreted so as to refer both to measures in force at the time when the risk materializes and to measures in force at the time when the worker was subject to the leg. For the acquisition of a right to benefits on the basis of Art. 40 payable by an institution of a MS referred to at the beginning of Art. 45(3) it is in principle sufficient that a worker who is subject to the leg. of another MS at the time when the risk insured against materializes or, if this is not the case, who has a right to benefits under the leg. of another MS, can establish insurance periods or, at least, periods of employment and/or periods treated as such completed under a leg. which, although in force at the time when the worker was employed, had ceased to be in force before the adoption of the Reg., even if that leg. was of a different type from that which is in force at the time when the risk materializes.**	NL	9.6.1977	109/76 (Blottner)	1977, 1141
Art. 40(1)	**Art. 40(1) must be interpreted as meaning that it also relates to the award of invalidity benefits in a MS in which the right to such benefits has been acquired by a worker on the basis of leg. of the type referred to in Art. 37(1) in the case where the person concerned, before the acquisition of such a right, had already become entitled, by virtue of the leg. of another MS not being of that type, to an old-age benefit resulting from conversion of an earlier invalidity benefit.**	NL	19.6.1979	180/78 (Brouwer-Kaune)	1979, 2111
Art. 40(3) Arts 13(2)(a), 18, 46(3)	**Invalidity benefit due under the leg. of a MS following a period of incapacity for work during which the worker received benefit in respect of that incapacity, including benefit from another MS, which is to be taken into account pursuant to Art. 40(3) may, where appropriate, be validly reduced pursuant to Art. 46(3).**	UK	12.1.1983	150/82 (Coppola)	1983, 43
Art. 40(4) EC Treaty Arts 48, 51, 177	**In accordance with Arts 48 and 51 of the Treaty, Regs 1408/71 and 574/72 are in particular intended to prevent the migrant worker, as a result of his migration from one MS to another, from losing the benefit of his periods of employment and thus being placed at a disadvantage in relation to the position in which he would have been if he had completed his entire career in only one MS. For that purpose they introduced a system of aggregation of all the periods of employment which may thus be taken into account for the purpose of acquiring and retaining the right to benefits of the same kind in different MS and for the purpose of calculating the amount of such benefits. But the purpose of those texts is not to determine the conditions for the withdrawal of such benefits and they cannot have that effect.** **Art. 40(4) of the Reg. must therefore be interpreted as meaning that 'the decision ... concerning the degree of invalidity' to which that provision refers covers exclusively a decision recognizing invalidity and not a decision establishing that there is no invalidity at a later date.**	B	10.3.1983	232/82 (Baccini II)	1983, 583

Chapter 3. Old-age and death (pensions)

(Arts 44 to 51)

Chapter 3 Art. 12(2)	Where a worker is in receipt of invalidity benefits converted into an old-age pension by virtue of the leg. of a MS and of invalidity benefits not yet converted into an old-age pension under the leg. of another MS, the old-age pension and the invalidity benefits are to be regarded as being of the same kind. In such a case the provisions of Chapter 3 of the Reg. are applicable for the purpose of determining the rights of the worker, and, by virtue of the last sentence of Art. 12(2) of the Reg., the application of national rules against overlapping is precluded.	B	15.10.1980	4/80 (D'Amico)	1980, 2951
Chapter 3 Arts 12(2), 46 Reg. 574/72 Arts 15, 46	Where a worker is in receipt of invalidity benefits converted into an old-age pension by virtue of the leg. of a MS and of invalidity benefits not yet converted into an old-age pension under the leg. of another MS, the old-age pension and the invalidity benefits are to be regarded as being of the same kind. Consequently, the provisions of Chapter 3 of Reg. 1408/71 are applicable and, by virtue of the last sentence of Art. 12(2) of the Reg., the application of national rules against overlapping is precluded.	B	2.7.1981	Joined cases 116, 117, 119, 120, 121/80 (Strehl, Celestre and others)	1981, 1737
Art. 44(2) Arts 40, 46 Reg. 574/72 Art. 36(4)	The procedural rules set forth in Art. 44(2) of Reg. 1408/71 and Art. 36(4) of Reg. 574/72 do not entail any change to the MS qualifying conditions for invalidity benefit. It is for the leg. of each MS to determine whether the person concerned may waive an invalidity pension in order to receive subsequently a more favourable old-age pension. It follows that where a national leg. imposes on a claimant a choice between two alternative benefits the benefit to be taken into account pursuant to the first sentence of Art. 44(2) of Reg. 1408/71 and for the calculations to be carried out under Art. 46 of the same Reg. is no other than the benefit which the claimant chose to receive.	B	3.2.1993	C-275/91 (Iacobelli)	1993, I-523
Art. 44(3) Arts 48(1), 78, 79	Art. 44(3) of the Reg. must be interpreted as meaning that orphans' pensions are governed solely by the provisions of Chapter 8 thereof, supplemented, if necessary, by the provisions of the other chapters to which Chapter 8 expressly refers. It follows, in particular, that the provisions of Art. 48(1), which provides that in certain circumstances the institution of a MS is not bound to award benefits if the periods of insurance or residence completed by the insured person there amount to less than one year, do not apply as regards orphans' pensions.	D	14.12.1988	269/87 (Ventura)	1988, 6411

Art. 45	**Art. 45 of the Reg. must be understood to mean that where the leg. of a MS makes the acquisition of a right to invalidity benefit conditional upon the person concerned having been entitled to sickness benefit under that leg. for a given period in the immediately proceding period – that condition being subject to so far as material: (a) the completion of insurance periods, (b) the making of a claim therefore in a prescribed manner and within a prescribed time –** **(i) the competent institution of the said MS shall take into account insurance periods completed under the leg. of any MS as though they had been completed under the leg. which it administers;** **(ii) the condition that a claim must be made in a prescribed manner and within a prescribed time shall be regarded as satisfied in so far as such a claim has been duly made in accordance with the leg. of the State of residence.**	UK	9.11.1977	41/77 (Warry)	1977, 2085
Art. 45	**The sole objective of the Reg. is to coordinate the national legal system of soc. sec., each of which determines the conditions for affiliation to the various soc. sec. schemes, including the conditions under which compulsory affiliation ceases. That Reg. therefore, and in particular Art. 45 thereof, cannot be interpreted as laying down the conditions under which compulsory insurance arises or ceases, since the answer to that question is exclusively a matter for the appropriate national laws.** **Consequently Art. 45 is not applicable so as to determine the existence or non-existence of an obligation to effect insurance laid down by national leg.**	D	12.7.1979	266/78 (Brunori)	1979, 2705
Art. 45 **Arts 77 to 79** EC Treaty **Arts 48 to 51, 177**	**The fact that a migrant worker receives a pension as a result of the application of the provisions of Art. 45 of the Reg. on the taking into account of periods of insurance or residence completed under the leg. of several MS, and not by virtue of national leg. alone, cannot, without jeopardizing the attainment of the objectives set out in Arts 48 to 51 of the Treaty, prevent him from receiving allowances available to pensioners under national law. Consequently, Arts 77 to 79 of the Reg., which cover only benefits for dependent children of pensioners and for orphans, cannot be interpreted as precluding a MS leg. which provides for family allowances for a pensioner's dependent spouse from applying to a person in receipt of an old-age pension under the Reg.**	I	28.11.1991	C-186/90 (Durighello)	1991, I-5773

Art. 45(1) **Arts 1(s), 69** **Reg. 3** **Arts 1(r), 27(1)**	**The insurance periods to be aggregated for the acquisition of the right to a retirement pension may include a period of unemployment which is regarded as equivalent to a period of employment by the leg. under which it was completed.** **On the other hand, when national leg. makes the early acquisition of the right to a retirement pension conditional upon the person concerned having been unemployed for a certain time as well as upon the completion of a period of membership of a social insurance scheme and when therefore the length of the period of unemployment is not intended to be aggregated to obtain the minimum period of membership required or to be used in the calculation of the benefit there are no grounds for taking into account a period of unemployment completed in another MS.**	D	9.7.1975	20/75 (D'Amico)	1975, 891
Art. 45(2) **Arts 12(2), 46**	Art. 46 of the Reg. is applicable where the amount of the benefits due by virtue of national leg. is unrelated to the periods completed and where the minimum period giving rise to entitlement under that leg. has been completed, even if the scheme concerned is a special scheme for a particular occupation and the periods completed in another MS were not completed within an equivalent scheme. For the purpose of determining the amount referred to in the first subparagraph of Art. 46(1) it is not permissible to apply a national rule designed to prevent the overlapping of domestic and foreign benefits. The amount found to be higher, on the basis of comparison prescribed in the second paragraph of Art. 46(1), is to be reduced where appropriate in accordance with Art. 46(3).	B	13.3.1986	296/84 (Sinatra II)	1986, 1047
Art. 45(3) **Arts 1(j), 40**	The concept of 'legislation' contained in Art. 45(3) must be widely interpreted so as to refer both to measures in force at the time when the risk materializes and to measures in force at the time when the worker was subject to the leg. For the acquisition of a right to benefits on the basis of Art. 40 of the Reg. payable by an institution of a MS referred to at the beginning of Art. 45(3) it is in principle sufficient that a worker who is subject to the leg. of another MS at the time when the risk insured against materializes or, if this is not the case, who has a right to benefits under the leg. of another MS, can establish insurance periods or, at least, periods of employment and/or periods treated as such completed under a leg. which, although in force at the time when the worker was employed, had ceased to be in force before the adoption of the Reg., even if that leg. was of a different type from that which is in force at the time when the risk materializes.	NL	9.6.1977	109/76 (Blottner)	1977, 1141

Art. 46 Art. 12(2)	Art. 12(2) and Art. 46 of the Reg. do not prevent the application of a national rule against overlapping in the determination of a pension under national leg. alone. These Articles, however, do prevent such application for the determination of a pension in accordance with the provisions of Art. 46. In connection with the calculation of a pension under Art. 46 the rule against overlapping laid down in paragraph 3 of that Art., designed to prevent unwarranted overlapping resulting in particular from coinciding insurance periods and periods treated as such, does not apply to the situation of a person who has worked in two MS in the same period and who during that period was obliged to pay old-age insurance contributions in both States. In this case the pension granted to him by a MS may not be reduced on the grounds that he at the same time receives a pension in another MS.	B	2.8.1993	C-31/92 (Larsy)	1993, I-4543
Art. 46 Art. 12(2), Chapter 3 Reg. 574/72 Arts 15, 46	So long as a worker is receiving a pension by virtue of national leg. alone, the provisions of Reg. 1408/71 do not prevent the national leg., including the national rules against the overlapping of benefits, from being applied to him in its entirety, provided that if the application of such national leg. proves less favourable to the worker than the application of the rules laid down by Art. 46 of Reg. 1408/71 the provisions of that Art. must be applied. Where a worker is in receipt of benefits of the same kind in respect of invalidity or old-age which are awarded by the institution of two or more MS in accordance with the provisions of Art. 46 of Reg. 1408/71, the national legislative provisions for reduction, suspension or withdrawal do not apply. It follows that the amount referred to in Art. 46(1) is the amount to which the worker would be entitled under national leg. if he were not in receipt of a pension by virtue of the leg. of another MS. If under the national leg. a worker who is able to establish a certain number of years of insurance is entitled to a full pension, it is the amount of that full pension which must be taken into account.	B	2.7.1981	Joined cases 116, 117, 119, 120, 121/80 (Strehl, Celestre and others)	1981, 1737
Art. 46 Arts 12(2), 51 Reg. 574/72 Art. 107	When a worker receives a pension pursuant to national leg. alone, the provisions of the Reg. do not prevent that leg. from being applied to him in its entirety, including the national rules against overlapping benefits. If, however, the application of that national leg. is less favourable to the worker than the application of Art. 46 of the Reg., the provisions of that Art. must be applied. On the latter supposition, paragraph 3 of Art. 46 is applicable to the exclusion of rules against overlapping laid down by national leg. No provision of Community law requires the periodical recalculation, by reason of a variation in the rates of conversion of currencies, of a soc. sec. benefit whose amount has been established in another MS.	NL	5.5.1983	238/81 (Van der Bunt-Craig)	1983, 1385

Art. 46 Art. 12(2)	**Art. 46 of the Reg. must be interpreted as meaning that, for the purposes of determining a benefit due solely under its national leg., the competent institution must apply solely the national provisions against overlapping benefits. On the other hand, for the purposes of determining the benefit due under Community law, the competent institution should not take account of the national rules against overlapping pursuant to Art. 12(2) of the Reg., but, if necessary, adjust the amount of the benefit due, pursuant to Art. 46(3). The worker is entitled to the highest amount of the benefits resulting from those calculations.**	B	11.6.1992	Joined cases C-90/91 and C-91/90 (Di Crescenzo and Casagrande)	1992, I-3851
Art. 46 Arts 4(1)(c), 12(2) EC Treaty Arts 48, 51	**The essential characteristic of the old-age benefits referred to in Arts 4(1)(c) and 46 of the Reg. 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 Art. 46 is based on the assumption that the benefits are financed and 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.** **Whilst benefits such as those paid under a guaranteed income retirement scheme to workers over 60 years of age who retire 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 Reg. 1408/71. They also differ in so far as they pursue an objective 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.** **It follows that such benefits may not be regarded as being of the same kind as the old-age benefits referred to in Art. 46 of the Reg.**	F	5.7.1983	171/82 (Valentini)	1983, 2157
Art. 46 Art. 1(j) Annex V, Part H, paragraph 4 Reg. 574/72 Art. 15	For the application of Art. 46 of the Reg. and of Art. 15 of Reg. 574/72: (a) a period of employment completed before 1 July 1967 under the Dutch leg. in force at that time, in respect of which contributions were paid in accordance with that leg.; (b) a period of paid employment completed in the Netherlands before 1 July 1967 in respect of which no contributions were paid; are to be regarded as periods of insurance and not as periods treated as such.	NL	2.2.1984	285/82 (Derks)	1984, 433

Art. 46 Art. 12(2) EC Treaty Arts 48, 51	**In order to calculate the amount of the benefit pursuant to Art. 46(2)(a) of the Reg. the competent institution of a MS must aggregate all the periods completed under the leg. of the MS to which the worker has been subject, in particular periods of military service completed by the worker and recognized as insurance periods within the meaning of this provision by the leg. of another MS, even if these periods did not have to be taken into account under the law of the MS to which the competent institution belongs.** **However, if under Art. 46(1) of the Reg. the worker is already entitled to an autonomous benefit equal to the full pension granted by the leg. of the MS to which the competent institution belongs without counting periods completed under the leg. of other MS to which the person concerned has been subject, the latter periods need not be taken into account to supplement the periods completed under the leg. of the MS to which the competent institution belongs for the purpose of acquiring entitlement to benefits.** **In order to calculate the actual amount of the benefit within the meaning of Art. 44(2)(b) of the Reg. the competent institution must take account of all the insurance periods completed and admitted as such by the leg. of all the MS, including periods credited before the risk materialized, recognized by the national leg. applicable, and cannot apply its own external rules against overlapping for the purpose of determining the said actual amount. In particular, the competent institution may not apply such rules in order to deduct the period of work completed in another MS from the credited years added to the years of actual work under the leg. of the MS to which it belongs.** **Neither Arts 12(2) and 46 of the Reg. nor Arts 48 and 51 of the Treaty prevent the application of a national provision against overlapping limiting the length of an employed person's work history to 45 years and, irrespective of the nationality of the persons concerned and of the MS to which the retirement scheme belongs under which the insurance periods exceeding the length of the working life of the person concerned have been completed, leading to a reduction of the insurance period actually completed by a migrant worker in the MS of the paying institution because of insurance years completed in another MS in so far as the reduction of the migrant worker's rights acquired in the MS to which the paying institution belongs is counterbalanced by the retirement pension rights acquired through the Reg. in the second MS.**	B	15.12.1993	Joined cases C-113/92 C-114/92 C-156/92 (Fabrizii, Neri and Grosso)	1993, I-6707

Art. 46 **Arts 12, 45(2)**	**The provisions of the Reg. do not preclude the grant of benefits to which entitlement was acquired by virtue of national legislative provisions alone, when those benefits are greater than those determined pursuant to Art. 46. In such a case, Art. 12(2) of the Reg. does not preclude the application of a national rule designed to prevent the overlapping of domestic and foreign benefits, in order to determine the benefits acquired under national legislative provisions alone.** **Art. 46 of the Reg. is applicable where the amount of the benefits due by virtue of national leg. is unrelated to the periods completed and where the minimum period giving rise to entitlement under that leg. has been completed, even if the scheme concerned is a special scheme for a particular occupation and the periods completed in another MS were not completed within an equivalent scheme.** **For the purpose of determining the amount referred to in the first subparagraph of Art. 46(1) it is not permissible to apply a national rule designed to prevent the overlapping of domestic and foreign benefits. The amount found to be higher, on the basis of comparison prescribed in the second paragraph of Art. 46(1), is to be reduced where appropriate in accordance with Art. 46(3).**	B	13.3.1986	296/84 (Sinatra II)	1986, 1047
Art. 46 **Art. 51**	**An invalidity benefit provided by a MS to a migrant worker must be regarded as determined in accordance with Art. 46 of the Reg., even if its amount, calculated in accordance with the rules of national law, including its provisions on overlapping, is equal to the amount calculated in accordance with the rules of Art. 46 of the Reg., including the rule on overlapping laid down in Art. 46(3).** **It follows that adaptation of such a benefit must comply with the rules laid down in Art. 51 of the Reg. under which a recalculation is permitted only if the method of determining benefits or the rules for calculating benefits are altered, and not with the provisions of national law where these require a recalculation of the national benefit to take account of changes in the benefit provided by another MS linked, in particular, with fluctuations in the average exchange rates or the general economic and social trend of that State.**	B	18.2.1993	C-193/92 (Bogana)	1993, I-755
Art. 46 **Art. 51**	**Art. 51 of the Reg. must be interpreted as applying to benefits such as those in respect of accidents at work or occupational disease which, by virtue of the national rules against overlapping of benefits, originally affected the amount of the pension fixed pursuant to Art. 46 and any subsequent adjustments to which might again affect that pension. It is therefore not necessary to recalculate the pension pursuant to Art. 46 if an adjustment is made to such a benefit on account of the general evolution of the economic and social situation.**	B	1.3.1984	104/83 (Cinciulo)	1984, 1285

Art. 46 Art. 12(2) Reg. 574/72 Art. 7(1)(b)	When a worker receives a pension pursuant to national leg. alone, the provisions of the Reg. do not prevent that leg. from being applied to him in its entirety, including the national rules against overlapping benefits. That principle also applies in the case of the worker's survivors who claim a survivor's pension. However, if the application of national leg. alone proves to be less favourable to the worker than the application of the rules laid down in Art. 46 of the Reg., the provisions of that Art. must be applied. Soc. sec. benefits must be regarded as being of the same kind, for the purposes of the final sentence of Art. 12(2) of the Reg., when their purpose and object as well as the basis on which they are calculated and the conditions for granting them are identical. That requirement is not satisfied when the benefits are linked to different insurance records and, consequently, to different insurance periods; that is the case with, on the one hand, a personal invalidity pension which is based on the recipient's own employment record in one MS and, on the other hand, a survivor's pension based on the employment record of the recipient's deceased husband in another MS. As the final sentence of Art. 12(2) of the Reg. is not applicable, the national rules for preventing the overlapping of benefits may therefore, according to the first sentence of Art. 12(2), also be relied upon against a person receiving benefits under the rules laid down in Art. 46 of the Reg. The classification, for the purposes of the anti-overlapping rules applied by a MS providing a survivor's pension to which the recipient becomes entitled under the leg. of that MS alone, of an invalidity pension paid by another MS, is not governed by Community law but by national law alone.	B	6.10.1987	197/85 (Stefanutti)	1987, 3855
Art. 46 Art. 12(2)	When a worker receives a pension pursuant to national leg. alone, the provisions of the Reg. do not prevent that leg. from being applied to him in its entirety, including the national rules against overlapping benefits. If, however, the application of that national leg. is less favourable to the worker than the application of Art. 46 of the Reg., the provisions of that Art. must be applied. On the latter supposition, Art. 46(3), which seeks to limit the overlap of acquired benefits, by the means provided in paragraphs 1 and 2 of that Art., is applicable, to the exclusion of rules against overlapping laid down by national leg.	B	24.9.1987	37/86 (Van Gastel, born Coenen)	1987, 3589
Art. 46	Where the provisions of Art. 46 of the Reg. are more favourable to the worker than the provisions of national leg. alone, by virtue of which the worker receives a pension, the provisions of that Art. must be applied in their entirety.	B	16.5.1979	236/78 (Mura II)	1979, 1819

Art. 46 Art. 12(2) (continued below)	**Where benefits granted by the competent institutions of two or more MS overlap when a migrant worker receives a pension by virtue of a MS national leg. alone, the provisions of the Reg. do not preclude that national leg. from being applied to him in its entirety, including any rules in that leg. against the overlapping of benefits. However, if the MS national leg. alone is less favourable for the worker than the Community rules laid down in the Reg., the provisions of that Reg. must be applied in their entirety.** **Where a worker is in receipt of invalidity benefits converted into a retirement pension by virtue of the leg. of a MS and invalidity benefits not yet converted into a retirement pension under the leg. of another MS, the retirement pension and the invalidity benefits are to be regarded as benefits of the same kind within the meaning of Art. 12(2) of the Reg. pursuant to which the provisions of the leg. of a MS for reduction, suspension or withdrawal of benefit in cases of overlapping with other soc. sec. benefits acquired in the same MS or under the leg. of another MS do not apply when the person concerned receives benefits of the same kind in respect of invalidity, old-age, death (pensions) or occupational disease which are awarded by the institutions of two or more MS.** **The competent institution of a MS is therefore required to apply Art. 46 of the Reg. when awarding benefits due to a migrant worker who satisfies all the conditions for entitlement to a full retirement pension in that State and also receives an invalidity pension that has not been converted into a retirement pension in another MS, even where that worker has not reached the retirement age prescribed under the leg. of the first State for entitlement to benefits in respect of periods of insurance or employment completed in the second MS.** **Pursuant to Art. 46 of the Reg., the retirement pension due to a migrant worker where the latter satisfies the conditions prescribed for entitlement to a full retirement pension under a MS national law alone, which took into consideration in establishing that pension the years during which the worker was actually employed in that MS or years treated as such, together with a number of notional years in respect of a period before he became entitled to benefits, and where, before that employment, the worker completed a period of insurance or employment in another MS, in respect of which he is entitled in that State to an invalidity pension which has not been converted into a retirement pension, must be calculated as follows:**	B	18.2.1992	C-5/91 (Di Prinzio)	1992, I-897

	(a) The amount of the independent pension must be determined pursuant to the first subparagraph of Art. 46(1) of the Reg., that amount being equal to that of the pension due under the leg. of the MS where the award of benefits is claimed, but without the periods completed in another MS being deductible, pursuant to a national anti-overlapping rule, from the number of notional years which, in accordance with the leg. which the competent institution administers, are added to the years of actual employment or years treated as such; **(b) The amount of the pro rata benefit must be determined pursuant to Art. 46(2) of the Reg. taking into account all the notional periods prior to the materialization of the risk which, in accordance with the leg. which the competent institution administers, are added to the years of actual employment or years treated as such;** **(c) The amount of the independent benefit and the amount of the pro rata benefit must be compared, pursuant to the second subparagraph of Art. 46(1) of the Reg., and the competent institution must take into consideration the higher of those amounts;** **(d) The amount of the adjusted benefits must be determined pursuant to Art. 46(3) of the Reg., the competent institution being obliged, if necessary, to reduce the independent benefit by deducting from it the total of the benefits calculated in accordance with the provisions of Art. 46(1) and (2) of the Reg. to the extent that that total exceeds the limit referred to in the first subparagraph of Art. 46(3);** **(e) The amount resulting from application of the applicable national law in its entirety, including its anti-overlapping rules, must be compared with the amount arrived at after the calculation pursuant to Article 46 of the Reg. and the higher of those amounts is to be taken into consideration.**				
Art. 46	The anti-overlapping rule in Art. 46(3) of the Reg. applies in all cases in which the total sum of the benefits calculated in accordance with Art. 46(1) and (2) exceeds the limit of the highest theoretical amount of pension, even if the exceeding of that limit is not due to the duplication of insurance periods. Where there is only one institution providing an independent benefit for the purposes of Art. 46(1) of the Reg., that institution alone must reduce its benefit pursuant to the second subparagraph of Art. 46(3) and must reduce it by the full amount by which the total sum of the benefits calculated in accordance with Art. 46(1) and (2) exceeds the limit referred to in the first subparagraph of Art. 46(3).	B	17.12.1987	323/86 (Collini)	1987, 5489

Art. 46 Art. 12(2)	**Where a worker receives a pension by virtue of national leg. alone, the provisions of the Reg. do not preclude that leg. from being applied to him in its entirety, including any national rules against overlapping benefits.** **However, if the application of national leg. alone proves to be less favourable to him than that of the rules laid down in Art. 46 of that Reg., Art. 46 must be applied. In the latter case, Art. 46(3), which is designed to limit the overlapping of acquired benefits, in accordance with the rules laid down in Art. 46(1) and (2), is applicable, to the exclusion of the anti-overlapping rules laid down by the national leg.** **An early retirement pension acquired under the leg. of one MS and an invalidity pension acquired under the leg. of another MS are to be treated as benefits of the same kind within the meaning of Art. 12(2) of the Reg., according to which the provisions of the leg. of a MS for the reduction, suspension or withdrawal of a benefit in cases of overlapping with other soc. sec. benefits acquired in that same MS or under the leg. of another MS are not to apply when the person concerned receives benefits of the same kind in respect of invalidity, old-age, death (pensions) or occupational disease paid by the institutions of the different MS concerned.** **When the leg. of only one MS is applied, the classification, in the light of the anti-overlapping rules contained in that leg., of an early retirement pension awarded under the leg. of that State alone and of an invalidity pension awarded by another MS is not governed by Community law.** **[The grounds of this judgment are identical to those of the judgment of the same date, 5 April 1990, in Case C-108/89 (Pian).]**	B	5.4.1990	C-109/89 (Bianchin Ernesto)	1990, I-1619
Art. 46 Art. 12(2)	So long as a worker is receiving a pension by virtue of national leg. alone, the provisions of the Reg. do not prevent the national leg., including the national rules against the overlapping of benefits, from being applied to him in its entirety, provided that if the application of such national leg. proves less favourable than the application of the rules laid down by Art. 46 of the Reg. the provisions of that Art. must be applied.	NL	14.3.1978	105/77 (Boerboom-Kersjes)	1978, 717
Art. 46 Art. 12(2) Reg. 574/72 Art. 46(2)	So long as a worker is receiving a pension by virtue of national leg. alone, the provisions of the Reg. do not prevent the national leg., including the national rules against the overlapping of benefits from being applied to him in its entirety, provided that if the application of such national leg. proves less favourable than the application of the rules laid down by Art. 46 of the Reg. the provisions of that Art. must be applied.	NL	14.3.1978	98/77 (Schaap I)	1978, 707

Art. 46 Art. 12(2)	**Where a worker receives a pension by virtue of national leg. alone, the provisions of the Reg. do not preclude that leg. from being applied to him in its entirety, including any national rules against overlapping benefits.** **However, if the application of national leg. alone proves to be less favourable to him than that of the rules laid down in Art. 46 of that Reg., Art. 46 must be applied. In the latter case, Art. 46(3), which is designed to limit the overlapping of acquired benefits, in accordance with the rules laid down in Art. 46(1) and (2), is applicable, to the exclusion of the anti-overlapping rules laid down by the national leg.** **An early retirement pension acquired under the leg. of one MS and an invalidity pension acquired under the leg. of another MS are to be treated as benefits of the same kind within the meaning of Art. 12(2) of the Reg., according to which the provisions of the leg. of a MS for the reduction, suspension or withdrawal of a benefit in cases of overlapping with other soc. sec. benefits acquired in that same MS or under the leg. of another MS are not to apply when the person concerned receives benefits of the same kind in respect of invalidity, old-age, death (pensions) or occupational disease paid by the institutions of the different MS concerned.** **When the leg. of only one MS is applied, the classification, in the light of the anti-overlapping rules contained in that leg., of an early retirement pension awarded under the leg. of that State alone, and of an invalidity pension awarded by another MS is not governed by Community law.** **[The grounds of this judgment are identical to those of the judgment of the same date, 5 April 1990, in Case C-109/89 (Bianchin Ernesto).]**	B	5.4.1990	C-108/89 (Pian)	1990, I-1599
Art. 46 Art. 51(2) EC Treaty Art. 51 Reg. 574/72 Art. 112	Art. 46(3) of the Reg. must be interpreted as meaning that the highest theoretical amount of benefits calculated according to Art. 46(2)(a) constitutes the limit on the benefits which may be claimed by a migrant worker under Community leg., even where that theoretical amount is equal to the full benefit payable under the leg. of a single MS. On that interpretation, the provisions in question are not incompatible with Art. 51 of the EC Treaty, since Art. 46 of the Reg. is applicable only if it allows a migrant worker to be granted benefits at least as high as those payable under the leg. of one State alone.	B	21.3.1990	199/88 (Cabras)	1990, I-1023

Art. 46 Art. 12(2)	Where a worker receives a pension pursuant to national leg. alone, the provisions of the Reg. do not preclude that leg., including the national rules against the overlapping of benefits, from being applied to him in its entirety. If, however, the application of that national leg. is less favourable to the worker than the application of Art. 46, the provisions of that Art. must be applied. If those provisions fail to be applied, paragraph 3 of Art. 46, which limits the overlapping of benefits acquired, in accordance with paragraphs 1 and 2 thereof, is applicable to the exclusion of rules against overlapping laid down in the national leg. An early retirement pension acquired under the leg. of one MS and an invalidity pension acquired under the leg. of another MS are to be regarded as benefits of the same kind within the meaning of Art. 12(2), according to which the legislative provisions of a MS for reduction, suspension or withdrawal of benefit in cases of overlapping with other soc. sec. benefits acquired in that MS or under the leg. of that or another MS do not apply when the person concerned receives benefits of the same kind in respect of invalidity, old-age, death (pensions) or occupational disease which are awarded by the institutions of the MS concerned, in accordance, in particular, with Art. 46.	B	18.4.1989	128/88 (Di Felice)	1989, 923
Art. 46 Arts 40, 44(2) Reg. 574/72 Art. 36(4)	The procedural rules set forth in Art. 44(2) of Reg. 1408/71 and Art. 36(4) of Reg. 574/72 do not entail any change to the MS qualifying conditions for invalidity benefit. It is for the leg. of each MS to determine whether the person concerned may waive an invalidity pension in order to receive subsequently a more favourable old-age pension. It follows that where a national leg. imposes on a claimant a choice between two alternative benefits the benefit to be taken into account pursuant to the first sentence of Art. 44(2) of Reg. 1408/71 and for the calculations to be carried out under Art. 46 of the same Reg. is no other than the benefit which the claimant chose to receive. The second subparagraph of Art. 46(1) of Reg. 1408/71 and Art. 36(4) of Reg. 574/72 do not prevent the institution of a MS, upon receiving from the institution of another MS a claim for an invalidity benefit based on Art. 40 of Reg. 1408/71 from granting a worker an old-age pension in lieu of the invalidity benefit which the person concerned has waived in order to receive a more favourable old-age pension.	B	3.2.1993	C-275/91 (Iacobelli)	1993, I-523
Art. 46(1)	So long as a worker is receiving a pension by virtue of national leg. alone, the provisions of the Reg. do not prevent the national leg., including the national rules against the overlapping of benefits, from being applied to him in its entirety, provided that if the application of such national leg. proves less favourable than the application of the rules regarding aggregation and apportionment those rules must, by virtue of Art. 46(1) of the Reg. be applied.	B	13.10.1977	22/77 (Mura)	1977, 1699

Art. 46(1) **Art. 12(2)**	**Pursuant to Art. 12(2) and Art. 46(1) of the Reg., the amount of a migrant worker's pension must be determined in accordance with the relevant national leg., irrespective of any entitlement to a pension which may arise under the leg. of any other MS. It follows that a national provision which reduces the additional years of notional employment from which a worker may benefit by the number of years in respect of which he may claim a pension in another MS constitutes a provision for reduction of benefit within the meaning of Art. 12(2) of the Reg. which, by virtue of its last sentence, is not to be applied when the amount of the pension is calculated under Art. 46(1) of that Reg.**	B	4.6.1985	117/84 (Ruzzu)	1985, 1697
Art. 46(1) **Art. 12(2)**	**In determining the amount of the independent benefit referred to in Art. 46(1) of the Reg., the competent institution of a MS must, in accordance with Art. 12(2) of the Reg. disregard any national provision precluding the overlapping of benefits and therefore any period of insurance completed in another MS and take into account any administrative practice which permits derogation from the strict application of the national leg. in favour of national workers.**	B	6.6.1990	342/88 (Spits)	1990, I-2259
Art. 46(1)	**Reg. 1408/71 permits a German insurance institution, in deciding whether to take interrupting periods (*Ausfallzeiten*) into account for purposes of the German leg. on soc. sec., to treat as compulsory contributions paid under German leg. and as insurance under the German pension insurance scheme not only compulsory contributions paid in other MS but also compulsory contributions and insurance in a non-member country with which the Federal Republic of Germany has concluded a convention on the reciprocal assimilation of insurance periods.** **On the other hand, periods completed under the leg. of a non-member country do not, merely because they have been taken into account by the German institution pursuant to a bilateral convention concluded by the Federal Republic of Germany, become periods 'completed under the leg. of the MS' within the meaning of Art. 46 of the Reg. and, consequently, no provision requires the institutions of the other MS to take account of them when making calculations under the provisions of Art. 46 and the fact that the German institution has taken those periods into account does not entail any increase in their obligations.**	D	5.7.1988	21/87 (Borowitz)	1988, 3715
Art. 46(1)	**So long as a worker is receiving a pension by virtue of national leg. alone, the provisions of the Reg. do not prevent the national leg., including the national rules against the overlapping of benefits, from being applied to him in its entirety, provided that if the application of such national leg. proves less favourable than the application of the rules regarding aggregation and apportionment those rules must, by virtue of Art. 46(1) of the Reg., be applied.**	B	13.10.1977	37/77 (Greco)	1977, 1711

Art. 46(1) **Art. 12(2)**	**Pursuant to Art. 12(2) and Art. 46(1) of the Reg., the amount of a migrant worker's pension must be determined in accordance with the relevant national leg., irrespective of any entitlement to a pension which may arise under the leg. of any other MS. It follows that a national provision which reduces the additional years of notional employment from which a worker may benefit by the number of years in respect of which he may claim a pension in another MS constitutes a provision for reduction of benefit within the meaning of Art. 12(2) of the Reg. which, by virtue of its last sentence, is not to be applied when the amount of the pension is calculated under Art. 46(1) of that Reg.**	B	4.6.1985	58/84 (Romano)	1985, 1679
Art. 46(1) **Reg. 574/72** **Art. 15(1)** **EC Treaty** **Arts 48-51**	**When pursuant to the rules laid down in the second subparagraph of Art. 46(1) of the Reg. the amount of an old-age benefit is calculated, Art. 15(1)(c) and (d) of Reg. 574/72 must be applied, concerning the conditions for taking periods treated as insurance periods into account, particularly in the case of overlapping of periods. To this end the national court must verify the status under the leg. of another MS of the periods for which its rules make provision for the payment of an invalidity pension. Under current Community law, which is confined to coordinate soc. sec. leg., there are no rules preventing the leg. of a MS which for the calculation of an old-age pension credits daily remuneration in respect of periods treated as employment periods, from applying to it the same proportion as that on the basis of which the invalidity pension paid previously was calculated.**	B	9.12.1993	Joined cases C-45/92 and C-46/92 (Lepore and Nicolantonio)	1993, I-6497
Art. 46(2)(a) and (b)	**Although the calculation to be carried out under Art. 46(2)(a) of the Reg. is intended to give a worker the maximum theoretical amount which he could claim if all periods of insurance had been completed in the State in question, the purpose of the calculation under Art. 46(2)(b) is solely to apportion the respective burdens of the benefit between the institutions of the MS concerned in the ratio of the length of the periods of insurance completed in each of the said MS before the risk materialized.** **It follows that if, in order to evaluate the benefit awarded in the event of premature invalidity or death of the insured person, the leg. of a MS provides that the benefit must be calculated in relation to not only periods of insurance completed by the insured person but also in relation to a supplementary period (*Zurechnungszeit*) equivalent to the interval of the time between the age of the insured person at the time at which the risk materialized and the time at which he reached the age of 55, that supplementary period must also be taken into account in the calculation of the theoretical amount referred to in Art. 46(2)(a) but not in the calculation of the actual amount referred to in Art. 46(2)(b) of the Reg.**	D	26.6.1980	793/79 (Menzies)	1980, 2085

Art. 46(2)	**It is not compatible with the method of calculating benefits provided for by Art. 46(2) of the Reg. for a MS under whose leg. the amount of invalidity benefit does not depend on the length of periods of insurance completed to determine the theoretical amount of the invalidity benefit on the basis of the extent to which the period between the date on which the person concerned was first insured in any one MS and the date on which the incapacity for work occurred comprises periods of insurance completed under the leg. of the MS or by virtue of the above-mentioned Reg.** **It is not compatible with that Reg. for a MS to adopt for the purpose of determining the amount of benefit in such circumstances provisions designed to alter the way in which the theoretical amount is calculated so as to make that amount less than that which would result from the general provisions in force under the national leg.**	NL	23.9.1982	274/81 (Besem)	1982, 2995
Art. 46(3) EC Treaty Art. 51	**A limitation on the overlapping of benefits which would lead to a diminution of the rights which the persons concerned already enjoy in a MS by virtue of the application of the national leg. alone is incompatible with Art. 51 of the Treaty.** **Art. 46(3) of Reg. 1408/71 is accordingly incompatible with Art. 51 of the Treaty to the extent to which it imposes a limitation on the overlapping of two benefits acquired in different MS by a reduction in the amount of a benefit acquired under national leg. alone.**	B	21.10.1975	24/75 (Petroni)	1975, 1149
Art. 46(3) EC Treaty Art. 51	**A limitation on the overlapping of benefits which would lead to a diminution of the rights which the persons concerned already enjoy in a MS by virtue of the application of the national leg. alone is incompatible with Art. 51.** **Art. 46(3) of the Reg. and Decision No 91 of the Administrative Commission are incompatible with Art. 51 of the Treaty to the extent to which they impose a limitation on the overlapping of two benefits acquired in different MS by a reduction of the amount of the benefit acquired under national leg. alone.**	B	3.2.1977	62/76 (Strehl)	1977, 211
Art. 46(3) EC Treaty Art. 51	**An application of Art. 46(3) of the Reg. which would lead to a diminution of the rights which the persons concerned already enjoy in a MS by virtue of the application of the national leg. alone is incompatible with Art. 51. Art. 46(3) of the Reg. is incompatible with Art. 51 of the Treaty to the extent to which it imposes a limitation on benefits acquired in different MS by a reduction in the amount of a benefit acquired under the national leg. of a MS alone.** **The application of rules preventing the overlapping of benefits where there is duplication of insurance periods is possible only where for the acquisition or calculation of the worker's right it is necessary to have recourse to aggregation of the insurance periods and apportionment of the benefits.**	B	13.10.1977	112/76 (Manzoni)	1977, 1647

Art. 46(3) **Art. 10** EC Treaty Art. 51	**Art. 46(3) of the Reg. is applicable only in cases where, for the purpose of acquiring the right to benefit within the meaning of Art. 51(a) of the Treaty, it is necessary to have recourse to the arrangements for aggregation of the periods of insurance.** **Since the waiving of residence clauses pursuant to Art. 10 of the Reg. has no effect on the acquisition of the right to benefit, it cannot involve the application of Art. 46(3) of the Reg.**	D	20.10.1977	32/77 (Giuliani)	1977, 1857
Art. 46(3) Reg. 574/72 Art. 46(2)	**Where there can be no question of periods coinciding because one body of leg. in question is of type A, Reg. 574/72 allows the worker the benefits corresponding to any period of voluntary or optional insurance.** **Therefore, although Art. 46(2) of Reg. 574/72 appears under the heading 'calculation of benefits in the event of overlapping of periods', it must be applied to all cases coming under Art. 46(3) of Reg. 1408/71 — even if there can be no question of periods coinciding because one body of leg. in question is of type A – so that, for the purpose of the application of that paragraph, the competent institution cannot take account of benefits corresponding to periods completed under voluntary or optional insurance.**	NL	5.4.1979	176/78 (Schaap II)	1979, 1673
Art. 46(3) **Arts 13(2)(a), 18, 40(3)**	**Invalidity benefit due under the leg. of a MS following a period of incapacity for work during which the worker received benefit in respect of that incapacity, including benefit from another MS, which is to be taken into account pursuant to Art. 40(3) of the Reg. may, where appropriate, be validly reduced pursuant to Art. 46(3) of that Reg.**	UK	12.1.1983	150/82 (Coppola)	1983, 43
Art. 47(1)	**The contingencies referred to in Art. 47(1) of the Reg. do not cover the case of a scheme of invalidity benefits under which the amount of benefit does not depend on the length of the insurance periods and which, for the calculation of the loss of earnings, is based primarily on the wage received in the occupation usually carried on by the person concerned, and for that purpose takes account either of the fixed salary last received by the person concerned in that occupation before he became incapacitated for work, or of the average wage received by him over a certain number of days (which must not fall more than two years before he became incapacitated for work).**	NL	29.11.1984	181/83 (Weber)	1984, 4007
Art. 48	**Art. 48 of the Reg. is not applicable where the right to benefits of a migrant worker or his survivors already arises solely from the provisions of the leg. of the MS in question.**	D	20.11.1975	49/75 (Borella)	1975, 1461

Art. 48(1)	For the purposes of Art. 48(1) of the Reg., the duration of residence in a MS is to be taken into account only if the leg. of that MS makes the completion of periods of residence a condition for entitlement to invalidity benefit. Art. 48(1) of the Reg. is to be interpreted as meaning that even if the worker has not completed a period of insurance of one year in a MS, the competent institution of that MS is bound to award him invalidity benefits if the worker has completed the minimum qualifying period specified as a condition for eligibility by national law. If the worker has completed the minimum qualifying period the competent institution may not refuse him benefit on the grounds that a provision in national law makes the right to benefit dependent upon the worker being insured in that MS at the time at which the risk materializes.	B	9.12.1982	76/82 (Malfitano)	1982, 4309
Art. 48(1) Arts 44(3), 78, 79	Art. 44(3) of the Reg. must be interpreted as meaning that orphans' pensions are governed solely by the provisions of Chapter 8 thereof, supplemented, if necessary, by the provisions of the other chapters to which Chapter 8 expressly refers. It follows, in particular, that the provisions of Art. 48(1), which provide that in certain circumstances the institution of a MS is not bound to award benefits if the periods of insurance or residence completed by the insured person there amount to less than one year, do not apply as regards orphans' pensions.	D	14.12.1988	269/87 (Ventura)	1988, 6411
Art. 48(2)	Pursuant to Art. 48(2) of the Reg. the national institution competent in retirement pension matters must take account of periods of insurance of less than one year completed by the worker under the leg. of other MS even if the right to a pension arises under national leg. alone. A MS is not entitled to require the payment by the worker of contributions corresponding to the periods of insurance referred to in Art. 48 of the Reg. and completed under the leg. of other MS or the transfer of the contributions for those periods which may have been paid in such MS.	B	18.2.1982	55/81 (Vermaut)	1982, 649
Art. 49 Reg. 574/72 Art. 36(1) Reg. 3 Art. 28(1)(f) and (g) Reg. 4 Art. 30	Art. 28(1)(f) and (g) of Reg. 3, subject to the compatibility of subparagraph (g) with Art. 51 of the Treaty, as well as Art. 49 of Reg. 1408/71, refers exclusively to a possible alteration of a benefit granted in one MS on the basis of national leg. alone, in a case where the conditions for the grant of benefits obtained through the leg. of another MS in which the person concerned has completed periods are satisfied later. These provisions do not therefore concern the calculation or the conditions for the grant of these later benefits.	B	9.3.1976	108/75 (Balsamo)	1976, 375
Art. 50	Art. 50 of the Reg. is applicable only in cases in which provision is made in the leg. of the MS in whose territory the worker resides for a minimum pension.	B	30.11.1977	64/77 (Torri)	1977, 2299

Art. 50	**Art. 50 of the Reg. is to be interpreted as meaning that a 'minimum benefit' exists only where the leg. of the State of residence includes a specific guarantee the object of which is to ensure for recipients of soc. sec. benefits a minimum income which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions.**	UK	17.12.1981	22/81 (Browning)	**1981, 3357**
Art. 51	**A recalculation in accordance with the provisions of Art. 46 of the Reg. is necessary in respect of any alteration in benefits paid by a MS, save where any such alteration is due to one of the 'reasons for adjustment' provided for in Art. 51 of the Reg., which do not include supervening changes in the personal circumstances of the insured.**	B	2.2.1982	7/81 (Sinatra I)	**1982, 137**
Art. 51 **Arts 12(2), 46** **Reg. 574/72** **Art. 107**	**No provision of Community law requires the periodical recalculation, by reason of a variation in the rates of conversion of currencies, of a soc. sec. benefit whose amount has been established in another MS.**	NL	5.5.1983	238/81 (Van der Bunt-Craig)	**1983, 1385**
Art. 51 **Art. 46**	**Art. 51 of the Reg. must be interpreted as applying to benefits such as those in respect of accidents at work or occupational disease which, by virtue of the national rules against overlapping of benefits, originally affected the amount of the pension fixed pursuant to Art. 46 and any subsequent adjustments to which might again affect that pension. It is therefore not necessary to recalculate the pension pursuant to Art. 46 if an adjustment is made to such a benefit on account of the general evolution of the economic and social situation.**	B	1.3.1984	104/83 (Cinciulo)	**1984, 1285**
Art. 51	**Art. 51 of the Reg. is to be interpreted as meaning that when, under national rules against the overlapping of benefits, the pension paid to a worker by a MS has been calculated at an amount such that, when added to the amount of benefit of a different kind paid by another MS, it does not exceed a certain ceiling, the pension is not to be recalculated in order to prevent that ceiling from being exceeded if subsequent adjustments are made to the other benefit on account of the general evolution in the economic and social situation.**	B	21.3.1990	C-85/89 (Ravida)	**1990, I-1063**

Art. 51 EC Treaty Art. 51	**The legislative provisions under which all the elderly residents of a MS are guaranteed a statutory minimum pension are regarded as coming under soc. sec. as referred to in Art. 51 of the Treaty with regard to employed persons and persons treated as such who have in that MS completed periods of employment, who reside there and are entitled to a pension there, even if these provisions are not so regarded in respect of other categories of beneficiaries.** **A benefit must therefore be considered an 'old-age benefit' within the meaning of the Reg. if it is granted to elderly residents whose means are below the minimum guaranteed by law and provides beneficiaries with additional resources of an amount equal to the difference between the said minimum and a part of the means of any kind which they may have at their disposal.** **The provisions of Art. 51(1) of the Reg., under which benefits need not be recalculated in accordance with Art. 46 of the Reg. if the change affecting one of the benefits provided ensues from events unconnected with the worker's individual situation and is the result of the economic and social trend, cannot be applied in the case of an old-age benefit which, intended to provide its beneficiary with a minimum income, is of a complementary nature, with the amount varying with the level of guaranteed minimum income, regularly reassessed, and that of the means of the person concerned.** **Application of this provision would mean disregarding the increase in the means of the person concerned resulting from the uprating of the pension paid to him on the basis of rights acquired in another MS and making him benefit systematically from a level of means exceeding the statutory minimum income, and would at the same time not be limited to benefiting the migrant worker but would also distort the purpose of the benefit and disrupt the system established under national law.** **The provisions to be applied are therefore those of Art. 51(2) in determining and adjusting the amount of benefit intended to provide a guaranteed minimum income paid to a worker who has been employed in a MS, who resides there and who receives there a retirement pension paid by the State while at the same time receiving a retirement pension from another MS. Such application leads to a recalculation of the benefit when a change occurs either in the amount of the guaranteed income or in the beneficiary's means.**	B	22.4.1993	C-65/92 (Levatino)	1993, I-2005

Art. 51 **Art. 46**	**An invalidity benefit provided by a MS to a migrant worker must be regarded as determined in accordance with Art. 46 of the Reg., even if its amount, calculated in accordance with the rules of national law, including its provisions on overlapping, is equal to the amount calculated in accordance with the rules of Art. 46 of the Reg., including the rule on overlapping laid down in Art. 46(3).** **It follows that adaptation of such a benefit must comply with the rules laid down in Art. 51 of the Reg. under which a recalculation is permitted only if the method of determining benefits or the rules for calculating benefits are altered, and not with the provisions of national law where these require a recalculation of the national benefit to take account of changes in the benefit provided by another MS linked, in particular, with fluctuations in the average exchange rates or the general economic and social trend of that State.**	B	18.2.1993	C-193/92 (Bogana)	1993, I-755
Art. 51(1)	**Where, under national rules against the overlapping of benefits the pension paid to a worker by a MS has been calculated at an amount such that, when added to the amount of a benefit of any kind paid by another MS, it does not exceed a certain ceiling, neither Art. 51(1) of the Reg. nor any other provision of Community law allows the amount of that pension to be adjusted in order to prevent that ceiling from being exceeded if subsequent alterations are made to the other benefit on account of the general evolution of the economic and social situation.**	B	20.3.1991	C-93/90 (Cassamali)	1991, I-1401
Art. 51(2)	**An alteration in the method of determining the minimum old-age benefit provided for in the leg. of a MS falls within the scope of Art. 51(2) of the Reg. and gives rise to a recalculation pursuant to Art. 46 of that Reg. However, an alteration in the method of determining, or the rules for calculating, old-age benefits which, under national law, does not apply to pensions paid before that alteration came into force does not require the MS concerned to carry out a recalculation.**	F	12.7.1989	141/88 (Jordan)	1989, 2387
Art. 51(2) **Art. 46** EC Treaty Art. 51 Reg. 574/72 Art. 112	**When a recalculation of benefits pursuant to Art. 51(2) of the Reg. leads to a reduction in the benefit paid by the institution of one MS, without any adjustment to the benefit paid by the institution of another MS, and the second institution thus holds no pension arrears payable to the recipient of the benefits, Art. 112 of Reg. 574/72 does not oblige the first institution to bear the expense of the benefits overpaid during the period needed for recalculating the benefits.**	B	21.3.1990	199/88 (Cabras)	1990, I-1023

Chapter 4. Accidents at work and occupational diseases

(Arts 52 to 63)

and

Chapter 5. Death grants

(Arts 64 to 66)

Art. 57 **Art. 12** **EC Treaty** **Arts 48 to 51**	**The first sentence of Art. 12(2) of the Reg. must be construed as excluding the reduction or suspension of a benefit acquired solely under the leg. of one MS even if the benefits to be taken into account in effecting the reduction, being acquired under the leg. of another MS, were awarded in application of Art. 57 of the Reg. and if the competent institution of the first MS contributes to the cost of those benefits upon the terms set out in Art. 57(3)(c).**	D	15.9.1983	279/82 (Jerzak)	**1983, 2603**
Art. 57(1) and (2)	**A diagnosis that a person is suffering from an occupational disease must be recognized by the MS which, by virtue of Art. 57(1) of the Reg., is under a duty to pay the benefits, even if that diagnosis was made in another MS and in accordance with its leg.**	F	11.3.1986	28/85 (Deghillage)	**1986, 991**
Art. 61(5) **Reg. 3** **Art. 30(1)**	**Art. 30(1) of Reg. 3 and Art. 61(5) of Reg. 1408/71 merely require the competent institution of a MS to take into consideration accidents or diseases which have occurred previously under the leg. of another MS, as if they had occurred under the leg. of the first MS but do not require it to take into consideration also accidents or diseases which have occurred subsequently under the leg. of another MS.**	D	29.5.1979	Joined cases 173/78 (Vilano) 174/78 (Barion)	**1979, 1851**

Chapter 6. Unemployment benefits

(Arts 67 to 71)

Art. 67 **Arts 12, 69, 71(1)(b)(ii)** **Reg. 574/72** **Art. 84(2)**	**The prohibition of overlapping benefits laid down by Art. 12(1) of the Reg. applies in the context of Art. 71(1)(b)(ii) and of Art. 67 of the same Reg.** **The competent institution of a MS under whose leg. the acquisition and duration of a right to unemployment benefit are contingent on the completion of insurance periods must, in a situation under Art. 71(1)(b)(ii) and Art. 67 of the Reg., in accordance with the first sentence of Art. 12(1) thereof, take account, for the calculation of unemployment benefit entitlement, of the periods of insurance completed under the leg. to which the unemployed person was last subject. However, it must deduct from the period of unemployment benefit entitlement acquired the days for which benefits were received under the leg. in question.**	D	8.7.1992	C-102/91 (Knoch)	1992, I-4341
Art. 67(1) **Art. 1(r) and (s)**	**Where entitlement to unemployment benefits is concerned, the term 'periods of insurance' in Art. 1(r) of the Reg. must be understood as referring not only to periods in which contributions to an unemployment insurance scheme were paid but also to periods of employment considered by the leg. under which they were completed as equivalent to periods of insurance, that is to say periods in which insurance cover by such a scheme is guaranteed. The term 'periods of employment' defined in Art. 1(s) of the Reg. thus covers only periods of work which, according to the leg. under which they were completed, are not regarded as periods conferring entitlement to affiliation to a scheme providing unemployment benefits.** **For the grant of unemployment benefits, Art. 67(1) of the Reg. does not make the aggregation, by the competent institution of a MS whose leg. makes the grant of such benefits dependent on the completion of periods of insurance, of periods of employment completed in another MS subject to the condition that such periods should be treated as periods of insurance for the same branch of soc. sec. by the leg. under which they were completed.**	NL	12.5.1989	388/87 (Warmerdam-Steggerda)	1989, 1203
Art. 67(1) **Art. 1(r)**	**It is clear from Art. 1(r) of the Reg. that, in order to ascertain whether a period of employment may be assimilated to a period of insurance for the purposes of the application of the rule concerning aggregation set out in Art. 67(1), reference must be made to the leg. under which such period was completed. Thus a period of employment completed under the leg. of a MS other than that in which the competent institution is established, and defined or recognized as an insurance period under that leg., is not subject to the condition laid down in Art. 67(1) *in fine* of the Reg.**	B	15.3.1978	126/77 (Frangiamore)	1978, 725

Art. 67(3) **Art. 69(1)** EC Treaty Art. 51	**By making provision, on the one hand, for Community nationals moving to another MS to be credited, in that MS, with periods of contribution or employment under the laws of any other MS for the purpose of acquiring, maintaining or recovering entitlement to unemployment benefit and, on the other, for unemployed workers seeking employment in another MS to maintain, for a limited period, the entitlement to unemployment benefit provided for in the laws of the country of last employment despite not being available for employment in that country, Reg. 1408/71 grants such workers rights which they would otherwise not have and which therefore help guarantee the freedom of movement of workers, in conformity with Art. 51 of the Treaty.** **In attaching conditions, Arts 67(3) and 69(1) of the aforementioned Reg. to the facilities granted to unemployed persons who are actively seeking work, the Community legislature has made correct use of its discretionary powers in respect of the implementation of freedom of movement for workers.**	UK	8.4.1992	C-62/91 (Gray)	1992, I-2737
Art. 67(3) **Arts 69, 70**	**The Community leg. applicable to the grant of unemployment benefits to unemployed persons residing in a MS other than the competent MS, in particular Arts 67(3), 69 and 70 of the Reg., does not preclude a MS from refusing to grant a worker unemployment benefit for more than the maximum period of three months laid down in Art. 69 of that Reg. when the worker has not completed lastly periods of insurance or employment in that MS.**	F	16.5.1991	C-272/90 (Van Noorden)	1991, I-2543
Arts 67 to 70	**Arts 67 to 70 of the Reg. have only one main purpose, namely the coordination of the rights to unemployment benefits provided by virtue of the national leg. of the MS for employed persons who are nationals of a MS. The members of the family of such workers are entitled only to the benefits provided by such leg. for the members of the family of unemployed workers and it is to be understood that the nationality of those members of the family does not matter for this purpose.**	D	23.11.1976	40/76 (Kermaschek)	1976, 1669
Art. 68(1) **Art. 71(1)(a)(ii)** **Reg. 574/72** **Art. 107**	**Art. 68(1) and Art. 71(1)(a)(ii) of Reg. 1408/71 must be interpreted as meaning that the institution of the State of residence which is responsible for paying unemployment benefits to wholly unemployed frontier workers must calculate benefits on the basis of the last remuneration actually received prior to unemployment and may not apply to the remuneration on which the calculation of those benefits is based, ceilings in force in the State of employment.**	F	1.10.1992	C-201/91 (Grisvard-Kreitz)	1992, I-5009

Art. 68(1)	As appears from the ninth recital in the preamble thereto, Reg. 1408/71 'in order to secure mobility of labour under improved conditions' seeks to ensure the worker without employment of 'the unemployment benefit provided for by the leg. of the MS to which he was last subject'. Such an objective clearly implies that in the Reg. unemployment benefit is regarded in such a manner as not to impede the mobility of workers, including frontier workers, and to that end seeks to ensure that the persons concerned receive benefits which take account, so far as possible, of conditions of employment and in particular of remuneration, which they enjoyed under the leg. of the MS of last employment. It appears from the first sentence of Art. 68(1) that, apart from the special case contemplated in the second sentence, the 'previous' wage or salary which normally constitutes the basis of calculation of unemployment benefit, is, according to that Reg., the wage or salary 'received' in the last employment of the worker and that it is only by way of exception and derogation that the basis of calculation of those benefits may in certain cases be the notional and not the actual wage or salary in the last employment. Art. 68(1) of the Reg., viewed in the light of Art. 51 of the Treaty and the objectives which it pursues, must be interpreted as meaning that, in the case of a frontier worker, within the meaning of Art. 1(b) of that Reg., who is wholly unemployed, the competent institution of the MS of residence, whose national leg., provides that the calculation of benefits should be based on the amount of the previous wage or salary, shall calculate those benefits taking into account the wage or salary received by the worker in the last employment held by him in the MS in which he was engaged immediately prior to his becoming unemployed.	D	28.2.1980	67/79 (Fellinger)	1980, 535
Art. 68(2) **Art. 4**	Under the terms of the first sentence of Art. 68(2), when calculating benefits the competent institution of a MS whose leg. provides that the amount of unemployment benefits varies with the number of members of the family shall also take into account members of the family residing in the territory of another MS as though they were residing in the territory of the competent State. When the amount of its unemployment benefit tends to vary according to the number of members of the family a national leg., irrespective of the calculation method it uses, falls within the scope of this provision which, subject to the case provided for in the second sentence of the same paragraph, ensures that the benefits granted to a national of another MS are not calculated without taking account of the spouse resident in another MS.	NL	2.8.1993	C-66/92 (Acciardi)	1993, I-4567
Art. 69	Art. 69 of the Reg. is not applicable to a wholly unemployed frontier worker who, on the termination of his last employment, settles in the territory of the competent MS, that is to say the MS in which he was last employed.	NL	7.3.1985	145/84 (Cochet)	1985, 801

Art. 69 EC Treaty Art. 51	**Art. 69 of the Reg. is not simply a measure to coordinate national laws on unemployment benefits but establishes an independent body of rules in favour of workers claiming the benefit thereof which constitute an exception to national legal rules and which must be interpreted uniformly in all the MS irrespective of the rules laid down in national law regarding the continuance and loss of entitlement to benefits** **Art. 69(2) of the Reg., according to which a worker who returns to the competent State after the three-month period referred to in Art. 69(1)(c) has expired loses 'all entitlement' to benefits under the leg. of that State, does not restrict that loss to the time between the expiry of the period and the moment when the worker makes himself available again to the employment services of the competent State. Accordingly, that worker may no longer claim entitlement, by virtue of the first sentence of Art. 69(2), to benefits as against the competent State unless the said period is extended pursuant to the second sentence of Art. 69(2).** **Art. 69(2) of the Reg. is not incompatible with the provisions of the EC Treaty concerning freedom of movement for workers in that it limits in time and renders subject to certain conditions the right to continued payment of unemployment benefits.** **Whilst the competent services and institutions of the MS enjoy a wide discretion in deciding whether to extend the three-month period laid down by Art. 69(2) of the Reg., they must, in exercising that discretionary power, take account of the principle of proportionality which is a general principle of Community law. In order correctly to apply that principle in cases such as this, in each individual case the competent services and institutions must take into consideration the extent to which the period in question has been exceeded, the reason for the delay in returning and the seriousness of the legal consequences arising from such delay.**	D	19.6.1980	Joined cases 41/79 (Testa) 121/79 (Maggio) 796/79(Vitale)	1980, 1979
Art. 69 Arts 67(3), 70	**The Community leg. applicable to the grant of unemployment benefits to unemployed persons residing in a MS other than the competent MS, in particular Arts 67(3), 69 and 70 of the Reg., does not preclude a MS from refusing to grant a worker unemployment benefit for more than the maximum period of three months laid down in Art. 69 of that Reg. when the worker has not completed lastly periods of insurance or employment in that MS.**	F	16.5.1991	C-272/90 (Van Noorden)	1991, I-2543
Art. 69 Arts 12, 67, 71(1)(b)(ii) Reg. 574/72 Art. 84(2)	**Receipt of benefits under the leg. of the MS in which the unemployed person resides or to which he returns may be suspended, pursuant to the third sentence of Art. 71(1)(b)(ii) of the Reg. only in so far as the conditions laid down by Art. 69 of the above-mentioned Reg. have actually been fulfilled and the person concerned consequently receives benefits in the MS to whose leg. he was last subject.**	D	8.7.1992	C-102/91 (Knoch)	1992, I-4341

Art. 69 Arts 1(s), 45(1) Reg. 3 Arts 1(r), 27(1)	**Community law does not in principle provide for the right of an unemployed worker to claim unemployment benefits under the leg. of a MS other than the State in which he became unemployed.**	D	9.7.1975	20/75 (D'Amico)	1975, 891
Art. 69	**Art. 69 of the Reg. is intended solely to ensure for the migrant worker the limited and conditional preservation of the unemployment benefits of the competent State even if he goes to another MS and this other MS cannot, therefore, rely on mere failure to comply with the conditions prescribed under that Art. to deny the worker entitlement to the benefit which he may claim under the national leg. of that State.**	I	10.7.1975	27/75 (Bonaffini)	1975, 971
Art. 69(1) Art. 67(3) EC Treaty Art. 51	**By making provision, on the one hand, for Community nationals moving to another MS to be credited, in that MS, with periods of contribution or employment under the laws of any other MS for the purpose of acquiring, maintaining or recovering entitlement to unemployment benefit and, on the other, for unemployed workers seeking employment in another MS to maintain, for a limited period, the entitlement to unemployment benefit provided for in the laws of the country of last employment despite not being available for employment in that country, Reg. 1408/71 grants such workers rights which they would otherwise not have and which therefore help guarantee the freedom of movement of workers, in conformity with Art. 51 of the Treaty.** **In attaching conditions, Arts 67(3) and 69(1) of the aforementioned Reg. to the facilities granted to unemployed persons who are actively seeking work, the Community legislature has made correct use of its discretionary powers in respect of the implementation of freedom of movement for workers.**	UK	8.4.1992	C-62/91 (Gray)	1992, I-2737
Art. 69(1)(c) and (4)	**Art. 69 of the Reg. is intended to encourage the mobility of persons looking for employment. Art. 69(4) contains a special provision applicable to unemployed persons for whom the competent State is Belgium. Where such an unemployed person goes to another MS in order to seek employment there, in accordance with the provisions of Art. 69, and returns to Belgium only after the expiry of the period of three months laid down in Art. 69(1)(c), he requalifies for benefits under the Belgian unemployment benefit scheme, pursuant to Art. 69(4), on condition only that he has retained the status of an entitled person under Belgian leg. and that he has been employed for at least three months since his return to Belgium.**	B	10.5.1990	C-163/89 (Di Conti)	1990, I-1829

Art. 69(2)	**An extension of the period referred to in Art. 69(2) of the Reg. is permissible even when the request is made after the expiration of that period. Art. 69(2) of the Reg. does not restrict the freedom of the competent services and institutions of the MS to take into consideration, with a view to deciding upon any extension of the period laid down by that Reg., all factors which they regard as relevant and which are inherent both in the individual situation of the workers concerned and in the exercise of effective control.**	D	20.3.1979	139/78 (Coccioli)	1979, 991
Art. 69(2) and (4)	**When an unemployed person leaves a MS where his entitlement to unemployment benefit has been recognized and finds employment in another MS, that State is the State where that person was last employed and consequently becomes the competent State within the meaning of Art. 69 of the Reg. It follows that, in the first MS, paragraphs 2 and 4 of that Art., concerning the entitlement to benefits of an unemployed person who returns to the competent State after having sought work in another MS, are no longer applicable to the person concerned if he returns to the first MS.**	B	28.4.1988	192/87 (Vanhaeren)	1988, 2411
Art. 70 Arts 67(3), 69	The Community leg. applicable to the grant of unemployment benefits to unemployed persons residing in a MS other than the competent MS, in particular Arts 67(3), 69 and 70 of the Reg., does not preclude a MS from refusing to grant a worker unemployment benefit for more than the maximum period of three months laid down in Art. 69 of that Reg. when the worker has not completed lastly periods of insurance or employment in that MS.	F	16.5.1991	C-272/90 (Van Noorden)	1991, I-2543
Art. 71	Art. 71 of the Reg. does not apply to an unemployed person who, during his last employment, was residing in the MS in which he was employed.	F	11.10.1984	128/83 (Guyot)	1984, 3507
Art. 71 Arts 39, 86 Reg. 574/72 Arts 35, 114	The factor which determines whether Art. 71 of Reg. 1408/71 applies at all is the residence of the person concerned in a MS other than that to whose leg. he was subject during his last employment. The first sentence of Art. 71(1)(b)(ii) for that reason does not apply to a worker who moves with his family to a MS where he resided and worked and where he suffered incapacity for work followed by invalidity, and who subsequently moved to another MS without working there, before finally taking up residence in a third MS, where, owing to his invalidity, he does not work or register for employment. Such a worker is consequently not covered by Art. 39(5) of that Reg. and must come within the general rule under Art. 39(1), which provides that, with regard to invalidity benefit, the competent MS is the State whose leg. was applicable at the time when incapacity for work followed by invalidity occurred, in this case the State of last employment.	UK	27.1.1994	C-287/92 (Maitland Toosey)	1994, I-279

Art. 71 EC Treaty Art. 177	Art. 71 of the Reg. cannot apply to the case of an unemployed person who has not pursued any activity as an employed person or any activity treated as such and who, in consequence has not yet acquired any entitlement to unemployment benefit. Neither the Treaty establishing the EC nor the provisions of Reg. 1408/71 relating to unemployment require a competent institution in one MS, for the purposes of the award of unemployment benefits to former students who have never been employed, to treat studies completed in another MS as though they had been completed in an establishment provided, recognized or subsidized by the competent State.	B	1.12.1977	66/77 (Kuyken)	1977, 2311
Art. 71(1)(a)(ii) Art. 13(2)(a)	The Reg. must be interpreted as meaning that the periods of full unemployment completed by a frontier worker who, under Art. 71(1)(a)(ii), received unemployment benefit in accordance with the legislative provisions of the MS in whose territory he resided must, having regard to the general rule concerning the determination of the leg. applicable laid down in Art. 13(2)(a), and in the absence of any exception provided for by the Community rules or dictated by the necessities inherent in the realization of the objectives thereof, be taken into account as regards pension rights in accordance with the leg. of the State in which he worked immediately before becoming unemployed.	D	29.6.1988	58/87 (Rebmann)	1988, 3467
Art. 71(1)(a)(ii) Art. 1(b) Art. 71(1)(b)(ii)	Only workers who, on the one hand, reside in a MS other than the State of employment and who, on the other, return regularly and frequently, in other words, daily or at least once a week, to their State of residence may be considered as having the status of frontier worker. It follows that a worker who, after transferring his residence to a MS other than the State of employment, no longer returns to that State to pursue his occupation, is not covered by the term 'frontier worker' within the meaning of Art. 1(b) of the Reg. and cannot rely on Art. 71(1)(a)(ii) of that Reg.	D	22.9.1988	236/87 (Bergemann)	1988, 5125
Art. 71(1)(a)(ii) Art. 68(1) Reg. 574/72 Art. 107	Art. 68(1) and Art. 71(1)(a)(ii) of Reg. 1408/71 must be interpreted as meaning that the institution of the State of residence which is responsible for paying unemployment benefits to wholly unemployed frontier workers must calculate benefits on the basis of the last remuneration actually received prior to unemployment and may not apply to the remuneration on which the calculation of those benefits is based, ceilings in force in the State of employment.	F	1.10.1992	C-201/91 (Grisvard-Kreitz)	1992, I-5009

Art. 71(1)(a)(ii) and (b) **Art. 1(b)**	**Art. 71(1)(a)(ii) of the Reg. must be interpreted as meaning that a wholly unemployed frontier worker who comes within the scope of that provision may claim benefits only from the MS in which he resides even though he fulfils the conditions for entitlement to benefits laid down by the leg. of the MS in which he was last employed.** **A worker who is wholly unemployed and who, although he satisfies the criteria laid down in Art. 1(b) of the Reg., has maintained in the MS in which he was last employed personal and business links of such a nature as to give him a better chance of finding new employment there, must be regarded as a 'worker other than a frontier worker' and therefore comes within the scope of Art. 71(1)(b). It is for the national court alone to determine whether a worker is in that position.**	D	12.6.1986	1/85 (Miethe)	1986, 1837
Art. 71(1)(b)	**Art. 71(1)(b) of the Reg. offers the worker a choice. He may apply to the unemployment benefit scheme in the State in which he was last employed, or claim benefit in the State where he resides. In the case of a wholly unemployed worker who elects to be governed by the leg. of the State where he resides that choice is made by the worker making himself available to the employment office of the State from which he is claiming the benefits. The worker may not, however, either aggregate the unemployment benefit from both States or, if he has made himself available only to the employment office in the territory of the MS where he resides, claim unemployment benefits from the State in which he was last employed.**	F	27.5.1982	227/81 (Aubin)	1982, 1991
Art. 71(1)(b)(ii) **Arts 1, 4(1)(g)**	**A wholly unemployed worker who, in the course of his last employment, was employed in a MS other than that of his residence by an undertaking established in the latter State and who, in respect of that activity, was subject to the leg. of the State of employment may, by virtue of Art. 71(1)(b)(ii) of the Reg., claim unemployment benefits under the provisions of the national leg. of the State where he resides and to whose employment services he makes himself available for work.**	NL	15.12.1976	39/76 (Mouthaan)	1976, 1901
Art. 71(1)(b)(ii)	**The concept of the MS in which the worker resides, appearing in Art. 71(1)(b)(ii) of the Reg., must be limited to the State where the worker, although occupied in another MS, continues habitually to reside and where the habitual centre of his interests is also situated. The addition of the words 'or who returns to that territory' implies merely that the concept of residence in a State does not necessarily exclude non-habitual residence in another MS. For the purposes of applying Art. 71(1)(b)(ii), account should be taken of the length and continuity of residence before the person concerned moved, the length and purpose of his absence, the nature of the occupation found in the other MS and the intention of the person concerned as it appears from all the circumstances.**	B	17.2.1977	76/76 (Di Paolo)	1977, 315

Art. 71(1)(b)(ii) **Art. 1(b)** **Art. 71(1)(a)(ii)**	**The field of application *ratione personae* of Art. 71(1)(b)(ii) of the Reg. is not limited to the categories of workers referred to in Decision No 94 of the Administrative Commission on Social Security for Migrant Workers. It applies, in particular, to a worker who, in the course of his last employment, transfers his residence to another MS for family reasons and who, after that transfer, no longer returns to the State of employment to pursue an occupation there. The possibility of receiving unemployment benefits in the State of residence rather than the State of employment under this provision is justified for certain categories of workers with close ties, in particular of a personal and vocational nature, with the country where they have settled and habitually reside and who must, as a result, be accorded the best conditions for obtaining new employment.**	D	22.9.1988	236/87 (Bergemann)	1988, 5125
Art. 71(1)(b)(ii)	**Art. 71(1)(b)(ii) of the Reg. is intended to guarantee unemployment benefits, under the most favourable conditions for seeking new employment, to a worker, other than a frontier worker, who is wholly unemployed and who makes himself available for work to the employment services in the territory of the MS in which he resides, or who returns to that territory, although he was subject, by reason of his last employment, to the leg. of another MS (see judgment in Case 236/87 Bergemann). For the purposes of determining whether a MS is the State of residence of a worker in spite of the fact that the latter is employed in another MS, it is necessary to take into account the length and continuity of the residence before the person concerned moved to another MS, the length (considered in the light of the facts of the particular case) and purpose of his absence, the nature of the work found in the other MS and the intention of the person concerned as it appears from all the circumstances (see judgment in Case 76/76 Di Paolo).** **In the case where a worker accepts employment in another MS for a period of two academic years, the fact that he obtains that employment under a university exchange scheme, that such a scheme normally limits the length of such employment at the outset and the work of the person concerned is interrupted every three months by long holiday periods which he spends in accommodation he retained in his State of origin are circumstances which may be taken into account by national courts for the purpose of deciding whether a worker comes within the above-mentioned provision.**	D	13.11.1990	C-216/89 (Reibold)	1990, I-4163

Art. 71(1)(b)(ii) **Arts 12, 67, 69** **Reg. 574/72** **Art. 84(2)**	**An employed person, other than a frontier worker, who is wholly unemployed and residing in the territory of a MS other than the competent one during his last employment does not lose entitlement to the unemployment benefits referred to by Art. 71(b)(ii) of the Reg. in accordance with the leg. of the MS in which he resides or to which he returns, by virtue of the fact that he has previously received unemployment insurance benefits from the institution of the MS to whose leg. he was last subject.** **The prohibition of overlapping benefits laid down by Art. 12(1) of the Reg. applies in the context of Art. 71(1)(b)(ii) and of Art. 67 of the same Reg.** **The competent institution of a MS under whose leg. the acquisition and duration of a right to unemployment benefit are contingent on the completion of insurance periods must, in a situation under Art. 71(1)(b)(ii) and Art. 67 of the Reg., in accordance with the first sentence of Art. 12(1) thereof, take account, for the calculation of unemployment benefit entitlement, of the periods of insurance completed under the leg. to which the unemployed person was last subject. However, it must deduct from the period of unemployment benefit entitlement acquired the days for which benefits were received under the leg. in question.** **Receipt of benefits under the leg. of the MS in which the unemployed person resides or to which he returns may be suspended, pursuant to the third sentence of Art. 71(1)(b)(ii) of the Reg. only in so far as the conditions laid down by Art. 69 of the above-mentioned Reg. have actually been fulfilled and the person concerned consequently receives benefits in the MS to whose leg. he was last subject.** **In the event of suspension, pursuant to the third sentence of Art. 71(1)(b)(ii) of the Reg., of receipt of benefits under the leg. of the State in which the unemployed person resides, the competent institution of that MS must deduct from the benefits which it pays the benefits which the unemployed person actually received in the MS to whose leg. he was last subject. The period during which the unemployed person actually received unemployment benefits under the leg. of the latter State must be deducted from the period of entitlement to benefits under the leg. of the State of residence.**	D	8.7.1992	C-102/91 (Knoch)	1992, I-4341

Chapter 7. Family benefits

(Arts 72 to 76)

Chapter 7 EC Treaty Arts 48 to 51	Neither Reg. 1408/71 nor Art. 48 of the Treaty prevents family allowances from being withdrawn pursuant to national leg. on the grounds that a child is pursuing its studies in another MS, where the parents of the child concerned are nationals of a non-member country or are not employed persons.	F	5.7.1984	238/83 (Meade)	1984, 2631
Chapter 7 Arts 13(2)((a), 73(1) Reg. 574/72 Art. 10(1)	A rule designed to prevent the overlapping of family allowances is applicable only to the extent to which it does not without cause deprive those concerned of the benefit of an entitlement to benefits conferred on them by the leg. of a MS.	D	19.2.1981	104/80 (BECk)	1981, 503
Art. 73 Art. 76 Reg. 574/72 Art. 10(1) EC Treaty Art. 177	The provision for suspension contained in the first sentence of Art. 10(1)(a) of Reg. 574/72 must be interpreted as meaning that it applies whenever the institution of another MS has in fact granted family benefits to a worker in respect of the same child, in pursuance of Art. 73 of Reg. 1408/71, without its being necessary to examine whether all the conditions for the granting of those benefits are satisfied under the leg. of that other MS.	UK	3.2.1983	149/82 (Robards)	1983, 171
Art. 73 Art. 76	There is no suspension of the entitlement to family allowances payable in pursuance of Art. 73 in the country of employment of one of the parents when the other parent resides with the children in another MS and pursues there a professional or trade activity but does not receive family allowances for the children, the reason being that not all the conditions laid down by the leg. of that MS for the actual receipt of such allowances are satisfied.	D	13.11.1984	191/83 (Salzano)	1984, 3741
Art. 73 Art. 76	There is no suspension under Art. 76 of entitlement to family allowances payable in pursuance of Art. 73 of that Reg. in the MS of employment of one of the parents when the other parent resides with the children in another MS and pursues there a professional or trade activity but does not receive family allowances for the children on the ground that not all the conditions laid down by the leg. of that MS for the receipt of such allowances are satisfied. Entitlement to family allowances payable to one of the parents in the MS of employment under Art. 73 of the said Reg. is suspended pursuant to Art. 76 only up to the amount of allowances of the same kind actually paid in the MS in whose territory the members of the family reside. Where the amount of family allowances actually received in the MS of residence is less than the allowances provided for by the leg. of the other MS the worker is entitled to claim from the competent institution of the latter MS additional allowances equal to the difference between the two amounts.	D	23.4.1986	153/84 (Ferraioli)	1986, 1401

Art. 73 Reg. 574/72 Art. 10(1)(a)	**The rule against overlapping payments laid down in the first sentence of Art. 10(1)(a) of Reg. 574/72 applies where family benefits or family allowances are due, in pursuance of Art. 73 of Reg. 1408/71, in respect of a child who, as a member of the family of one of the recipients of such benefits or allowances, is a person covered by the Community leg. on soc. sec. for employed persons, without there being any need to ascertain whether the other recipient who is also entitled to such benefits in respect of the same child is also covered by that leg.** **Where a family benefit is due under national leg. alone, irrespective of the children's place of residence and without it being necessary to invoke Art. 73 in order to become entitled to the benefit, that benefit cannot be deemed to be due in pursuance of Art. 73, and the first sentence of Art. 10(1)(a) of Reg. 574/72 does not apply.**	UK	9.7.1987	377/85 (Burchell)	1987, 3329
Art. 73 Reg. 574/72 Art. 10	**The exercise by a person having the care of children, and, in particular, by the spouse of the person entitled in pursuance of Art. 73 of Reg. 1408/71 of a professional or trade activity in the MS of residence of the children suspends, under Art. 10 of Reg. 574/72 the right to allowances in pursuance of Art. 73 of Reg. 1408/71 up to the amount of the allowances of the same kind actually paid by the State of residence, irrespective of who is designated as directly entitled to the family allowances by the leg. of the State of residence.**	UK	9.12.1992	C-119/91 (McMenamin)	1992, I-6393
Art. 73 Art. 76	**Pursuit of a professional or trade activity in the State in whose territory the members of the family are residing is not a sufficient condition for the suspension of the entitlement conferred by Art. 73 since it is necessary in addition that the family benefits should be 'payable' under the leg. of that MS. Consequently the suspension, under Art. 76 of the Reg., of the entitlement to family benefits or allowances in pursuance of Art. 73 of that Reg. is not applicable when the father works abroad in a MS whilst the mother is employed in the country in which the other members of the family reside and has not acquired under the leg. of the said country of residence a right to family allowances either because only the father is acknowledged to have the status of head of household or because the conditions for awarding to the mother the right to payment of allowances have not been fulfilled.**	B	20.4.1978	134/77 (Regazzoni)	1978, 963
Art. 73 Art. 4(1)(h)	**Where an employed person is subject to the leg. of a MS and lives with his family in another MS, his spouse who has never been resident or employed in the State in which the worker is employed may rely on Art. 73 in order to claim a derived right to receive family benefits for the members of the worker's family from the competent institution of that State, provided that the worker fulfils the conditions laid down in Art 73. and provided also that under national leg. the family benefits concerned are provided for family members.**	UK	16.7.1992	C-78/91 (Hughes)	1992, I-4839

Art. 73 **Art. 13(2)(a)** EC Treaty Art. 169	**Art. 13(2)(a) of the Reg., which is designed to resolve conflicts of leg. which may arise where, over the same period, the place of residence and the place of employment are not situated in the same MS, does not apply in the case of an employed person who, after definitively ceasing all occupational activity, receives an early-retirement pension and resides in a MS other than the one in which he was last employed. For that reason Art. 73 of the Reg. is also not applicable to such a person, with the result that the residence conditions governing the grant of family benefits contained in the leg. of the MS in which he was last employed may be relied on as against him, and the fact that he continued to be compulsory insured under one of the branches of the national soc. sec. scheme has no effect on this situation.**	NL	28.11.1991	C-198/90 (Co v Netherlands)	1991, I-5799
Art. 73 **Art. 76**	**Art. 76 of the Reg. must be interpreted as meaning that, where the worker is engaging simultaneously in a secondary activity as a self-employed person in the MS in which his family resides and in an activity as an employed person in the territory of another MS, the right to family allowances payable by the MS of employment under Art. 73 of that Reg. is suspended only up to the amount of allowances of the same kind actually paid in the MS in whose territory the worker's family resides. If the amount of the family allowances actually received in the MS of residence is lower than the amount of the allowances provided for under the leg. of the other MS, the worker is entitled to a supplementary allowance equal to the difference between the two amounts, the cost of which is to be borne by the competent institution in the other MS.**	B	27.6.1989	24/88 (Georges)	1989, 1905
Art. 73 **Art. 76**	**Art. 73 of the Reg. is designed to make it easier for migrant workers to receive family allowances in the State in which they are employed, when their family has not moved with them. It is complemented by Art. 76, whose sole purpose is to restrict the possibility of overlapping entitlement to benefits. That provision, as amended by Reg. 2001/83, must be interpreted as meaning that entitlement to family benefits or allowances under Art. 73 in the MS in which one of the parents is employed is not to be suspended where the benefits or allowances are not payable or are no longer payable in the MS in whose territory the members of the family reside solely because they have not been applied for or re-applied for.**	D	4.7.1990	C-117/89 (Kracht)	1990, I-2781

Art. 73 **Art. 1(u)(ii)** EC Treaty Art. 51	**Since it relates only to employed persons, Art. 51 of the Treaty does not require a MS on whose territory a self-employed person works to pay family allowances within the meaning of Art. 1(u)(ii) of the Reg. if the members of the person's family reside in another MS. However, with effect from 15 January 1986, in accordance with Art. 73 of the Reg. as amended by Reg. 3427/89, a self-employed person subject to the leg. of a MS is entitled, in respect of members of his family who are residing in another MS to the family benefits provided for by the leg. of the former State, as if they were residing in that State.**	F	5.12.1989	114/88 (Delbar)	1989, 4067
Art. 73 **Arts 2, 77(2)(a) and (b)(i), 78(2)**	**It follows from Art. 73 of the Reg. that so long as a worker remains subject to the social leg. of a MS he is entitled to the family benefits provided for by the leg. of the first MS for members of his family residing in the territory of another MS, as if they were residing in the territory of the first State.**	B	14.3.1989	1/88 (Baldi)	1989, 667
Art. 73 **Art. 1(u)(i)**	**The purpose of Art. 73 of the Reg. is to prevent a MS from being able to refuse to grant family benefits on account of the fact that a member of the worker's family resides in a MS other than that providing the benefits. Such a refusal could deter Community workers from exercising their right to freedom of movement and would therefore constitute an obstacle to that freedom. It follows that a condition of entitlement to certain family benefits whereby a worker's child must be registered as unemployed with the employment office of the MS providing the benefits, a condition which can be fulfilled only if the child resides within the territory of that State, comes within the scope of Art. 73 and must therefore be considered to be fulfilled where the child is registered as unemployed with the employment office of the MS in which he resides.** **[The grounds of this judgment do not differ from those of the judgment ruling on the interpretation of Art. 74 of Reg. 1408/71 delivered the same date in Case C-12/89 Gatto.]**	D	22.2.1990	228/88 (Bronzino)	1990, I-531
Art. 73 **Art. 12** EC Treaty Art. 51	**In accordance with the aim of Art. 51 of the Treaty, to which reference should be made when the Community rules do not provide for a specific situation, Arts 12 and 73 of Reg. 1408/71 must be interpreted as meaning that a worker's right to family benefits in the MS of employment in respect of members of his family residing in a second MS, when family benefits are already being paid in respect of the same members of the family to his or her spouse in a third MS in which the spouse is employed, may be exercised where the amount of family benefits actually received in the third MS is lower than the amount of benefit in the first MS, in which case the worker is entitled to an additional benefit, payable by the competent institution of the first State, equal to the difference between the two amounts.**	B	14.12.1989	168/88 (Dammer)	1989, 4553

Art. 73 EC Treaty Arts 48, 51	The Court's declaration that Art. 73(2) of the Reg. is invalid – attributable to the fact that that provision, which creates a system applicable specifically to workers subject to the leg. of one of the MS, does not satisfy the requirement of equal treatment laid down in Art. 48 of the Treaty and therefore can have no place in the context of the coordination of national leg. prescribed by Art. 51 of the Treaty with a view to promoting the free movement of workers – means that until such time as the Council adopts new rules which are in conformity with Art. 51 the system for the payment of family benefits laid down in Art. 73(1) of the aforesaid Reg. is of general application.	F	2.3.1989	359/87 (Pinna II)	1989, 585
Art. 73(1) Art. 1(a)(i) and (ii) EC Treaty Art. 52	A self-employed person who, in the event of his involuntarily ceasing to work, is entitled to unemployment benefits by virtue of contributions paid or credited as an employed person is not an 'employed person' for the purpose of Art. 73(1) of the Reg. as amended by Reg. 1390/81, read in conjunction with Art. 1(a)(i) and (ii) of that Reg.	UK	4.10.1991	C-15/90 (Middleburgh)	1991, I-4655
Art. 73(1) Art. 13(2)(a) Chapter 7 Reg. 574/72 Art. 10(1)(a)	By virtue of Arts 73 and 13(2)(a) of the Reg. taken together a frontier worker residing with his wife and children in a MS other than the State of employment acquires an entitlement under Community law to family allowances in the latter State.	D	19.2.1981	104/80 (BECk)	1981, 503
Art. 73(1) Art. 17	Art. 73(1) of the Reg. creates, in favour of a worker who is subject to the leg. of a MS other than the State in whose territory the members of his family reside, a real entitlement to the family allowances provided for by the applicable leg. That entitlement cannot be defeated by the application of a provision of that leg. by virtue of which persons not residing in the territory of the MS in question are not to receive family allowances. In connection with Art. 73 it is irrelevant whether the leg. to which the worker is subject was determined by application of Arts 13 to 16 of the Reg. or on the basis of an agreement concluded pursuant to Art. 17 of that Reg.	NL	17.5.1984	101/83 (Brusse)	1984, 2223
Art. 73(1) and (2) Art. 99 EC Treaty Art. 51 Act of Accession of Spain 1985 Art. 60	The uniform solution for all the MS provided for in Art. 99 of Reg. 1408/71, in the version enacted in Reg. 2001/83, entered into force on 15 January 1986 following the judgment of the Court of the same date in which Art. 73(2) of that Reg. was declared to be void *ab initio*; that declaration of invalidity entailed that, in the absence of new rules in conformity with Art. 51 of the Treaty, the system for the payment of family benefits laid down in Art. 73(1) was of general application. The entry into force of that uniform solution meant that, under Art. 60 of the Act of Accession of Spain, the application of Art. 73(1) of Reg. 1408/71 could, with effect from 15 January 1986, be relied on by Spanish workers employed in a MS other than Spain the members of whose families reside in Spain.	D	13.11.1990	C-99/89 (Yanez-Campoy)	1990, I-4097

Art. 73(2) EC Treaty Arts 48 to 51, 174, 177	**The principle of equal treatment prohibits not only overt discrimination based on nationality but all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result.** **That is the case when the criterion of the MS in which the members of the family reside is used by the Community rules in order to determine the leg. applicable to the family benefits of a migrant worker. Even though the leg. of a MS employs the same criterion to determine the entitlement to family benefits of a national of that State employed in its territory, that criterion is by no means equally important for that category of worker, since the problem of members of the family residing outside the MS of employment arises essentially for migrant workers. Consequently, the criterion is not of such a nature as to secure the equal treatment laid down by Art. 48 of the Treaty and therefore may not be employed within the context of the coordination of national leg. which is laid down in Art. 51 of the Treaty with a view to promoting the free movement of workers within the Community in accordance with Art. 48.** **It follows that Art. 73(2) of Reg. 1408/71 is invalid in so far as it precludes the award to employed persons subject to French leg. of French family benefits for members of their family residing in the territory of another MS.**	F	15.1.1986	41/84 (Pinna I)	1986, 1
Art. 74 Art. 1(u)(i)	**The purpose of Art. 74 of the Reg. is to prevent a MS from being able to refuse to grant family benefits on account of the fact that a member of the worker's family resides in a MS other than that providing the benefits. Such a refusal could deter Community workers from exercising their right to freedom of movement and would therefore constitute an obstacle to that freedom. It follows that a condition of entitlement to certain family benefits whereby a worker's child must be registered as unemployed with the employment office of that MS providing the benefits, a condition which can be fulfilled only if the child resides within the territory of that State, comes within the scope of Art. 74 and must therefore be considered to be fulfilled where the child is registered as unemployed with the employment office of the MS in which he resides.** **[The grounds of this judgment do not differ from those of the judgment ruling on the interpretation of Art. 73 of Reg. 1408/71, delivered the same date in Case C-228/88 Bronzino.]**	D	22.2.1990	C-12/89 (Gatto)	1990, I-557

Art. 76 **Art. 73** Reg. 574/72 Art. 10(1)(a) EC Treaty Art. 177	**The second sentence of Art. 10(1)(a) of Reg. 574/72, like Art. 76 of Reg. 1408/71, seeks to give priority, in a case of overlapping family benefits, to the benefits of the MS in the territory of which the children reside and in which one of the recipients in question pursues a professional or trade activity. The problem of overlapping benefits which the provision in question is intended to resolve is not to be answered differently according to whether or not the marriage bond still exists between the two parents who might, depending on the case, be entitled to benefits in respect of the same child. In view of the purpose of that provision, it should not be interpreted in a restrictive manner but as meaning that it applies to a divorced spouse.**	UK	3.2.1983	149/82 (Robards)	1983, 171
Art. 76 **Art. 73**	**There is no suspension of the entitlement to family allowances payable in pursuance of Art. 73 of the Reg. in the country of employment of one of the parents when the other parent resides with the children in another MS and pursues there a professional or trade activity but does not receive family allowances for the children, the reason being that not all the conditions laid down by the leg. of that MS for the actual receipt of such allowances are satisfied.**	D	13.11.1984	191/83 (Salzano)	1984, 3741
Art. 76 **Art. 73**	**There is no suspension under Art. 76 of the Reg. of entitlement to family allowances payable in pursuance of Art. 73 of that Reg. in the MS of employment of one of the parents when the other parent resides with the children in another MS and pursues there a professional or trade activity but does not receive family allowances for the children on the grounds that not all the conditions laid down by the leg. of that MS for the receipt of such allowances are satisfied.** **Entitlement to family allowances payable to one of the parents in the MS of employment under Art. 73 of the said Reg. is suspended pursuant to Art. 76 only up to the amount of allowances of the same kind actually paid in the MS in whose territory the members of the family reside.Where the amount of family allowances actually received in the MS of residence is less than the allowances provided for by the leg. of the other MS the worker is entitled to claim from the competent institution of the latter MS additional allowances equal to the difference between the two amounts.**	D	23.4.1986	153/84 (Ferraioli)	1986, 1401

Art. 76 **Art. 73**	**Art. 76 of the Reg. must be interpreted as meaning that, where the worker is engaging simultaneously in a secondary activity as a self-employed person in the MS in which his family resides and in an activity as an employed person in the territory of another MS, the right to family allowances payable by the MS of employment under Art. 73 of that Reg. is suspended only up to the amount of allowances of the same kind actually paid in the MS in whose territory the worker's family resides. If the amount of the family allowances actually received in the MS of residence is lower than the amount of the allowances provided for under the leg. of the other MS, the worker is entitled to a supplementary allowance equal to the difference between the two amounts, the cost of which is to be borne by the competent institution in the other MS.**	B	27.6.1989	24/88 (Georges)	1989, 1905
Art. 76 **Art. 73**	**Pursuit of a professional or trade activity in the State in whose territory the members of the family are residing is not a sufficient condition for the suspension of the entitlement conferred by Art. 73 since it is necessary in addition that the family benefits should be 'payable' under the leg. of that MS.** **Consequently the suspension, under Art. 76 of the Reg., of the entitlement to family benefits or allowances in pursuance of Art. 73 of that Reg. is not applicable when the father works abroad in a MS whilst the mother is employed in the country in which the other members of the family reside and has not acquired under the leg. of the said country of residence a right to family allowances either because only the father is acknowledged to have the status of head of household or because the conditions for awarding to the mother the right to payment of allowances have not been fulfilled.**	B	20.4.1978	134/77 (Regazzoni)	1978, 963
Art. 76 **Art. 73**	**Art. 73 of the Reg. is designed to make it easier for migrant workers to receive family allowances in the State in which they are employed, when their family has not moved with them. It is complemented by Art. 76, whose sole purpose is to restrict the possibility of overlapping entitlement to benefits. That provision, as amended by Reg. 2001/83, must be interpreted as meaning that entitlement to family benefits or allowances under Art. 73 in the MS in which one of the parents is employed is not to be suspended where the benefits or allowances are not payable or are no longer payable in the MS in whose territory the members of the family reside solely because they have not been applied for or re-applied for.**	D	4.7.1990	C-117/89 (Kracht)	1990, I-2781

Chapter 8. Benefits for dependent children of pensioners and for orphans

(Arts 77 to 79)

Art. 77 **Art. 78** EC Treaty Art. 51	**Arts 77 and 78 of the Reg. must be interpreted as meaning that, where a deceased father has been subject to the leg. of more than one MS, entitlement to an orphan's pension acquired under the leg. of the MS which is competent according to those provisions does not extinguish entitlement to higher orphans' benefits under the leg. of another MS alone. Where the amount of the benefits actually received in the first MS is less than that of the benefits provided for by the leg. of the other MS alone, the orphan is entitled to a supplement from the competent institution of the latter State equal to the difference between the two amounts.**	D	24.11.1983	320/82 (D'Amario)	**1983, 3811**
Art. 77 EC Treaty Arts 7, 48, 51	**Art. 77 of the Reg. must be interpreted as giving a person entitled to family benefits who is a national of a MS and has dependent children but resides in another MS entitlement to payment by the soc. sec. institutions of his country of origin only of 'family allowances', as defined in Art. 1(u)(ii) of the Reg. to the exclusion of other family benefits such as the *rentrée scolaire* (school expenses) allowance and the *salaire unique* (single wage) allowance provided for by French leg.** **Art. 51 of the Treaty provides for the coordination, not the harmonization, of the leg. of the MS and leaves in being differences between the MS soc. sec. systems and, consequently, in the rights of persons working in the MS. It follows that substantive and procedural differences between the soc. sec. systems of the MS, and hence in the rights of the persons working in the MS, are unaffected by Art. 51 of the Treaty. However, the Community rules on soc. sec. must refrain from adding to the disparities which already stem from the absence of harmonization of national leg., and the principle of equal treatment laid down in Arts 7 and 48 of the Treaty prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result.** **Art. 77 of the Reg., under which the benefits for dependent children which a MS must pay to its nationals who are in receipt of a pension and reside in another MS are restricted to family allowances, is not contrary to those principles. It is a rule of general scope which applies indistinctly to all nationals of the MS and is based on objective criteria concerning the nature of benefits of that kind and the conditions for granting them; it does not in itself lead to discrimination.**	F	27.9.1988	313/86 (Lenoir)	**1988, 5391**

Art. 77 **Arts 5, 78, 81(a)** EC Treaty Art. 5 **(continued below)**	**Where, in the cases referred to in Art. 77(2)(b)(i) and Art. 78(2)(b)(i), the amount of the benefits paid by the MS of residence is less than the amount of the benefits payable by another MS, the pensioner, or the orphan of the deceased worker, is entitled to receive from the competent institution of the latter MS a benefit supplement equal to the difference between those two amounts, even where under the leg. of that State the grant of the benefits is subject to the condition that both the claimant and the qualifying child reside within its national territory.** **The fact that certain benefits provided for under a national law or national rules for the dependent children of pensioners were not mentioned in the declaration referred to in Art. 5 of the Reg. does not in itself establish that those benefits do not constitute benefits for the purposes of Art. 77 of that Reg.; however, where such benefits were mentioned in that declaration, they are to be regarded as benefits for the purposes of Art. 77 of the Reg.** **Recognition of entitlement to the benefit supplement for dependent children of pensioners seeks to promote freedom of movement for workers by ensuring that those concerned obtain the amount of benefits which would have been granted to them if they had continued to reside in the MS granting the most favourable benefits; that entitlement exists even where the pensioner becomes entitled to a pension under the leg. of the MS granting more favourable benefits after he transferred his residence to another MS which is responsible for payment of benefits under Art. 77(2) of the Reg.** **The benefit supplement for dependent children of pensioners must be granted having regard to all the dependent children of the pensioner, including those born after he transferred his residence to the MS which grants the less favourable benefits.** **Where the leg. of the MS responsible for the payment of the benefits referred to in Art. 77 or Art. 78 of the Reg. or a benefit supplement provides for a reduction in the amount of such benefits according to the net annual income of the recipient and the members of his family, the said Arts 77 and 78 authorize such a reduction where the recipient resides in a MS other than the MS responsible for payment. In order to determine in such a case the net annual income of the recipient and the members of his family and to calculate the amount of benefits or the benefit supplement to which the recipient is entitled, the competent institution of the MS responsible for payment must apply the relevant provisions of the leg. of that State as if the recipient and the members of his family residing in the same State as him resided in the MS responsible for payment and received in that State the income which they receive in the MS of residence, and, to this end, the competent institution is to rely on the information and supporting evidence provided at its request by the recipient and by the competent authorities of the MS of residence.**	D	11.6.1991	C-251/89 (Athanasopoulos)	**1991, I-2797**

	However, the competent institution of the MS responsible for payment may not request the person concerned to provide information and supporting evidence other than could be provided by a reasonably diligent person residing in the same MS; nor, where the person concerned does not provide the information or supporting evidence requested, may it impose a penalty on him which differs from that imposed on the recipients of the same benefits residing in the territory of the MS responsible for payment who fail to provide the same or equivalent information or supporting evidence.				
Art. 77 Arts 1(a), 2(1)	Art. 77 of the Reg., which governs family allowances for old-age pensioners and increases in or supplements to such pensions in respect of their dependent children must be interpreted to mean that the expression 'pensions for old-age' does not cover old-age benefits granted in a MS to a person who was insured there under a soc. sec. scheme applicable to self-employed persons if such benefits are based on the leg. of that MS alone without the application of the provisions of the said Reg.	UK	31.3.1981	99/80 (Galinsky)	1981, 941
Art. 77(2)(a) Arts 1(j), 4	A pension under the leg. of one MS only within the meaning of Art. 77(2)(a) of the Reg. does not include a pension granted under a special scheme for civil servants or persons treated as such.	NL	8.3.1979	129/78 (Lohmann)	1979, 853
Art. 77(2)(a) Reg. 574/72 Art. 10(1)(b)	The expression 'diens echtgenote' (whose wife) in Art. 10(1)(b) of Reg. 574/72 includes a married man who is engaged in a professional or trade activity in a MS and whose wife is entitled under the provisions of Art. 77(2)(a) of Reg. 1408/71 to family allowances under the leg. of another MS.	NL	12.7.1979	9/79 (Worsdorfer, born Koschniske)	1979, 2717
Art. 77(2)(a) and (b)(i) Arts 2, 73, 78(2)	Where, in the cases referred to in Art. 77(2)(a) and Art. 77(2)(b)(i) of the Reg., the amount of the benefits paid by the State of residence is lower than that of the benefits granted by the other State which is responsible for payment, the worker retains the right to the higher amount and is entitled to receive an additional benefit paid by the competent soc. sec. institution of that State, equal to the difference between the amount of the benefits paid by the State of residence and that of the benefits payable in the other State which is responsible for payment to persons receiving an invalidity pension, together with any supplement provided for by the leg. of the latter State in respect of the children of such pensioners.	B	14.3.1989	1/88 (Baldi)	1989, 667
Art. 77(2)(b)(i) EC Treaty Art. 51	Where, in the case referred to in Art. 77(2)(b)(i) of the Reg., the amount of benefits paid by the State of residence is lower than that of the benefits paid by another MS which is responsible for payment, the worker retains the right to the higher amount of benefits and is entitled to receive an additional benefit, paid by the competent social security institution of that State, equal to the difference between the two amounts.	B	12.7.1984	242/83 (Patteri)	1984, 3171

Art. 77(2)(b)(i) **Reg. 1408/71 in general**	**Art. 77(2)(b)(i) of the Reg. must be interpreted as meaning that entitlement to family benefits from the State in whose territory the recipient of an invalidity pension resides does not take away the right to higher benefits awarded previously by another MS. If the amount of family benefits actually received by the worker in the MS in which he resides is less than the amount of the benefits provided for by the leg. of the other MS, he is entitled to a supplement to the benefits from the competent institution of the latter State equal to the difference between the two amounts.**	B	12.6.1980	733/79 (Laterza)	1980, 1915
Arts 77 to 79 **Art. 45** EC Treaty Arts 48 to 51, 177	**The fact that a migrant worker receives a pension as a result of the application of the provisions of Art. 45 of the Reg. on the taking into account of periods of insurance or residence completed under the leg. of several MS, and not by virtue of national leg. alone, cannot, without jeopardizing the attainment of the objectives set out in Arts 48 to 51 of the Treaty, prevent him from receiving allowances available to pensioners under national law. Consequently, Arts 77 to 79 of the Reg., which cover only benefits for dependent children of pensioners and for orphans, cannot be interpreted as precluding a MS legislation which provides for family allowances for a pensioner's dependent spouse from applying to a person in receipt of an old-age pension under the Reg.**	I	28.11.1991	C-186/90 (Durighello)	1991, I-5773
Art. 78 Art. 77 EC Treaty Art. 51	**Arts 77 and 78 of the Reg. must be interpreted as meaning that, where a deceased father has been subject to the leg. of more than one MS, entitlement to an orphan's pension acquired under the leg. of the MS which is competent according to those provisions does not extinguish entitlement to higher orphans' benefits under the leg. of another MS alone. Where the amount of the benefits actually received in the first MS is less than that of the benefits provided for by the leg. of the other MS alone, the orphan is entitled to a supplement from the competent institution of the latter State equal to the difference between the two amounts.**	D	24.11.1983	320/82 (D'Amario)	1983, 3811
Art. 78 Arts 44(3), 48(1), 79	**Art. 44(3) of the Reg. must be interpreted as meaning that orphans' pensions are governed solely by the provisions of Chapter 8 thereof, supplemented, if necessary, by the provisions of the other chapters to which Chapter 8 expressly refers. It follows, in particular, that the provisions of Art. 48(1), which provides that in certain circumstances the institution of a MS is not bound to award benefits if the periods of insurance or residence completed by the insured person there amount to less than one year, do not apply as regards orphans' pensions.**	D	14.12.1988	269/87 (Ventura)	1988, 6411

Art. 78 **Arts 5, 77, 81(a)** EC Treaty Art. 5	**Where, in the cases referred to in Art. 77(2)(b)(i) and Art. 78(2)(b)(i) of the Reg., the amount of the benefits paid by the MS of residence is less than the amount of the benefits payable by another MS, the pensioner, or the orphan of the deceased worker, is entitled to receive from the competent institution of the latter MS a benefit supplement equal to the difference between those two amounts, even where under the leg. of that State the grant of the benefits is subject to the condition that both the claimant and the qualifying child reside within its national territory.** **Where the leg. of the MS responsible for the payment of the benefits referred to in Art. 77 or Art. 78 of the Reg. or a benefit supplement provides for a reduction in the amount of such benefits according to the net annual income of the recipient and the members of his family, the said Arts 77 and 78 authorize such a reduction where the recipient resides in a MS other than the MS responsible for payment. In order to determine in such a case the net annual income of the recipient and the members of his family and to calculate the amount of benefits or the benefit supplement to which the recipient is entitled, the competent institution of the MS responsible for payment must apply the relevant provisions of the leg. of that State as if the recipient and the members of his family residing in the same State as him resided in the MS responsible for payment and received in that State the income which they receive in the MS of residence, and, to this end, the competent institution is to rely on the information and supporting evidence provided at its request by the recipient and by the competent authorities of the MS of residence.** **However, the competent institution of the MS responsible for payment may not request the person concerned to provide information and supporting evidence other than could be provided by a reasonably diligent person residing in the same MS; nor, where the person concerned does not provide the information or supporting evidence requested, may it impose a penalty on him which differs from that imposed on the recipients of the same benefits residing in the territory of the MS responsible for payment who fail to provide the same or equivalent information or supporting evidence.**	D	11.6.1991	C-251/89 (Athanasopoulos)	1991, I-2797
Art. 78 **Arts 1(u)(ii), 2, 79(3)**	**The direct and sole recipient of the orphan's pension is the orphan himself and the pension, like other survivors' benefits, constitutes the projection in time of a prior occupation, pursuit of which ceased on the death of the worker.**	D	16.3.1978	115/77 (Laumann)	1978, 805

Art. 78	**Orphans' benefits within the meaning of Art. 78(1) of the Reg. must be construed as meaning any benefit which under the national scheme applicable is intended for the maintenance of the orphans, regardless of the nature or name of the benefit.** **Consequently, Art. 78(2)(b)(i) must be interpreted as meaning that for the calculation of a benefit supplement due under this provision the competent institution must take a family supplement into account which, having regard to the criteria laid down for its payment by the leg. of the MS where the orphan resides, constitutes a family allowance designed to contribute to the orphan's maintenance as well as the part of the overall survivor's pension provided to the surviving spouse of the migrant worker which under the same leg. is intended for the orphan's maintenance. On the other hand, the increase provided for by the leg. of the MS of residence to bring the level of the survivor's pension up to that of the statutory minimum pension applicable in that State is not taken into account by the competent institution for the purposes of this calculation where the migrant worker's surviving spouse is entitled to that increase, whether or not there are any dependent children and whether or not the latter are orphans.**	D	18.2.1993	C-218/91 (Gobbis)	1993, I-701
Art. 78(1) and (2)(b)(i)	**Art. 78 of the Reg. must be interpreted as meaning that, in calculating the benefit supplement payable where the amount of the benefits actually received in the MS of residence is less than that of the benefits which the orphan would be entitled to under the leg. of another MS, all the benefits intended for the orphan in the MS concerned must be taken into account, in so far as those benefits fall within the definition in paragraph 1 of that Art.**	D	19.3.1992	C-188/90 (Doriguzzi-Zordanin)	1992, I-2039
Art. 78(2) **Arts 2, 73, 77(2)(a) and (b)(i)**	**It is apparent from the terms of Art. 78(2) of the Reg. that that provision overrides the conditions concerning residence in national territory only as regards 'the orphan of a deceased worker'. Art. 2, which defines the persons to whom the Reg. applies, draws a clear distinction between workers themselves on the one hand and members of their families and their survivors on the other. The expression 'orphan of a deceased worker' cannot therefore be taken to cover the case of children who have become orphans as a result of the death of a member of a worker's family who was not himself a worker. It follows that Art. 78(2) covers only the case of an orphan whose deceased father or mother personally had the status of worker.**	B	14.3.1989	1/88 (Baldi)	1989, 667

Art. 78(2)(b)(i) **Reg. 1408/71 in general**	**Art. 78(2)(b)(i) of the Reg. must be interpreted as meaning that the entitlement to benefits payable by the State in whose territory the orphan to whom they have been awarded resides does not remove the entitlement to benefits greater in amount previously acquired under the leg. of another MS alone. Where the amount of benefits actually received in the MS of residence is less than that of the benefits provided for by the leg. of the other MS alone the orphan is entitled to supplementary benefits, payable by the competent institution of the latter State, equal to the difference between the two amounts.**	D	9.7.1980	807/79 (Gravina)	1980, 2205
Art. 79 **Arts 44(3), 48(1), 78**	**Art. 44(3) must be interpreted as meaning that orphans' pensions are governed solely by the provisions of Chapter 8, supplemented, if necessary, by the provisions of the other chapters to which Chapter 8 expressly refers. It follows, in particular, that the provisions of Art. 48(1), which provides that in certain circumstances the institution of a MS is not bound to award benefits if the periods of insurance or residence completed by the insured person there amount to less than one year, do not apply as regards orphans' pensions.**	D	14.12.1988	269/87 (Ventura)	1988, 6411
Art. 79(3)	**Under Art. 79(3), the suspension of the entitlement to family allowances in respect of the dependent children of a father who is in receipt of a pension under the leg. of a MS is not applicable if the mother has not actually become entitled to those same allowances under the leg. of another MS by virtue of her pursuit of a professional or trade activity, either because only the father is acknowledged to have the status of head of household or because the conditions for awarding to the mother the right to payment of the allowances have not been fulfilled. The Reg. on soc. sec. for migrant workers did not set up a common scheme of soc. sec., but allowed different schemes to exist, creating different claims on different institutions against which the claimant possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by Community law. The Community rules could not therefore, in the absence of an express exception consistent with the aims of the Treaty, be applied in such a way as to deprive a migrant worker or his dependants of the benefit of a part of the leg. of a MS.** **The rule in Art. 79(3), which is designed to prevent the overlapping of family allowances, is applicable only to the extent to which it does not, without cause, deprive the persons concerned of the benefit of a part of national leg. When the amount of the allowance of which payment is suspended in one MS is greater than that of the allowances received in another MS by virtue of the pursuit of a professional or trade activity, it is therefore appropriate that the rule against overlapping of benefits should be applied only partially and that the difference between these amounts should be granted in the form of a supplement.**	B	6.3.1979	100/78 (Rossi)	1979, 831

Art. 79(3) **Arts 1(u)(ii), 2, 78**	**The right to the benefits referred to in Art. 79(3) of the Reg. is to be suspended, pursuant to the provisions of that paragraph, in order to prevent duplication of benefits only so far as that right overlaps rights to benefits of the same kind acquired by virtue of the pursuit of a professional or trade activity.**	D	16.3.1978	115/77 (Laumann)	1978, 805

Title IV:

Administrative Commission on Social Security for Migrant Workers

(Arts 80 to 81)

Art. 81 EC Treaty Arts 51, 155, 173, 177	It follows both from Art. 155 of the Treaty and the judicial system created by the Treaty, and in particular by Arts 173 and 177 thereof, that a body such as the Administrative Commission may not be empowered by the Council to adopt acts having the force of law. Whilst a decision of the Administrative Commission may provide aid to soc. sec. institutions responsible for applying Community law in this field, it is not of such a nature as to require those institutions to use certain methods or adopt certain interpretations when they come to apply the Community rules. A decision of the Administrative Commission does not therefore bind national courts.	B	14.5.1981	98/80 (Romano)	1981, 1241
Art. 81(a) Arts 5, 77, 78 EC Treaty Art. 5	It is for the Administrative Commission on Social Security for Migrant Workers, pursuant to Art. 81(a) of the Reg., to draw up the list of institutions in the MS which are responsible for providing the competent institution in the MS responsible for payment of a benefit supplement under Arts 77 or 78 of that Reg. with the official information necessary for calculating that supplement referred to in Decision No 129 of the Administrative Commission. The competent institution of the MS from which a benefit supplement is claimed may, however, still apply to the Commission and to the authorities of the MS in which the claimant resides in order to ascertain the name of the institution in the latter MS which is competent to provide the official information referred to in Decision No 129.	D	11.6.1991	C-251/89 (Athanasopoulos)	1991, I-2797
Art. 81(d) Arts 4(1), 10(1)	The fact that the application of certain provisions of the Community leg. on soc. sec. may give rise to practical difficulties where the arrangements for the payment of certain categories of benefits have not been laid down cannot prejudice the rights which individuals derive from the principles of the social leg. of the Community. Furthermore the Administrative Commission on Social Security for Migrant Workers was specifically set up by Art. 81(d) of the Reg. to deal with any difficulties of that kind.	F	12.7.1990	236/88 (Co v France)	1990, I-3163

Title V:

Advisory Committee on Social Security for Migrant Workers

(Arts 82 to 83)

and

Title VI:

Miscellaneous provisions

(Arts 84 to 93)

Art. 84(4)	**Under Art. 84(4) of the Reg. the authorities, institutions and tribunals of the MS are bound, notwithstanding any provision of their national laws to a different or contrary effect, to accept all claims or other documents which relate to the implementation of the said Reg. and which have been drawn up in an official language of another MS and they are not allowed in this connexion to make any distinctions on grounds of nationality or residence between the persons concerned.** **It is impossible for the authority of Community law to vary from one MS to the other as a result of domestic laws, whatever their purpose, if the efficacy of that law and the necessary uniformity of its application in all MS and to all those persons covered by the provisions at issue are not to be jeopardized.** **In particular the general nature of the rule laid down in Art. 84(4) of the Reg. and its uniform application in all the MS would be called in question if it were open to the authorities, institutions and tribunals of those States to limit its scope by reference to criteria based on the nationality or residence of the persons concerned.**	B	6.12.1977	55/77 (Maris)	1977, 2327
Art. 84(4) **Art. 3** EC Treaty Arts 48, 51	**Arts 48 and 51(1) of the EC Treaty, and Reg. 1408/71 as amended and updated by Reg. 2001/83, and in particular Arts 3 and 84(4) thereof, do not apply to situations of which every element is confined within a single MS.**	B	22.9.1992	C-153/91 (Petit)	1992, I-4973
Art. 86 **Art. 1(a)** Reg. 574/72 Art. 8	**Art. 86 of the Reg. must be interpreted as meaning that where a claim, declaration or appeal is submitted to an authority, institution or court of a MS other than that under the leg. of which the benefit must be awarded, that authority, institution or court has no power to determine the admissibility of the claim, declaration or appeal in question. That power belongs exclusively to the authority, institution or court of the MS under the leg. of which the benefit must be awarded and to which the claim, declaration or appeal must in all circumstances be forwarded.**	UK	22.5.1980	143/79 (Walsh)	1980, 1639
Art. 86 Arts 39, 71 Reg. 574/72 Arts 35, 114	**It follows from Art. 86 of Reg. 1408/71 and from Art. 35 of Reg. 574/72 that when a claimant submits a claim for invalidity benefit to the institution of the State of residence, that institution is required to forward it to the institution of the competent MS, that is to say, the State whose.leg. was applicable at the time when incapacity for work followed by invalidity occurred. On the other hand, and in contrast to the system laid down with respect to other benefits, there is no provision in Reg. 1408/71 which requires the institutions of the State of residence to pay invalidity benefit to a claimant, even if the competent State is required to make reimbursement, subject to the application of Art. 114 of Reg. 574/72 in the case of a dispute between the relevant institutions. Community law, however, does not in any way prohibit the institution of the State of residence from assisting a claimant in the submission of a claim to the institution of the competent State.**	UK	27.1.1994	C-287/92 (Maitland Toosey)	1994, I-279

Art. 93 **Art. 1(j) and (n)**	**The term 'institution' in Art. 93 of the Reg. means, in respect of each MS, the body or authority responsible for administering all or part of the MS leg. relating to the branches or schemes of soc. sec. mentioned in that Reg.**	NL	15.3.1984	313/82 (Tiel Utrecht)	**1984, 1389**
Art. 93(1)	**Art. 93(1) of the Reg. must be interpreted as meaning that the conditions and extent of the right of recoupment which a soc. sec. institution within the meaning of that Reg. has against the party who has caused an injury in the territory of another MS, which has entailed the payment of soc. sec. benefits, are determined in accordance with the law of the MS to which that institution is subject. In particular, provisions such as paragraph 17(1) and paragraph 22(2) of the *Lov om Erstatningsansvar*, Law No 228 of 23 May 1984, as amended, do not exclude claims by institutions responsible for benefits in the other MS.**	DK	2.6.1994	C-428/92 (DAK)	**1994** **(not yet in the law reports)**

Title VII:

Transitional and final provisions

(Arts 94 to 100)

Art. 94(4) **Art. 2(1)**	**Art. 2(1) and Art. 94(2) of the Reg., read in conjunction with one another, are to be interpreted as guaranteeing that all insurance periods and all periods of employment or residence completed under the leg. of a MS before the entry into force of that Reg. shall be taken into consideration for the purpose of determining entitlement to benefits in accordance with its provisions, subject to the condition that the migrant worker was a national of one of the MS when the periods were completed.**	D	12.10.1978	10/78 (Belbouab)	1978, 1915
Art. 94(5) **Reg. 3** **Art. 42(5)** EC Treaty Art. 177	**Since the aim of Art. 94(5) of the Reg. is to give to a person to whom benefits were awarded under the old Reg. the right to request the review, in his favour, of such benefits, it must be interpreted as meaning that the competent institution of a MS is not entitled to substitute itself for an insured person with regard to the review of the rights which that person acquired before the Reg. came into force.**	B	13.10.1976	32/76 (Saieva)	1976, 1523
Art. 94(5) **Art. 100**	**The principle deriving from Art. 94(5) of the Reg. that the competent institution of a MS cannot on its own initiative, in the absence of any request from the insured person, carry out a review of the rights acquired by that person prior to the entry into force of that Reg., does not apply, by virtue of Art. 100 of the Reg., to situations which automatically entail a new determination of rights to benefits. Consequently, the recalculation of an invalidity pension awarded before the entry into force of the Reg., made necessary by changes in the personal circumstances of the insured person which have occurred after its entry into force, must be effected in accordance with the provisions of the Reg.**	B	4.5.1988	83/87 (Viva)	1988, 2521
Art. 96 **Arts 2(1), 3(1), 4(1)(c) and (2), 5**	**The fact that a MS has mentioned a given allowance in its declaration notified and published in accordance with the provisions of Arts 5 and 96 of the Reg. must be accepted as proof that the benefits relating to that allowance are soc. sec. benefits within the meaning of the Reg.**	F	12.7.1979	237/78 (Palermo, born Toia)	1979, 2645
Art. 99 **Arts 73(1) and (2)** EC Treaty Art. 51 Act of Accession of Spain, 1985 Art. 60	**The uniform solution for all the MS provided for in Art. 99 of Reg. 1408/71, in the version enacted in Reg. 2001/83, entered into force on 15 January 1986 following the judgment of the Court of the same date in which Art. 73(2) of that Reg. was declared to be void *ab initio*; that declaration of invalidity entailed that, in the absence of new rules in conformity with Art. 51 of the Treaty, the system for the payment of family benefits laid down in Art. 73(1) was of general application. The entry into force of that uniform solution meant that, under Art. 60 of the Act of Accession of Spain, the application of Art. 73(1) of Reg. 1408/71 could, with effect from 15 January 1986, be relied on by Spanish workers employed in a MS other than Spain the members of whose families reside in Spain.**	D	13.11.1990	C-99/89 (Yanez-Campoy)	1990, I-4097

Art. 100 **Art. 94(5)**	**The principle deriving from Art. 94(5) of the Reg. that the competent institution of a MS cannot on its own initiative, in the absence of any request from the insured person, carry out a review of the rights acquired by that person prior to the entry into force of that Reg., does not apply, by virtue of Art. 100 of the Reg., to situations which automatically entail a new determination of rights to benefits.** **Consequently, the recalculation of an invalidity pension awarded before the entry into force of the Reg., made necessary by changes in the personal circumstances of the insured person which have occurred after its entry into force, must be effected in accordance with the provisions of the Reg.**	B	4.5.1988	83/87 (Viva)	1988, 2521

Annexes

Reg. 1408/71 Annex	Summary	Country	Date	Case	ECJ law report c.j.
Annex I, Section I Reg. 1408/71 Art. 14(a)	It is clear from Annex I, Section I, to Reg. 1408/71, which for the Netherlands provides that any persons pursuing an activity or occupation without a contract of employment shall be considered a self-employed person within the meaning of Art. 1(a)(ii) of the Reg., that the status of the self-employed person is not subject to the person concerned residing in that MS. It follows that a German national residing in Germany while pursuing about half his self-employment in Germany and the other half in the Netherlands must be considered a self-employed person falling within the scope of the Reg. notwithstanding the fact that he does not meet the residence requirement imposed by Dutch leg. as a condition for coverage by the Dutch soc. sec. scheme.	NL	13.10.1993	C-121/92 (Zinnecker)	1993, I-5023
Annex V, Part H, paragraph 4 (currently Annex VI, Part J, paragraph 4) Reg. 1408/71 Arts 1(j), 46 Reg. 574/72 Art. 15	For the application of Art. 46 of the Reg. and of Art. 15 of Reg. 574/72: (a) a period of employment completed before 1 July 1967 under the Dutch leg. in force at that time, in respect of which contributions were paid in accordance with that leg.; (b) a period of paid employment completed in the Netherlands before 1 July 1967 in respect of which no contributions were paid; are to be regarded as periods of insurance and not as periods treated as such.	NL	2.2.1984	285/82 (Derks)	1984, 433
Annex V (currently Annex VI) Reg. 1408/71 Arts 1(j), 2(1), 3(1), 10(1)	Annex V to the Reg. contains a number of provisions containing special application procedures which refer to various special situations. Such procedures may only derive from an express provision in the rules in question and cannot be extended to situations other than those expressly envisaged.	B	11.7.1980	150/79 (Co v Belgium)	1980, 2621
Annex V (currently Annex VI) Arts 1(a)(ii), 18	A national of a MS who, in another MS, has been subject to a soc. sec. scheme which is applicable to all residents can benefit from the provisions of the Reg. only if he can be identified as an employed person within the meaning of Art. 1(a)(ii) of the Reg. As regards the UK in particular, in the absence of any other criterion, such identification depends by virtue of Annex V to that Reg. on whether he was required to pay soc. sec. contributions as an employed person.	F	19.1.1978	84/77 (Tessier, born Recq)	1978, 7

Annex VI, Part I, point 2(c) **(currently Annex VI, Part J, point 2(c))** Reg. 1408/71 in general EC Treaty Art. 51	**Neither Art. 51 of the EC Treaty nor the provisions of Reg. 1408/71, and in particular point 2(c) of Part I of Annex VI thereto, require that, when the pension of a married man is determined under the Dutch leg. on general old-age insurance, his wife, who after 1 January 1957 completed periods considered as periods of insurance under point 2(c), must therefore be granted the advantages provided for by the Dutch leg. in respect of periods prior to their marriage and prior to 1 January 1957 during which she neither resided nor pursued an activity as an employed person in the Netherlands.**	NL	25.2.1986	254/84 (De Jong)	1986, 671
Annex VI, Part I, point 2 **(currently Annex VI, Part J, point 2)** **Annex VI, Part I, point 2(a)** **(currently Annex VI, Part J, point 2(a))**	**The provisions of Reg. 1408/71 must be interpreted in the light of the objective of Arts 48 to 51 of the EC Treaty, namely the establishment of the greatest possible freedom of movement for workers. That objective would not be attained if, as a consequence of the exercise of their right to freedom of movement and to transfer their residence to another MS, workers were to lose the advantages in the field of soc. sec. guaranteed to them by the laws of a single MS.** **It cannot be justified that the rules of Community law in the field of soc. sec., by refusing, under a general old-age insurance scheme in which residence is the sole qualification for insurance, to take periods of residence into account as insurance periods in the case of a married woman when they are so treated in the case of a man and an unmarried woman, give rise to discrimination and are contrary to the fundamental principle of freedom of movement since they create an obstacle capable of dissuading a married woman from accompanying her husband when he moves to another MS.** **Point 2(a) of Part I of Annex VI to Reg. 1408/71 applies to a married woman so that, subject to the provisions of point 2(b), (d) and (f), periods before 1 January 1957 during which a married woman, who does not satisfy the conditions permitting her to have such periods treated as periods of insurance, resided in the territory of the Netherlands after the age of 15 or during which, whilst residing in the territory of another MS, she pursued an activity as an employed person in the Netherlands for an employer established in that country, must be considered as periods of insurance completed in application of Dutch leg. on general old-age insurance.**	NL	25.2.1986	284/84 (Spruyt)	1986, 685

Annex VI, Part I, point 2(c) (currently Annex VI, Part J, point 2(c)) **Reg. 1408/71 in general** EC Treaty Art. 51	**Neither Art. 51 of the EC Treaty nor any provision of Reg. 1408/71 requires the periods referred to in point 2(c) of Part I of Annex VI to that Reg. to be regarded as insurance periods for the purpose of determining the period within which an application to pay voluntary contributions under national leg. may be submitted.**	NL	24.9.1987	43/86 (De Rijke)	1987, 3611
Annex VI, Part J	**A person who has been in the employment of a legal person under Dutch public law and who though residing outside the Netherlands has in that capacity been subject to Dutch soc. sec. law has links with the Netherlands that are as close as those of a person who has resided or who has worked for an employer established in that country while residing in the territory of another MS, this being the case expressly provided for in Section 2(a) of Annex VI-J to Reg. 1408/71. Such links must consequently also be regarded as sufficient in demanding that the periods prior to 1 January 1957 during which these links existed be treated as insurance periods under Dutch leg. on general old-age insurance.** **It follows that the provision of Section 2(a) of Annex VI-J to the said Reg. must be construed as meaning that the reduction provided for in Art. 13(1) of the Dutch law on general old-age insurance does not apply to periods before 1 January 1957 in which the pensioner who does not meet the conditions to have these periods treated as insurance periods has between ages 15 and 65 been in the employment of a legal person under Dutch public law and was as such subject to the Dutch soc. sec. leg., even if he resided outside the Netherlands.**	NL	30.3.1993	C-282/91 (De Wit)	1993, I-1221

Reg. 574/72

Reg. 574/72	Summary	Country	Date	Case	ECJ law report c.j.
Art. 7(1)(b) Reg. 1408/71 Arts 12(2), 46	The provisions of Art. 7(1)(b) of Reg. 574/72 are applicable to the overlapping of a survivor's pension to which the recipient became entitled under the leg. of a single MS with a pension of a different kind (an invalidity or old-age pension) to which entitlement was acquired solely under the leg. of another MS if the application of the national leg. alone proves in the end to be less favourable to the recipient.	B	6.10.1987	197/85 (Stefanutti)	1987, 3855
Art. 8 Reg. 1408/71 Arts 1(a), 86	The phrase 'leg. of two or more MS' which occurs in Art. 8 of Reg. 574/72, must be understood as also including the provisions of the Community Reg. Art. 8 applies only to the extent to which a claim by the person concerned may in fact be satisfied by the application of the leg. of two or more MS and only in regard to the period for which the claimant may claim benefits under the leg. specified by that Art. On the other hand, that provision does not preclude a person who has exhausted the maximum entitlement awarded by the State of the confinement from benefiting for an additional period from benefits awarded by other leg. to which she has been subject and which, for reasons of the welfare of the mother and child, allows a longer period of leave from work. Indeed, such a result could not be regarded as coming within the category of 'unjustified overlapping' which the provision in question seeks to prevent.	UK	22.5.1980	143/79 (Walsh)	1980, 1639
Art. 10 Reg. 1408/71 Art. 73	The exercise by a person having the care of children, and, in particular, by the spouse of the person entitled in pursuance of Art. 73 of Reg. 1408/71 of a professional or trade activity in the MS of residence of the children suspends, under Art. 10 of Reg. 574/72 the right to allowances in pursuance of Art. 73 of Reg. 1408/71 up to the amount of the allowances of the same kind actually paid by the State of residence, irrespective of who is designated as directly entitled to the family allowances by the leg. of the State of residence.	UK	9.12.1992	C-119/91 (McMenamin)	1992, I-6393
Art. 10(1)(a) as amended by Regs 878/73 and 1209/76 Reg. 1408/71 Arts 13(2)(a), 73(1), Chapter 7	Art. 10(1)(a) of Reg. 574/72 as amended suspends payment of family benefits or family allowances payable under the leg. of the State of employment only up to the amount received, in respect of the same period and the same member of the family, in the State of residence by the spouse pursuing a professional or trade activity within the territory of that State.	D	19.2.1981	104/80 (Beeck)	1981, 503

Art. 10(1)(a) Reg. 1408/71 Arts. 73, 76 EC Treaty Art. 177	The provision for suspension contained in the first sentence of Art. 10(1)(a) of Reg. 574/72 must be interpreted as meaning that it applies whenever the institution of another MS has in fact granted family benefits to a worker in respect of the same child, in pursuance of Art. 73 of Reg. 1408/71, without its being necessary to examine whether all the conditions for the granting of those benefits are satisfied under the leg. of that other MS. The second sentence of Art. 10(1)(a) of Reg. 574/72, like Art. 76 of Reg. 1408/71, seeks to give priority, in a case of overlapping family benefits, to the benefits of the MS in the territory of which the children reside and in which one of the recipients in question pursues a professional or trade activity. The problem of overlapping benefits which the provision in question is intended to resolve is not to be answered differently according to whether or not the marriage bond still exists between the two parents who might, depending on the case, be entitled to benefits in respect of the same child. In view of the purpose of that provision, it should not be interpreted in a restrictive manner but as meaning that it applies to a divorced spouse.	UK	3.2.1983	149/82 (Robards)	1983, 171
Art. 10(1)(a)	The first sentence of Art. 10(1)(a) of Reg. 574/72, as amended by Reg. 878/73, applies where a child in respect of whom family benefits or family allowances are due is, as a member of the family of one of the recipients of such benefits or allowances, a person covered by the Community leg. on soc. sec. for employed persons, without there being any need to ascertain whether the other recipient who is also entitled to family benefits or family allowances in respect of the same child is also covered by that leg. The aforesaid provision makes it possible to suspend family benefits or family allowances payable under the leg. of one MS alone which are awarded to a recipient who is not covered by the Community leg. on soc. sec. for employed persons in respect of a child who is so covered by virtue of a member of the family who is a worker, provided however that the amount suspended is limited to the amount in respect of which the benefits overlap. The rule against overlapping also applies where family benefits or family allowances are payable under the leg. of one MS alone, according to which acquisition of the right to those benefits or allowances is conditional on residence alone.	NL	4.7.1984	104/84 (Kromhout)	1985, 2205

Art. 10(1)(a) Reg. 1408/71 Art. 73	The rule against overlapping payments laid down in the first sentence of Art. 10(1)(a) of Reg. 574/72 applies where family benefits or family allowances are due, in pursuance of Art. 73 of Reg. 1408/71, in respect of a child who, as a member of the family of one of the recipients of such benefits or allowances, is a person covered by the Community leg. on soc. sec. for employed persons, without there being any need to ascertain whether the other recipient who is also entitled to such benefits in respect of the same child is also covered by that leg. Where a family benefit is due under national leg. alone, irrespective of the children's place of residence and without it being necessary to invoke Art. 73 in order to become entitled to the benefit, that benefit cannot be deemed to be due in pursuance of Art. 73, and the first sentence of Art. 10(1)(a) of Reg. 574/72 does not apply.	UK	9.7.1987	377/85 (Burchell)	1987, 3329
Art. 10(1)(b) Reg. 1408/71 Art. 77(2)(a)	The need for a uniform interpretation of Community Reg. makes it impossible in case of doubt for the wording of a provision to be considered in isolation but requires on the contrary that it should be interpreted and applied in the light of the versions existing in the other official languages. The expression *diens echtgenote* (whose wife) in Art. 10(1)(b) of Reg. 574/72 includes a married man who is engaged in a professional or trade activity in a MS and whose wife is entitled under the provisions of Art. 77(2)(a) of Reg. 1408/71 to family allowances under the leg. of another MS.	NL	12.7.1979	9/79 (Worsdorfer, born Koschniske)	1979, 2717
Art. 15 Art. 46 Reg. 1408/71 Arts 12(2), 46, Chapter 3	It is not permissible for the institution of a MS to apply national rules for the aggregation and apportionment of periods of insurance which are less favourable to the workers than those contained in Reg. 574/72.	B	2.7.1981	Joined cases 116, 117, 119, 120 and 121/80 (Strehl, Celestre and others)	1981, 1737
Art. 15 Reg. 1408/71 Arts 1(j), 46 Annex V, Part H, paragraph 4	For the application of Art. 46 of Reg. 1408/71 and of Art. 15 of Reg. 574/72: (a) a period of employment completed before 1 July 1967 under the Dutch leg. in force at that time, in respect of which contributions were paid in accordance with that leg.; (b) a period of paid employment completed in the Netherlands before 1 July 1967 in respect of which no contributions were paid; are to be regarded as periods of insurance and not as periods treated as such.	NL	2.2.1984	285/82 (Derks)	1984, 433

Art. 15(1) Reg. 1408/71 Art. 46(1) EC Treaty Arts 48 to 51	**When pursuant to the rules laid down in the second subparagraph of Art. 46(1) of the Reg. the amount of an old-age benefit is calculated, Art. 15(1)(c) and (d) of Reg. 574/72 must be applied, concerning the conditions for taking periods treated as insurance periods into account, particularly in the case of overlapping of periods. To this end the national court must verify the status under the leg. of another MS of the periods for which its rules make provision for the payment of an invalidity pension. Under current Community law, which is confined to coordinate soc. sec. leg., there are no rules preventing the leg. of a MS which for the calculation of an old-age pension credits daily remuneration in respect of periods treated as employment periods, from applying to it the same proportion as that on the basis of which the invalidity pension paid previously was calculated.**	B	9.12.1993	Joined cases C-45/92 and C-46/92 (Lepore and Nicolantonio)	1993, I-6497
Art. 15(3)	**If an insurance period of less than one month completed in the Federal Republic of Germany must, under German leg., be treated as a whole month, an insurance period completed in accordance with the leg. of another MS and which, on conversion into months for the purpose of aggregation, produces a decimal fraction, must also be rounded up to the next highest figure in months, in order to ensure that employed workers do not, because of emigration, lose the rights which they have acquired in their country of origin.**	D	30.10.1975	33/75 (Galati)	1975, 1323
Art. 18	**Art. 18(1) to (4) of Reg. 574/72 must be interpreted as meaning that the competent institution, even where it is the employer and not a soc. sec. institution, is bound in law and in fact by the medical findings made by the institution of the place of residence or the place where the person concerned is staying as regards the commencement and duration of the incapacity where it does not have that person examined by a doctor of its own choice, as is permitted by Art. 18(5).**	D	3.6.1992	C-45/90 (Paletta)	1992, I-3423

Art. 18	**Art. 18(1) to (4) of Reg. 574/72 must be interpreted as meaning that if the competent institution does not exercise the option provided for in paragraph 5 of having the person concerned examined by a doctor of its choice, it is bound, in fact and in law, by the findings made by the institution of the place of residence as regards the commencement and duration of the incapacity for work. The same is true if the person concerned did not apply to the institution of the place of residence by submitting a certificate of incapacity for work as required by Art. 18(1) of the Reg. or, in accordance with the principle that procedural defects which are beyond the control of the beneficiary must not have effects which are unfavourable to him, if that institution has medical examinations carried out without observing the time-limits prescribed in Art. 18(3) of that Reg. for that purpose and for forwarding the medical report to the competent institution.** **Art. 18(5) of the Reg. must be interpreted as meaning that the competent institution may have a prescribed examination carried out by a doctor of its choice, including a doctor in the country in which the person concerned resides, and that that person is not obliged to return to the State of the competent institution to undergo a medical examination there.**	D	12.3.1987	22/86 (Rindone)	1987, 1339
Art. 35 **Art. 114** **Reg. 1408/71** **Arts 39, 71, 86**	**It follows from Art. 86 of Reg. 1408/71 and from Art. 35 of Reg. 574/72 that when a claimant submits a claim for invalidity benefit to the institution of the State of residence, that institution is required to forward it to the institution of the competent MS, that is to say, the State whose leg. was applicable at the time when incapacity for work followed by invalidity occurred.** **On the other hand, and in contrast to the system laid down with respect to other benefits, there is no provision in Reg. 1408/71 which requires the institutions of the State of residence to pay invalidity benefit to a claimant, even if the competent State is required to make reimbursement, subject to the application of Art. 114 of Reg. 574/72 in the case of a dispute between the relevant institutions. Community law, however, does not in any way prohibit the institution of the State of residence from assisting a claimant in the submission of a claim to the institution of the competent State.**	UK	27.1.1994	C-287/92 (Maitland Toosey)	1994, I-279

Art. 36(1) **Reg. 1408/71** **Art. 49** **Reg. 3** **Art. 28(1)(f) and (g)** **Reg. 4** **Art. 30**	**When a migrant worker has made a claim for invalidity benefit to the institution of the place of his permanent residence and in accordance with the procedure specified by the leg. of the said place, as prescribed by Art. 30(1) of Reg. 4, or specified by the leg. applied by that institution, as is prescribed by Art. 36(1) of Reg. 574/72, there is no need to make a new claim in another MS even if, at the time of the making of his claim he did not yet satisfy all the fundamental conditions required by the leg. of the second State for a grant of the benefit.**	B	9.3.1976	108/75 (Balsamo)	1976, 375
Art. 36(4) **Reg. 1408/71** **Arts 40, 44(2) and 46**	**The procedural rules set forth in Art. 44(2) of Reg. 1408/71 and Art. 36(4) of Reg. 574/72 do not entail any change to the MS qualifying conditions for invalidity benefit. It is for the leg. of each MS to determine whether the person concerned may waive an invalidity pension in order to receive subsequently a more favourable old-age pension.** **It follows that where a national leg. imposes on a claimant a choice between two alternative benefits the benefit to be taken into account pursuant to the first sentence of Art. 44(2) of Reg. 1408/71 and for the calculations to be carried out under Art. 46 of the same Reg. is no other than the benefit which the claimant choose to receive.** **The second subparagraph of Art. 46(1) of Reg. 1408/71 and Art. 36(4) of Reg. 574/72 do not prevent the institution of a MS, upon receiving from the institution of another MS a claim for an invalidity benefit based on Art. 40 of Reg. 1408/71 from granting a worker an old-age pension in lieu of the invalidity benefit which the person concerned has waived in order to receive a more favourable old-age pension.**	B	3.2.1993	C-275/91 (Iacobelli)	1993, I-523
Art. 45(1) **Art. 111**	**Art. 111 of Reg. 574/72 deals exhaustively with the question of the recovery of the amount overpaid as regards soc. sec. benefits due to a worker to whom benefits have been paid on a provisional basis pursuant to Art. 45(1) of that Reg. It leaves the MS no freedom to legislate on the matter, or in particular to provide that where the arrears received from a foreign institution, when converted into national currency, exceed the amount of the advance payments or allowances paid on a provisional basis, the balance is not to be paid over if the difference is due either to the difference in the exchange rates used to calculate the amount of the sums due from the foreign institutions and to arrive at the figure expressed in foreign currency, or to the adjustment of the allowances to the cost of living.**	B	14.5.1981	111/80 (Fanara)	1981, 1269

Art. 45(4) EC Treaty Art. 177	**Art. 45(4) of Reg. 574/72 cannot be interpreted as being intended to exclude all possibility of protection by the courts of the entitlement to benefits on a provisional basis. The expression 'not open to appeal' in Art. 45(4), coupled with the words 'provisional nature' which precede it, means only that the measures adopted by the competent institutions under Art. 45(1) may not be the subject-matter of proceedings which seek to obtain a definitive settlement of the person's entitlement to benefit. However, Art. 45(4) does allow a claim to be made before the appropriate national courts against the competent institution's failure to perform, or delay in performing, the obligations imposed on it by Art. 45(1) and permits interest on the amounts payable to be awarded to the claimant at a rate to be fixed by the court in accordance with the provisions of national law as a result of such proceedings.**	B	14.2.1980	53/79 (Damiani)	1980, 273
Art. 46 Art. 15 Reg. 1408/71 Arts 12(2), 46, Chapter 3	**It is not permissible for the institution of a MS to apply national rules for the aggregation and apportionment of periods of insurance which are less favourable to the workers than those contained in Reg. 574/72.**	B	2.7.1981	Joined cases 116, 117, 119, 120, 121/80 (Strehl, Celestre and others)	1981, 1737
Art. 46(2) Reg. 1408/71 Arts 12(2), 46	**The benefits corresponding to an insurance period which has been bought in pursuant to the provisions of national leg. which grants a worker this right are to be regarded as falling within Art. 46(2) of Reg. 574/72.**	NL	14.3.1978	98/77 (Schaap I)	1978, 707
Art. 46(2) Reg. 1408/71 Art. 46(3)	**Where there can be no question of periods coinciding because one body of leg. in question is of type A, Reg. 574/72 allows the worker the benefits corresponding to any period of voluntary or optional insurance.** **Therefore, although Art. 46(2) of Reg. 574/72 appears under the heading 'calculation of benefits in the event of overlapping of periods', it must be applied to all cases coming under Art. 46(3) of Reg. 1408/71 – even if there can be no question of periods coinciding because one body of leg. in question is of type A – so that, for the purpose of the application of that paragraph, the competent institution cannot take account of benefits corresponding to periods completed under voluntary or optional insurance.**	NL	5.4.1979	176/78 (Schaap II)	1979, 1673

Art. 51(1)	**Where an institution responsible for payment of an invalidity benefit exercises the power provided for in Art. 51(1) of Reg. 574/72 of having a recipient of the benefit residing in another MS examined by a doctor of its own choice, the person concerned may be required to go to the MS in which the competent institution is situated, provided that the travel and accommodation expenses thereby incurred are borne by the competent institution and the person concerned is fit enough to make the journey without impairment of his health.** **Where the institution of the place where the person concerned is staying or residing has determined that the person is not fit enough to undertake the journey, there is nothing to prevent the institution responsible for payment or the body responsible for medical examinations from verifying that circumstance on the spot.**	NL	27.6.1991	C-344/89 (Martinez-Vidal)	1991, I-3245
Art. 59	**Although it imposes on the recipient of soc. sec. benefits a duty to notify any transfer of his residence, Art. 59 is silent as to the form and the time of the notification. Consequently, the notification provided for in Art. 59 of the Reg. may be oral or in writing and may be made at any time.** **Failure to make the notification referred to in Art. 59 of the Reg., or late notification, cannot entail loss of entitlement to the benefits due for the period between the transfer of residence and the date on which the competent soc. sec. institution was apprised of that transfer, provided that the conditions for receipt of benefits were still fulfilled during that period.**	B	11.7.1985	261/84 (Scaletta)	1985, 2711
Art. 84(2) **Reg. 1408/71** **Arts 12, 67, 69, 71(1)(b)(ii)**	**The certified statement issued in accordance with Art. 84(2) of Reg. 574/72 does not constitute irrefutable proof *vis-à-vis* the institution of another MS which is competent for matters relating to unemployment or *vis-à-vis* the courts of that State.**	D	8.7.1992	C-102/91 (Knoch)	1992, I-4341
Art. 107 **Reg. 1408/71** **Arts 12(2), 46, 51**	**Where benefits of the same kind are granted or awarded in different MS on the basis of analogous national rules, without any reference to the provisions of Reg. 1408/71, there are no grounds for applying the method of currency conversion set out in Art. 107 of Reg. 574/72.** **No provision of Community law requires the periodical recalculation, by reason of a variation in the rates of conversion of currencies, of a soc. sec. benefit whose amount has been established in another MS.**	NL	5.5.1983	238/81 (Van der Bunt-Craig)	1983, 1385
Art. 107 **Reg. 1408/71** **Arts 68(1), 71(1)(a)(ii)**	**Art. 107 of Reg. 574/72 must be interpreted as meaning that, until the entry into force of Reg. 1249/92 of 30 April 1992 amending Reg. 1408/71 and Reg. 574/72, in calculating the unemployment benefits of wholly unemployed frontier workers, the last remuneration received in the State of employment was to be converted in accordance with the official rate on the day of payment.**	F	1.10.1992	C-201/91 (Grisvard-Kreitz)	1992, I-5009

Art. 111 Art. 45(1)	Art. 111 of Reg. 574/72 deals exhaustively with the question of the recovery of the amount overpaid as regards soc. sec. benefits due to a worker to whom benefits have been paid on a provisional basis pursuant to Art. 45(1) of that Reg. It leaves the MS no freedom to legislate on the matter, or in particular to provide that where the arrears received from a foreign institution, when converted into national currency, exceed the amount of the advance payments or allowances paid on a provisional basis, the balance is not to be paid over if the difference is due either to the difference in the exchange rates used to calculate the amount of the sums due from the foreign institutions and to arrive at the figure expressed in foreign currency, or to the adjustment of the allowances to the cost of living.	B	14.5.1981	111/80 (Fanara)	1981, 1269
Art. 112 Reg. 1408/71 Arts 51(2), 46 EC Treaty Art. 51	When a recalculation of benefits pursuant to Art. 51(2) of Reg. 1408/71 leads to a reduction in the benefit paid by the institution of one MS, without any adjustment to the benefit paid by the institution of another MS, and the second institution thus holds no pension arrears payable to the recipient of the benefits, Art. 112 of Reg. 574/72 does not oblige the first institution to bear the expense of the benefits overpaid during the period needed for recalculating the benefits.	B	21.3.1990	199/88 (Cabras)	1990, I-1023
Art. 114 Art. 35 Reg. 1408/71 Arts 39, 71, 86	It follows from Art. 86 of Reg. 1408/71 and from Art. 35 of Reg. 574/72 that when a claimant submits a claim for invalidity benefit to the institution of the State of residence, that institution is required to forward it to the institution of the competent MS, that is to say, the State whose leg. was applicable at the time when incapacity for work followed by invalidity occurred. On the other hand, and in contrast to the system laid down with respect to other benefits, there is no provision in Reg. 1408/71 which requires the institutions of the State of residence to pay invalidity benefit to a claimant, even if the competent State is required to make reimbursement, subject to the application of Art. 114 of Reg. 574/72 in the case of a dispute between the relevant institutions. Community law, however, does not in any way prohibit the institution of the State of residence from assisting a claimant in the submission of a claim to the institution of the competent State.	UK	27.1.1994	C-287/92 (Maitland Toosey)	1994, I-279
Reg. 574/72 Annex 3 Reg. 1408/71 Arts 22, 36 EC Treaty Art. 177	The words 'institution of the place of stay or residence' in Art. 22(1)(c)(i) of Reg. 1408/71 mean the institution empowered to provide the benefits in the State of residence or stay as listed in Annex 3 to Reg. 574/72, as amended by Reg. 878/73.	NL	16.3.1978	117/77 (Pierik I)	1978, 825

Reg. 1612/68

Reg. 1612/68	Summary	Country	Date	Case	ECJ law report c.j.
Reg. 1612/68 in general Reg. 1408/71 Arts 1(a), 3	The principal aim of Reg. 1612/68 is to ensure that in each MS workers from the other MS receive treatment which is not discriminatory by comparison with that of national workers by providing for the systematic application of the rule of national treatment as far as all conditions of employment and work are concerned. It is not the purpose of that Reg. to create rights by virtue of insurance periods completed in another MS if such rights, in the case of nationals of the host State, do not derive from national provisions.	UK	24.4.1980	110/79 (Coonan)	1980, 1445
Reg. 1612/68 in general Reg. 1408/71 Arts 2, 4	The Community rules on freedom of movement for workers do not apply to cases which have no factor linking them with any of the situations governed by Community law. Such is the case with workers who have never exercised the right to freedom of movement within the Community. Accordingly, a member of the family of a worker who is a national of a MS cannot rely on Reg. 1612/68 in order to claim the same social advantages as workers who are nationals of that State when the worker of whose family he is a member has never exercised the right to freedom of movement within the Community.	F	17.12.1987	147/87 (Zaoui)	1987, 5511
Art. 7 Reg. 1408/71 Arts 1(f), 2(1) EC Treaty Art. 177	In the light of the equality of treatment which Reg. 1612/68 seeks to bring about and taking account of the provisions of that Reg. as a whole, the matters covered by Art. 7(2) must be defined in such a way as to include every social and tax advantage, whether or not linked to a contract of employment.	F	16.12.1976	63/76 (Inzirillo)	1976, 2057
Art. 7(2) Reg. 1408/71 Arts 4, 18 EC Treaty Art. 52	A MS practises discrimination of nationals of other MS if it makes the payment of birth grants and maternity allowances subject to conditions of prior residence within its territory as these conditions are more readily fulfilled by its own nationals. This discrimination in the grant of allowances which for employed persons constitute social advantages amounts to an infringement of Art. 7(2) of Reg. 1612/68. It also infringes Art. 52 of the Treaty since in the case of self-employed persons, while it is not practised in the field of specific rules relating to the pursuit of an occupation, it nevertheless hampers the pursuit of occupational activities by nationals of other MS. The residence requirement in respect of the birth allowance cannot be justified on grounds of considerations of public health since the obligation to undergo various medical examinations to which the grant of the allowance is likewise subject could be dissociated from it.	L	10.3.1993	C-111/91 (Co v Luxembourg)	1993, I-817

Art. 7(2) Reg. 1408/71 Art. 4	It follows from all the provisions of Reg. 1612/68 and from the objective pursued that the social and tax advantages which this Reg. extends to workers who are nationals of other MS are all those which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as a worker 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 MS therefore seems suitable to facilitate their mobility within the Community. A benefit based on a scheme of national recognition, (such as the benefit granted by the Belgian Royal Decree of 27 June 1969), cannot be considered as an advantage granted to a national worker by reason primarily of his status of worker or resident on the national territory and for that reason does not fulfil the essential characteristics of the 'social advantages' referred to in Art. 7(2) of Reg. 1612/68. It does not therefore come within the substantive field of application of that Reg. and is not therefore, as regards the conditions for the grant of that benefit, subject to the provisions of the latter.	B	31.5.1979	207/78 (Even)	1979, 2019
Art. 7(2) Reg. 1408/71 Art. 4(1)	The concept of social advantages within the meaning of Art. 7(2) of Reg. 1612/68 includes all those 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 whose extension to workers who are nationals of other MS therefore seems likely to facilitate the mobility of such workers within the Community. A social benefit guaranteeing a minimum means of subsistence in a general manner constitutes a social advantage within the meaning of Reg. 1612/68. Art. 7(2) of that Reg. must be interpreted as meaning that the grant of such a social advantage may not be made subject to the requirement that the claimant should have actually resided within the territory of a MS for a prescribed period where that requirement is not imposed on nationals of that MS.	B	27.3.1985	249/83 (Hoeckx)	1985, 973
Art. 7(2) Reg. 1408/71 Art. 4(1)	The concept of social advantages within the meaning of Art. 7(2) of Reg. 1612/68 includes all those 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 whose extension to workers who are nationals of other MS therefore seems likely to facilitate the mobility of such workers within the Community. A social benefit guaranteeing a minimum means of subsistence in a general manner constitutes a social advantage within the meaning of Reg. 1612/68.	B	27.3.1985	122/84 (Scrivner)	1985, 1027

Art. 7(2) **Reg. 1408/71** **Arts 2(1), 3(1)**	**The term 'social advantage' used in Art. 7(2) of Reg. 1612/68 refers to 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 whose extension to workers who are nationals of other MS therefore seems likely to facilitate the mobility of such workers within the Community.** **Unemployment benefits provided under the leg. of a MS for young persons seeking work constitute a social advantage within the meaning of Art. 7(2) of Reg. 1612/68. A MS cannot refuse to grant such benefits to the dependent children of a worker who is a national of another MS on the grounds of the children's nationality, whether they are nationals of a MS or of a non-member country.**	B	20.6.1985	94/84 (Deak)	1985, 1873
Art. 7(2) **Reg. 1408/71** **Arts 2(1), 7(1)(b)**	**The term 'social advantage' within the meaning of Art. 7(2) of Reg. 1612/68 includes 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 whose extension to workers who are nationals of other MS therefore seems likely to facilitate the mobility of such workers within the Community.** **The grant of a special old-age allowance which guarantees a minimum income to old persons constitutes a social advantage within the meaning of Reg. 1612/68. Art. 7(2) of that Reg. must be interpreted to the effect that the grant of such a social advantage may not be made subject to a condition requiring actual residence in the territory of a MS for a specified number of years if such a condition is not laid down in respect of nationals of that MS.**	F	6.6.1985	157/84 (Frascogna I)	1985, 1739
Art. 7(2) **Reg. 1408/71** **Art. 3**	**By maintaining the requirement of a period of residence on Belgian territory which workers from other MS subject to Belgian leg. must fulfil and in order to qualify for the grant of the allowances for handicapped persons, the guaranteed income for elderly persons and the minimum means of subsistence (minimex), Belgium has failed to fulfil its obligations under the EC Treaty and, in particular, Art. 7(2) of Reg. 1612/68 and Art. 3 of Reg. 1408/71 both of which require nationals and citizens of other MS to be treated equally.**	B	10.11.1992	C-326/90 (Co v Belgium)	1992, I-5517

Art. 7(2) **Reg. 1408/71** **Arts 2, 3**	**The concept of social advantage referred to in Art. 7(2) of Reg. 1612/68 comprises all advantages which, whether or not connected with an employment contract, are generally recognized for national workers by virtue of their objective status as workers or simply because of their residence in the national territory and whose extension to workers who are nationals of other MS is therefore conducive to their mobility within the Community.** **This being the case for allowances for handicapped persons, a national of a MS who is a former official of an international organization may claim the right to the equality of treatment guaranteed by the aforementioned provision with a view to obtaining an allowance for handicapped adults provided for by the leg. of the MS where he resides, other than the State of origin, intended for a dependent descendant. A condition under which the beneficiary must possess the nationality of the State of residence may not be applied to him as such a condition, even if it also applies to the descendants of national workers, is incompatible with the requirement of equality of treatment in that it is more readily met by descendants of national workers than those of migrant workers.**	B	27.5.1993	C-310/91 (Schmid)	1993, I-3011

EEC-Morocco Cooperation Agreement

EEC-Morocco Cooperation Agreement	Summary	Country	Date	Case	ECJ law report
Art. 41(1)	**A provision of an agreement concluded by the Community with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adaptation of any subsequent measure.** **Such is the case as regards Art. 41(1) of the Cooperation Agreement between the EC and Morocco, a provision which forms part of Title III relating to cooperation in the field of labour and which, far from being purely programmatic in nature, establishes, in the field of working conditions and remuneration and in that of social security, the principle that there is to be no discrimination, on the basis of nationality, against Moroccan workers and members of their families living with them, a principle capable of governing directly the legal situation of individuals.** **By reason of the fact that it prohibits, as a matter of principle, in the field of soc. sec., all discrimination on the basis of nationality against Moroccan workers and members of their families living with them, Art. 41(1) of the Cooperation Agreement between the EC and Morocco precludes a MS from refusing to grant an *allocation d'attente* provided by its leg. in favour of young persons in search of employment and falling within the category of unemployment benefits, to a member of the family of a worker of Moroccan nationality living with him, on the ground that the person in search of employment is of Moroccan nationality.**	B	31.1.1991	C-18/90 (Kziber)	1991, I-199
Art. 41(1)	Art. 41(1) of the Cooperation Agreement between the EC and Morocco, must be interpreted as meaning that it precludes a MS from refusing to grant a disability allowance provided for under its leg. in the case of nationals residing in that State for at least five years to a Moroccan national suffering permanent incapacity for work following an industrial accident occurring in that State who has resided on that State's territory for more than five years on the ground that the person concerned is of Moroccan nationality.	B	20.4.1994	C-58/93 (Yousfi)	1994, I-1353

EC Treaty

EC Treaty	Summary	Country	Date	Case	ECJ law reports
Art. 5 Reg. 1408/71 Arts 5, 77, 78, 81(a)	It is for the Administrative Commission on Social Security for Migrant Workers, pursuant to Art. 81(a) of the Reg., to draw up the list of institutions in the MS which are responsible for providing the competent institution in the MS responsible for payment of a benefit supplement under Arts 77 or 78 of that Reg. with the official information necessary for calculating that supplement referred to in Decision No 129 of the Administrative Commission. The competent institution of the MS from which a benefit supplement is claimed may, however, still apply to the Commission and to the authorities of the MS in which the claimant resides in order to ascertain the name of the institution in the latter MS which is competent to provide the official information referred to in Decision No 129.	D	11.6.1991	C-251/89 (Athanasopoulos)	1991, I-2797
Art. 7 Arts 48, 51 Reg. 1408/71 Art. 77	Art. 51 of the Treaty provides for the coordination, not the harmonization, of the leg. of the MS and leaves in being differences between the MS soc. sec. systems and, consequently, in the rights of persons working in the MS. It follows that substantive and procedural differences between the soc. sec. systems of the MS, and hence in the rights of the persons working in the MS, are unaffected by Art. 51 of the Treaty. However, the Community rules on soc. sec. must refrain from adding to the disparities which already stem from the absence of harmonization of national leg., and the principle of equal treatment laid down in Arts 7 and 48 of the Treaty prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result. Art. 77 of the Reg., under which the benefits for dependent children which a MS must pay to its nationals who are in receipt of a pension and reside in another MS are restricted to family allowances, is not contrary to those principles. It is a rule of general scope which applies indistinctly to all nationals of the MS and is based on objective criteria concerning the nature of benefits of that kind and the conditions for granting them; it does not in itself lead to discrimination.	F	27.9.1988	313/86 (Lenoir)	1988, 5391
Art. 7 Art. 51(b) Reg. 1408/71 Arts 2(1), 3(1), 10	The principle of non-discrimination laid down in the first paragraph of Art. 7 of the EC Treaty and implemented in matters of soc. sec. by Art. 3(1) of Reg. 1408/71 is not applicable, by virtue of the very terms of that provision, where the person entitled to a soc. sec. benefit is not one of the persons covered by that Reg.	B	14.11.1990	C-105/89 (Buhari Haji)	1990, I-4211

Art. 7 **Art. 48** **Reg. 1408/71** **Arts 3(1), 19(1)(b), 22(1)(a)(ii)**	**Within the scope of application of Reg. 1408/71 the first paragraph of Art. 7 of the Treaty, as implemented by Art. 48 of the Treaty and Art. (3)(1) of the Reg., is directly applicable in MS.** **By prohibiting every MS from applying its law differently on the grounds of nationality, within the field of application of the Treaty, Arts 7 and 48 are not concerned with any disparities in treatment which may result, between MS, from divergences existing between the laws of the various MS, so long as the latter affect all persons subject to them in accordance with objective criteria and without regard to their nationality. Arts 7 and 48 of the Treaty and Art. 3(1) of the Reg. do not prohibit the treatment by the institutions of MS of corresponding facts occurring in another MS as equivalent to facts which, if they occur in the national territory, constitute a ground for the loss or suspension of the right to cash benefits; the decision on this matter is for the national authorities, provided that it applies without regard to nationality and those facts are not described in such a way that they lead in fact to discrimination against nationals of the other MS.**	UK	28.6.1978	1/78 (Kenny)	1978, 1489
Art. 7 **Arts 48 to 51** **Reg. 1408/71** **Art. 3(1)**	**Arts 48 to 51 of the Treaty and the leg. adopted in implementation thereof, which includes Art. 3 of Reg. 1408/71, prevent a worker from losing, as a consequence of the exercise of his right to freedom of movement, the advantages in the field of soc. sec. guaranteed to him by the laws of a single MS, since such a consequence could deter workers from exercising that right and would therefore constitute an obstacle to that freedom. Those provisions must therefore be interpreted as meaning that a migrant worker who is receiving an old-age pension under the leg. of one MS and accident insurance benefits paid by an insurance institution of another MS may not be put in a worse position, for the purpose of calculating the portion of the benefit to be suspended pursuant to the leg. of the first State, than a worker who has not exercised his right of free movement and is receiving both benefits under the leg. of a single MS. No justification for such inequality of treatment can be afforded by any practical difficulties which soc. sec. institutions may encounter when calculating entitlement to benefits.**	D	7.3.1991	C-10/90 (Masgio)	1991, I-1119
Art. 8A **Reg. 1408/71** **Art. 9(2)**	**Art. 8A of the Treaty, added by the Single European Act, which provides for the adoption of measures to establish the internal market progressively before 31 December 1992, may not be construed as meaning that in the absence of measures adopted by the Council before that date imposing upon the MS the obligation to admit to voluntary insurance under their soc. sec. scheme persons who have been subject to compulsory insurance in another MS, this obligation automatically results from the time-limit being reached. Such an obligation presupposes a harmonization of the soc. sec. leg. of the MS. The fact is that under current Community law there is no such harmonization.**	I	20.10.1993	C-297/92 (Baglieri)	1993, I-5211

Art. 48 **Arts 51, 177** **Reg. 1408/71** **Art. 40(4)**	**In accordance with Arts 48 and 51 of the Treaty, Regs 1408/71 and 574/72 are in particular intended to prevent the migrant worker, as a result of his migration from one MS to another, from losing the benefit of his periods of employment and thus being placed at a disadvantage in relation to the position in which he would have been if he had completed his entire career in only one MS. For that purpose they introduced a system of aggregation of all the periods of employment which may thus be taken into account for the purpose of acquiring and retaining the right to benefits of the same kind in different MS and for the purpose of calculating the amount of such benefits. But the purpose of those texts is not to determine the conditions for the withdrawal of such benefits and they cannot have that effect.** **Art. 40(4) of Reg. 1408/71 must therefore be interpreted as meaning that 'the decision ... concerning the degree of invalidity' to which that provision refers covers exclusively a decision recognizing invalidity and not a decision establishing that there is no invalidity at a later date.**	B	10.3.1983	232/82 (Baccini II)	1983, 583
Art. 48 **Art. 7** **Reg. 1408/71** **Arts 3(1), 19(1)(b), 22(1)(a)(ii)**	**Within the scope of application of Reg. 1408/71 the first paragraph of Art. 7 of the Treaty, as implemented by Art. 48 of the Treaty and Art. (3)(1) of the Reg., is directly applicable in MS.** **By prohibiting every MS from applying its law differently on the grounds of nationality, within the field of application of the Treaty, Arts 7 and 48 are not concerned with any disparities in treatment which may result, between MS, from divergences existing between the laws of the various MS, so long as the latter affect all persons subject to them in accordance with objective criteria and without regard to their nationality.** **Arts 7 and 48 of the Treaty and Art. 3(1) of the Reg. do not prohibit the treatment by the institutions of MS of corresponding facts occurring in another MS as equivalent to facts which, if they occur in the national territory, constitute a ground for the loss or suspension of the right to cash benefits; the decision on this matter is for the national authorities, provided that it applies without regard to nationality and those facts are not described in such a way that they lead in fact to discrimination against nationals of the other MS.**	UK	28.6.1978	1/78 (Kenny)	1978, 1489
Art. 48 **Art. 51(1)** **Reg. 1408/71** **Arts 3, 84(4)**	**Arts 48 and 51(1) of the EC Treaty, and Reg. 1408/71 as amended and updated by Reg. 2001/83, and in particular Arts 3 and 84(4) thereof, do not apply to situations of which every element is confined within a single MS.**	B	22.9.1992	C-153/91 (Petit)	1992, I-4973

Art. 48 Art. 51 Reg. 1408/71 Arts 4(1)(c), 12(2), 46	**The first sentence of Art. 12(2) of Reg. 1408/71 is compatible with Art. 51 of the Treaty inasmuch as that provision does not prohibit the application of national rules against overlapping in cases where benefits are not of the same kind as benefits received in respect of invalidity, old-age, death or occupational disease within the meaning of Reg. 1408/71. In so far as those national provisions against overlapping are applied in a manner which is identical to nationals of all the MS without taking into account their nationality, there can be no discrimination within the meaning of Art. 48 of the EC Treaty.**	F	5.7.1983	171/82 (Valentini)	1983, 2157
Art. 48 Art. 51	**Point 15 of section C in Annex VI to Reg. 1408/71 is invalid in so far as it provides, in regard to entitlement to a pension in respect of occupational invalidity or incapacity for work, or a miner's pension in respect of a reduction in his capacity to work as a miner, or a miner's pension in respect of occupational invalidity or incapacity for work, that, where under German leg. account must be taken of the occupation hitherto pursued by the person concerned, that entitlement is to be determined by taking account only of activities subject to compulsory insurance under German leg.** **Although that provision applies regardless of the nationality of the worker concerned, it works, when combined with the provisions of the German leg., to the disadvantage of migrant workers coming from MS other than Germany who have been employed successively in those States and in the Federal Republic of Germany because it prevents them from obtaining recognition, for the purposes of entitlement to a pension, of a qualification obtained in another MS which is higher than that which they have in the Federal Republic of Germany. Since it is not of such a nature as to guarantee the equal treatment required by Art. 48 of the Treaty, such a provision has no place in the coordination of national laws provided for in Art. 51 of the Treaty in order to promote freedom of movement for workers in the Community.**	D	7.6.1988	20/85 (Roviello)	1988, 2805
Art. 48 Art. 51 Reg. 1408/71 Art. 9	**Arts 48 and 51 of the Treaty do not preclude the application to nationals of a MS of a provision of national leg. laying down, for the exercise of the right to purchase pension rights, a requirement of affiliation to the national compulsory insurance scheme. It is for the leg. of each MS to lay down the conditions concerning the right or the obligation to become affiliated to a soc. sec. scheme or to a particular branch under such a scheme, provided always that in this connection there is not discrimination between nationals of the host State and the nationals of other MS.**	D	18.5.1989	368/87 (Hartmann-Troiani)	1989, 1333

Art. 48 **Art. 52**	**Freedom of establishment is not confined to the right to create a single establishment within the Community but entails the right to set up and maintain, subject to the observance of the relevant professional rules of conduct, more than one place of work within the Community. That applies also to a person who is employed in one MS and wishes, in addition, to work in another MS in a self-employed capacity.** **Arts 48 and 52 of the Treaty preclude national leg. which might place Community citizens at a disadvantage when they wish to extend their activities beyond the territory of a single MS. Those Arts must therefore be interpreted as meaning that a MS may not refuse to exempt self-employed persons working within its territory from the contributions provided for under the national leg. on soc. sec. for self-employed persons, where employment is coupled with a self-employed activity, on the ground that the employment which is capable of giving entitlement to such exemption is pursued within the territory of another MS.**	B	7.7.1988	143/87 (Stanton)	1988, 3877
Art. 48 **Arts 7, 51** **Reg. 1408/71** **Art. 77**	**Art. 51 of the Treaty provides for the coordination, not the harmonization, of the leg. of the MS and leaves in being differences between the MS soc. sec. systems and, consequently, in the rights of persons working in the MS. It follows that substantive and procedural differences between the soc. sec. systems of the MS, and hence in the rights of the persons working in the MS, are unaffected by Art. 51 of the Treaty. However, the Community rules on soc. sec. must refrain from adding to the disparities which already stem from the absence of harmonization of national leg., and the principle of equal treatment laid down in Arts 7 and 48 of the Treaty prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result.** **Art. 77 of the Reg., under which the benefits for dependent children which a MS must pay to its nationals who are in receipt of a pension and reside in another MS are restricted to family allowances, is not contrary to those principles. It is a rule of general scope which applies indistinctly to all nationals of the MS and is based on objective criteria concerning the nature of benefits of that kind and the conditions for granting them; it does not in itself lead to discrimination.**	F	27.9.1988	313/86 (Lenoir)	1988, 5391

Art. 48 Reg. 1408/71 Arts 2(3), 14c and d	In the scheme of the Treaty civil servants are regarded as employed persons. On the one hand, the Community meaning of the term 'worker' within the meaning of Art. 48 of the Treaty must be defined in accordance with objective criteria which distinguish the employment relationship, the essential feature of which is that a person performs services for and under the direction of another person in return for which he receives remuneration. On the other hand, both the position in the Treaty and the wording of Art. 48(4) which refers to employment in the public service in order to exclude it from its scope of application, without distinguishing between employment as civil servants and employment as other staff, show that civil servants are counted as employees or salaried workers. It follows that employment as a civil servant of a person falling within the scope of Reg. 1408/71 is an activity as a person 'employed' within the meaning of Art. 14c, which lays down special rules applicable to persons simultaneously employed in the territory of one MS and self-employed in the territory of another MS.	B	24.3.1994	C-71/93 (Van Poucke)	1994, I-1101
Art. 48 Art. 51 Reg. 1408/71 Art. 73	The Court's declaration that Art. 73(2) of the Reg. is invalid – attributable to the fact that that provision, which creates a system applicable specifically to workers subject to the leg. of one of the MS, does not satisfy the requirement of equal treatment laid down in Art. 48 of the Treaty and therefore can have no place in the context of the coordination of national leg. prescribed by Art. 51 of the Treaty with a view to promoting the free movement of workers – means that until such time as the Council adopts new rules which are in conformity with Art. 51 the system for the payment of family benefits laid down in Art. 73(1) of the aforesaid Reg. is of general application.	F	2.3.1989	359/87 (Pinna II)	1989, 585
Art. 48 Art. 51 Reg. 1408/71 Arts 12(2), 46	Neither Arts 12(2) and 46 of the Reg. nor Arts 48 and 51 of the Treaty prevent the application of a national provision against overlapping limiting the length of an employed person's work history to 45 years and, irrespective of the nationality of the persons concerned and of the MS to which the retirement scheme belongs under which the insurance periods exceeding the length of the working life of the person concerned have been completed, leading to a reduction of the insurance period actually completed by a migrant worker in the MS of the paying institution because of insurance years completed in another MS in so far as the reduction of the migrant worker's rights acquired in the MS to which the paying institution belongs is counterbalanced by the retirement pension rights acquired through the Reg. in the second MS.	B	15.12.1993	Joined cases C-113/92 C-114/92 C-156/92 (Fabrizii, Neri and Grosso)	1993, I-6707

Art. 48 Art. 52	Arts 48 and 52 of the Treaty preclude national leg. which might place Community citizens at a disadvantage when they wish to extend their activities beyond the territory of a single MS. Those Arts must therefore be interpreted as meaning that a MS may not refuse to exempt self-employed persons working within its territory from the contributions provided for under the national leg. on soc. sec. for self-employed persons, where employment is coupled with a self-employed activity, on the ground that the employment which is capable of giving entitlement to such exemption is pursued within the territory of another MS.	B	7.7.1988	Joined cases 154 and 155/87 (Wolf and others)	1988, 3897
Art. 48 Reg. 1408/71 Art. 3	Since it does not involve direct or indirect participation in the exercise of powers conferred by public law and in the discharge of functions whose purpose is to safeguard the general interests of the State or of other public authorities and which therefore require a special relationship of allegiance to the State on the part of persons occupying them and reciprocity of rights and duties which form the foundation of the bond of nationality, employment as a teacher, in general, and as a foreign-language assistant at a university, in particular, is not employment in the public service within the meaning of Art. 48(4) of the EC Treaty. The principle of equal treatment of which Art. 48(2) is one embodiment and which prohibits not only overt discrimination based on nationality but all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result precludes the application of a provision of national law imposing a limit on the duration of the employment relationship between universities and foreign-language assistants where there is in principle no such limit with regard to other workers.	I	30.5.1989	33/88 (Allue and Coonan)	1989, 1591
Art. 48(2) Art. 5 Reg. 1408/71 Arts 6, 7	Arts 48(2) and 51 of the EC Treaty must be interpreted as precluding the loss of soc. sec. advantages for workers who have exercised their right to freedom of movement which would result from the inapplicability, following the entry into force of Reg. 1408/71, of conventions operating between two or more MS and incorporated in their national law. Although the replacement of the soc. sec. conventions between MS by Reg. 1408/71 is mandatory in nature, it cannot have the effect of allowing the purpose of Arts 48 to 51 of the EC Treaty to be disregarded; that would be the case if workers who had availed themselves of their right to freedom of movement were to lose the soc. sec. advantages previously conferred on them by national leg., whether alone or in conjunction with international soc. sec. conventions operating between two or more MS.	D	7.2.1991	C-227/89 (Rönfeldt)	1991, I-323

Art. 48(2) Art. 51	**Arts 48(2) and 51 of the EC Treaty must be interpreted as not preventing the national leg. from amending the conditions for the grant of an invalidity pension and making them stricter by providing for a reference period prior to the occurrence of the invalidity during which the insured person must have exercised an activity subject to compulsory insurance and paid a minimum number of contributions in order to be entitled to an invalidity pension, provided that the conditions adopted do not entail overt or disguised discrimination between Community workers.** **However, by virtue of those Arts, where it allows prolongation of the reference period in certain circumstances, it is unlawful for such leg. not to provide for the possibility of prolongation where the events or circumstances corresponding to those which make prolongation possible arise in another MS since, by failing to do so, such leg., even if formally applicable to all Community workers, is liable to have a much greater adverse effect on migrant workers, who, particularly in case of sickness or unemployment, tend to return to their countries of origin, and may dissuade them from exercising their right of free movement.**	D	4.10.1991	349/87 (Paraschi)	1991, I-4501
Art. 48(3)	**The free movement of workers enshrined in Art. 48 of the Treaty entails the right for nationals of MS to move freely within the territory of other MS and to stay there for the purpose of seeking employment. The period of time for which the person seeking employment may stay may be limited but, in order for the effectiveness of Art. 48 to be secured, persons concerned must be given a reasonable time in which to apprise themselves, in the territory of the MS concerned, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged. In the absence of a Community provision prescribing the amount of time, it is not contrary to Community law for the legislation of a MS to provide that a national of another MS who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged.**	UK	26.2.1991	C-292/89	1991, I-745

Arts 48 to 51 Reg. 1408/71 Art. 12(2)	Although restrictions may be placed on migrant workers as a counterpart to the advantages which they derive under the Community Regs and which they could not obtain without them, the aim of Arts 48 to 51 of the EC Treaty would not be achieved if the effect of the application of those Regs were to withdraw or reduce the soc. sec. advantages which a worker enjoys under the legislature of one MS alone. Art. 51 of the Treaty and Regs 1408/71 and 574/72 must be interpreted as meaning that where, under the national leg. of a MS, the right of a migrant worker to unemployment benefit depends on his fitness for work and such fitness for work has been accepted by the competent authorities of the said MS, those authorities may not refuse the worker in question unemployment benefit on the ground that he is in receipt in another MS of an aggregated and apportioned invalidity pension determined in accordance with Community rules.	B	23.3.1982	79/81 (Baccini I)	1982, 1063
Arts 48 to 51 Reg. 1408/71 Arts 12(2), 57	Art. 12(2) of the Reg. forms the counterpart of the advantages which Community law affords workers in enabling them to require soc. sec. leg. of more than one MS to be applied simultaneously. Its purpose is to prevent them from deriving advantages from that possibility which in national law are considered excessive. However, although limitations may be imposed on migrant workers to balance the soc. sec. advantages which they derive from the Community Regs and which they could not obtain without them, the aim of Arts 48 to 51 of the Treaty would not be attained if the soc. sec. advantages which a worker may derive from the leg. of a single MS were to be withdrawn or reduced as a result of the application of those Regs. It must therefore be accepted that the application, pursuant to Art. 12(2) of the Reg., of a provision designed to prevent the overlapping of national benefits alone to a benefit payable under the leg. of another MS is not justified unless the benefit to be reduced was acquired by virtue of the application of the provisions of that Reg.	D	15.9.1983	279/82 (Jerzak)	1983, 2603
Arts 48 to 51 Reg. 1408/71 Chapter 7	The position of a person who has gone to another MS in order to follow a course of study and who, during that period, was not insured under a soc. sec. scheme set up for the benefit of employed persons does not come within the scope of the provisions of Arts 48 to 51 of the Treaty. Neither Reg. 1408/71 nor Art. 48 of the Treaty prevents family allowances from being withdrawn pursuant to national leg. on the ground that a child is pursuing its studies in another MS, where the parents of the child concerned are nationals of a non-member country or are not employed persons.	F	5.7.1984	238/83 (Meade)	1984, 2631

Arts 48 to 51 Arts 174, 177 Reg. 1408/71 Art. 73(2)	Art. 51 of the Treaty provides for the coordination, not the harmonization, of the leg. of the MS and hence leaves in being differences between the MS soc. sec. systems and, consequently, in the rights of workers employed in the MS. It follows that substantive and procedural differences between the soc. sec. systems of individual MS, and hence in the rights of workers employed in the MS, are unaffected by Art. 51 of the Treaty. However, the objective of securing free movement for workers within the Community, as provided for by Arts 48 to 51 of the Treaty, will be imperilled and made more difficult to realize, if unnecessary differences in the soc. sec. rules are introduced by Community law. It follows that the Community rules on soc. sec. introduced pursuant to Art. 51 of the Treaty must refrain from adding to the disparities which already stem from the absence of harmonization of national leg. The principle of equal treatment prohibits not only overt discrimination based on nationality but all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result. That is the case when the criterion of the MS in which the members of the family reside is used by the Community rules in order to determine the leg. applicable to the family benefits of a migrant worker. Even though the leg. of a MS employs the same criterion to determine the entitlement to family benefits of a national of that State employed in its territory, that criterion is by no means equally important for that category of worker, since the problem of members of the family residing outside the MS of employment arises essentially for migrant workers. Consequently, the criterion is not of such a nature as to secure the equal treatment laid down by Art. 48 of the Treaty and therefore may not be employed within the context of the coordination of national leg. which is laid down in Art. 51 of the Treaty with a view to promoting the free movement of workers within the Community in accordance with Art. 48. It follows that Art. 73(2) of Reg. 1408/71 is invalid in so far as it precludes the award to employed persons subject to French leg. of French family benefits for members of their family residing in the territory of another MS.	F	15.1.1986	41/84 (Pinna I)	1986, 1
Arts 48 to 51 Reg. 1408/71 Annex VI, Part I, point 2	The provisions of Reg. 1408/71 must be interpreted in the light of the objective of Arts 48 to 51 of the EC Treaty, namely the establishment of the greatest possible freedom of movement for workers. That objective would not be attained if, as a consequence of the exercise of their right to freedom of movement and to transfer their residence to another MS, workers were to lose the advantages in the field of soc. sec. guaranteed to them by the laws of a single MS.	NL	25.2.1986	284/84 (Spruyt)	1986, 685

Arts 48 to 51 Art. 177 Reg. 1408/71 Arts 45, 77 to 79	The fact that a migrant worker receives a pension as a result of the application of the provisions of Art. 45 of the Reg. on the taking into account of periods of insurance or residence completed under the leg. of several MS, and not by virtue of national leg. alone, cannot, without jeopardizing the attainment of the objectives set out in Arts 48 to 51 of the Treaty, prevent him from receiving allowances available to pensioners under national law. Consequently, Arts 77 to 79 of the Reg., which cover only benefits for dependent children of pensioners and for orphans, cannot be interpreted as precluding a MS legislation which provides for family allowances for a pensioner's dependent spouse from applying to a person in receipt of an old-age pension under the Reg.	I	28.11.1991	C-186/90 (Durighello)	1991, I-5773
Arts 48 to 51 Reg. 1408/71 Arts 1(r), 39(1) and (2) Reg. 36/63 Arts 1(1)(c), 6(1), 19(1) Reg. 3 Art. 1(p)	The period during which a frontier worker is wholly unemployed and required, pursuant to Art. 19(1) of Reg. 36/63, to claim unemployment benefits in the MS of residence, although not recognized in that MS as an insurance period or equivalent period, must be treated as such in the MS in which the person concerned was last employed, where the leg. applicable at the material time treated periods of unemployment completed on its territory as periods of sickness insurance. That is the appropriate solution notwithstanding the provisions of Reg. 3 and Reg. 1408/71 which state that 'insurance periods' means periods defined or treated as such by the leg. under which they were completed, and which, if applied in such case, would, because they would have the effect of depriving a migrant worker of advantages which he would have been able to claim under the leg. of a single MS, be contrary to the objective pursued by Arts 48 to 51 of the Treaty.	B	15.10.1991	C-302/90 (Faux)	1991, I-4875
Arts 48 to 51 Art. 7 Reg. 1408/71 Art. 3(1)	Arts 48 to 51 of the Treaty and the leg. adopted in implementation thereof, which includes Art. 3 of Reg. 1408/71, prevent a worker from losing, as a consequence of the exercise of his right to freedom of movement, the advantages in the field of soc. sec. guaranteed to him by the laws of a single MS, since such a consequence could deter workers from exercising that right and would therefore constitute an obstacle to that freedom. Those provisions must therefore be interpreted as meaning that a migrant worker who is receiving an old-age pension under the leg. of one MS and accident insurance benefits paid by an insurance institution of another MS may not be put in a worse position, for the purpose of calculating the portion of the benefit to be suspended pursuant to the leg. of the first State, than a worker who has not exercised his right of free movement and is receiving both benefits under the leg. of a single MS. No justification for such inequality of treatment can be afforded by any practical difficulties which soc. sec. institutions may encounter when calculating entitlement to benefits.	D	7.3.1991	C-10/90 (Masgio)	1991, I-1119

Arts 48 to 51 Reg. 1408/71 Art. 1(r) Reg. 3 Art. 1(r)	Art. 1(r) of Reg. 3 and Art. 1(r) of Reg. 1408/71 must be interpreted as meaning that periods treated as periods of insurance are to be determined solely in accordance with the criteria laid down in the national leg. under which those periods were completed, provided that the national leg. observes the provision of Arts 48 to 51 of the Treaty [see judgment of 6 June 1972 in case 2/72 (Murru)].	B	7.2.1990	324/88 (Vella)	1990, I-257
Arts 48 to 51 Reg. 1408/71 Art. 46(1) Reg. 574/72 Art. 15(1)	Arts 48 to 51 of the Treaty ensure that migrant workers do not, as a result of exercising their right to free movement, lose soc. sec. advantages guaranteed by the leg. of a MS, because such a consequence could dissuade Community workers from exercising their freedom of movement and would therefore constitute an obstacle to that freedom. The requirements of freedom of movement are such that when his old-age pension is calculated a migrant worker cannot benefit from the possibility provided for by national leg. of having invalidity periods treated as periods of work solely on the grounds that when the incapacity for work occurred he was not employed in the MS to which the institution responsible for paying the benefit belongs but in another MS. The prospect of losing in a MS the right to have invalidity periods treated as insurance periods, which would occur where a person went to work in another MS, would in certain circumstances dissuade that person from exercising the right to free movement.	B	9.12.1993	Joined cases C-45/92 and C-46/92 (Lepore and Nicolantonio)	1993, I-6497
Art. 51 Reg. 1408/71 Art. 46(3)	The Council, in the exercise of the powers which it holds under Art. 51 of the Treaty concerning the coordination of soc. sec. schemes of the MS, has the power, in conformity with the provisions of the Treaty, to lay down detailed rules for the exercise of rights to social benefits which the persons concerned derive from the Treaty. A limitation on the overlapping of benefits which would lead to a diminution of the rights which the persons concerned already enjoy in a MS by virtue of the application of the national leg. alone is incompatible with Art. 51 of the Treaty. Art. 46(3) of Reg. 1408/71 is accordingly incompatible with Art. 51 of the Treaty to the extent to which it imposes a limitation on the overlapping of two benefits acquired in different MS by a reduction in the amount of a benefit acquired under national leg. alone.	B	21.10.1975	24/75 (Petroni)	1975, 1149

Art. 51 **Reg. 1408/71** **Art. 51**	**The legislative provisions under which all the elderly residents of a MS are guaranteed a statutory minimum pension are regarded as coming under soc. sec. as referred to in Art. 51 of the Treaty with regard to employed persons and persons treated as such who have in that MS completed periods of employment, who reside there and are entitled to a pension there, even if these provisions are not so regarded in respect of other categories of beneficiaries.** **A benefit must therefore be considered an 'old-age benefit' within the meaning of the Reg. if it is granted to elderly residents whose means are below the minimum guaranteed by law and provides beneficiaries with additional resources of an amount equal to the difference between the said minimum and a part of the means of any kind which they may have at their disposal.** **The provisions of Art. 51(1) of the Reg., under which benefits need not be recalculated in accordance with Art. 46 of the Reg. if the change affecting one of the benefits provided ensues from events unconnected with the worker's individual situation and is the result of the economic and social trend, cannot be applied in the case of an old-age benefit which, intended to provide its beneficiary with a minimum income, is of a complementary nature, with the amount varying with the level of guaranteed minimum income, regularly reassessed, and that of the means of the person concerned.** **Application of this provision would mean disregarding the increase in the means of the person concerned resulting from the uprating of the pension paid to him on the basis of rights acquired in another MS and making him benefit systematically from a level of means exceeding the statutory minimum income, and would at the same time not be limited to benefiting the migrant worker but would also distort the purpose of the benefit and disrupt the system established under national law.** **The provisions to be applied are therefore those of Art. 51(2) in determining and adjusting the amount of benefit intended to provide a guaranteed minimum income paid to a worker who has been employed in a MS, who resides there and who receives there a retirement pension paid by the State while at the same time receiving a retirement pension from another MS. Such application leads to a recalculation of the benefit when a change occurs either in the amount of the guaranteed income or in the beneficiary's means.**	B	22.4.1993	C-65/92 (Levatino)	1993, I-2005

Art. 51 Reg. 1408/71 Art. 46(3)	In the exercise of the powers which it holds under Art. 51 of the Treaty concerning the coordination of the soc. sec. schemes of the MS, the Council has the power, in conformity with the provisions of the Treaty, to lay down detailed rules for the exercise of rights to social benefits which the persons concerned derive from the Treaty. A limitation on the overlapping of benefits which would lead to a diminution of the rights which the persons concerned already enjoy in a MS by virtue of the application of the national leg. alone is incompatible with Art. 51. Art. 46(3) of the Reg. and Decision No 91 of the Administrative Commission are incompatible with Art. 51 of the Treaty to the extent to which they impose a limitation on the overlapping of two benefits acquired in different MS by a reduction of the amount of the benefit acquired under national leg. alone.	B	3.2.1977	62/76 (Strehl)	1977, 211
Art. 51 Reg. 1408/71 Art. 4(4)	Leg. which confers on the beneficiaries a legally defined position which involves no individual and discretionary assessment of need or personal circumstances comes in principle within the field of soc. sec. within the meaning of Art. 51 of the Treaty and of Regs 3 and 1408/71. Where the competent insurance institutions to which the persons referred to by German leg. had been affiliated before 1945 no longer exist or are situated outside the territory of the Federal Republic of Germany and the purpose of such leg. is to alleviate certain situations which arose out of events connected with the national socialist regime and the Second World War and where the payment of the benefits in question to nationals is of a discretionary nature where such nationals are residing abroad, those benefits are not to be regarded as in the nature of soc. sec.	D	31.3.1977	79/76 (Fossi)	1977, 667
Art. 51 Reg. 1408/71 Art. 46(3)	An application of Art. 46(3) of Reg. 1408/71 which would lead to a diminution of the rights which the persons concerned already enjoy in a MS by virtue of the application of the national leg. alone is incompatible with Art. 51. Art. 46(3) of the Reg. is incompatible with Art. 51 of the Treaty to the extent to which it imposes a limitation on benefits acquired in different MS by a reduction in the amount of a benefit acquired under the national leg. of a MS alone.	B	13.10.1977	112/76 (Manzoni)	1977, 1647
Art. 51 Reg. 1408/71 Arts 10, 46(3)	Art. 46(3) of Reg. 1408/71 is applicable only in cases where, for the purpose of acquiring the right to benefit within the meaning of Art. 51(a) of the Treaty, it is necessary to have recourse to the arrangements for aggregation of the periods of insurance.	D	20.10.1977	32/77 (Giuliani)	1977, 1857

Art. 51 **Arts 155, 173, 177** **Reg. 1408/71** **Art. 81**	**When a full pension is granted to a worker under the national leg. of MS A alone and, in implementation of Community rules, he is also awarded a pension in MS B which is reduced by the amount of the full pension granted by the competent institution in MS A, it is not compatible with Art. 51 of the Treaty for that leg. to be applied in a way which in any given period would allow the amount of the advanced payments made to the recipient recovered by the competent institution in MS A to exceed the amount of pension or arrears of pension transferred to that institution by the soc. sec. institution in MS B and converted into MS A's national currency on the date of transfer.**	B	14.5.1981	98/80 (Romano)	1981, 1241
Art. 51 **Arts 48, 177** **Reg. 1408/71** **Art. 40(4)**	**In accordance with Arts 48 and 51 of the Treaty, Regs 1408/71 and 574/72 are in particular intended to prevent the migrant worker, as a result of his migration from one MS to another, from losing the benefit of his periods of employment and thus being placed at a disadvantage in relation to the position in which he would have been if he had completed his entire career in only one MS. For that purpose they introduced a system of aggregation of all the periods of employment which may thus be taken into account for the purpose of acquiring and retaining the right to benefits of the same kind in different MS and for the purpose of calculating the amount of such benefits. But the purpose of those texts is not to determine the conditions for the withdrawal of such benefits and they cannot have that effect.** **Art. 40(4) of Reg. 1408/71 must therefore be interpreted as meaning that 'the decision ... concerning the degree of invalidity' to which that provision refers covers exclusively a decision recognizing invalidity and not a decision establishing that there is no invalidity at a later date.**	B	10.3.1983	232/82 (Baccini II)	1983, 583
Art. 51 **Reg. 1408/71** **Arts 4, 10(1)**	**A social aid pension which, in the first place, confers on recipients a legally defined status which is not conditional upon any discretionary individual assessment of their personal needs or circumstances, and, secondly, may be paid as a supplement to the income of recipients of social security benefits, falls in principle within the field of soc. sec. referred to in Art. 51 of the EC Treaty and is not excluded from the scope of Reg. 1408/71 by the provisions of Art. 4(4) thereof.**	I	5.5.1983	139/82 (Piscitello)	1983, 1427
Art. 51 **Art. 48** **Reg. 1408/71** **Arts 4(1)(c), 12(2), 46**	**The first sentence of Art. 12(2) of Reg. 1408/71 is compatible with Art. 51 of the Treaty inasmuch as that provision does not prohibit the application of national rules against overlapping in cases where benefits are not of the same kind as benefits received in respect of invalidity, old-age, death or occupational disease within the meaning of Reg. 1408/71. In so far as those national provisions against overlapping are applied in a manner which is identical to nationals of all the MS without taking into account their nationality, there can be no discrimination within the meaning of Art. 48 of the EC Treaty.**	F	5.7.1983	171/82 (Valentini)	1983, 2157

Art. 51 Reg. 1408/71 Arts 77, 78	**The aim of Art. 51 of the Treaty would not be achieved if, as a result of the exercise of their right to freedom of movement, workers were to lose the soc. sec. advantages guaranteed to them, in any event, by the leg. of a single MS. Consequently, the Community rules on soc. sec. cannot, in the absence of an express exception consistent with the aims of the Treaty, be applied in such a way as to deprive a migrant worker or his dependants of benefits granted under the leg. of a single MS.**	D	24.11.1983	320/82 (D'Amario)	1983, 3811
Art. 51 Reg. 1408/71 Art. 77(2)(b)(i)	**As is apparent from its very wording, Art. 51 of the EC Treaty, which requires the Council to adopt such measures in the field of soc. sec. as are necessary to achieve the fundamental objective of freedom of movement for workers, is not intended to limit the Council's powers to the two measures expressly mentioned therein, namely the aggregation of all periods taken into account under the laws of the several countries and the payment of benefits to persons resident in the territories of the MS.**	B	12.7.1984	242/83 (Patteri)	1984, 3171
Art. 51 Reg. 1408/71 in general Reg. 1408/71 Annex VI, Part I, point 2(c)	**Neither Art. 51 of the EC Treaty nor the provisions of Reg. 1408/71, and in particular point 2(c) of Part I of Annex VI thereto, require that, when the pension of a married man is determined under the Dutch leg. on general old-age insurance, his wife, who after 1 January 1957 completed periods considered as periods of insurance under point 2(c), must therefore be granted the advantages provided for by the Dutch leg. in respect of periods prior to their marriage and prior to 1 January 1957 during which she neither resided nor pursued an activity as an employed person in the Netherlands.**	NL	25.2.1986	254/84 (De Jong)	1986, 671
Art. 51 Reg. 1408/71 in general Reg. 1408/71, Annex VI, Part I, point 2(c)	**Neither Art. 51 of the EC Treaty nor any provision of Reg. 1408/71 requires the periods referred to in point 2(c) of Part I of Annex VI to that Reg. to be regarded as insurance periods for the purpose of determining the period within which an application to pay voluntary contributions under national leg. may be submitted.**	NL	24.9.1987	43/86 (De Rijke)	1987, 3611

Art. 51 **Art. 48**	**Point 15 of section C in Annex VI to Reg. 1408/71 is invalid in so far as it provides, in regard to entitlement to a pension in respect of occupational invalidity or incapacity for work, or a miner's pension in respect of a reduction in his capacity to work as a miner, or a miner's pension in respect of occupational invalidity or incapacity for work, that, where under German leg. account must be taken of the occupation hitherto pursued by the person concerned, that entitlement is to be determined by taking account only of activities subject to compulsory insurance under German leg.** **Although that provision applies regardless of the nationality of the worker concerned, it works, when combined with the provisions of the German leg., to the disadvantage of migrant workers coming from MS other than Germany who have been employed successively in those States and in the Federal Republic of Germany because it prevents them from obtaining recognition, for the purposes of entitlement to a pension, of a qualification obtained in another MS which is higher than that which they have in the Federal Republic of Germany. Since it is not of such a nature as to guarantee the equal treatment required by Art. 48 of the Treaty, such a provision has no place in the coordination of national laws provided for in Art. 51 of the Treaty in order to promote freedom of movement for workers in the Community.**	D	7.6.1988	20/85 (Roviello)	1988, 2805
Art. 51 **Reg. 1408/71 in general**	**Art. 51 of the EC Treaty and Reg. 1408/71 provide only for the aggregation of insurance periods completed in different MS. They do not, however, regulate the conditions under which those insurance periods are constituted. The conditions governing the right or obligation to become a member of a soc. sec. scheme are a matter to be determined by the leg. of each MS [see the judgments of 12 July 1979 in Case 266/78 (Brunori) and of 24 April 1980 in Case 110/79 (Coonan)]. They are not therefore applicable for the purpose of determining the conditions of affiliation to a soc. sec. scheme, whether compulsory or voluntary.**	D	28.2.1989	29/88 (Schmitt)	1989, 581
Art. 51 **Art. 48** **Reg. 1408/71** **Art. 9**	**Arts 48 and 51 of the Treaty do not preclude the application to nationals of a MS of a provision of national leg. laying down, for the exercise of the right to purchase pension rights, a requirement of affiliation to the national compulsory insurance scheme. It is for the leg. of each MS to lay down the conditions concerning the right or the obligation to become affiliated to a soc. sec. scheme or to a particular branch under such a scheme, provided always that in this connection there is not discrimination between nationals of the host State and the nationals of other MS.**	D	18.5.1989	368/87 (Hartmann-Troiani)	1989, 1333
Art. 51 **Reg. 1408/71** **Art. 69**	**Art. 69(2) of the Reg. is not incompatible with the provisions of the EC Treaty concerning freedom of movement for workers in that it limits in time and renders subject to certain conditions the right to continued payment of unemployment benefits.**	D	19.6.1980	Joined cases 41/79 (Testa) 121/79 (Maggio) 796/79 (Vitale)	1980, 1979

Art. 51 **Arts 7, 48** **Reg. 1408/71** **Art. 77**	**Art. 51 of the Treaty provides for the coordination, not the harmonization, of the leg. of the MS and leaves in being differences between the MS soc. sec. systems and, consequently, in the rights of persons working in the MS. It follows that substantive and procedural differences between the soc. sec. systems of the MS, and hence in the rights of the persons working in the MS, are unaffected by Art. 51 of the Treaty. However, the Community rules on soc. sec. must refrain from adding to the disparities which already stem from the absence of harmonization of national leg., and the principle of equal treatment laid down in Arts 7 and 48 of the Treaty prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result.** **Art. 77 of the Reg., under which the benefits for dependent children which a MS must pay to its nationals who are in receipt of a pension and reside in another MS are restricted to family allowances, is not contrary to those principles. It is a rule of general scope which applies indistinctly to all nationals of the MS and is based on objective criteria concerning the nature of benefits of that kind and the conditions for granting them; it does not in itself lead to discrimination.**	F	27.9.1988	313/86 (Lenoir)	1988, 5391
Art. 51 **Art. 48(2)**	**Arts 48(2) and 51 of the EC Treaty must be interpreted as not preventing the national leg. from amending the conditions for the grant of an invalidity pension and making them stricter by providing for a reference period prior to the occurrence of the invalidity during which the insured person must have exercised an activity subject to compulsory insurance and paid a minimum number of contributions in order to be entitled to an invalidity pension, provided that the conditions adopted do not entail overt or disguised discrimination between Community workers.** **However, by virtue of those Arts, where it allows prolongation of the reference period in certain circumstances, it is unlawful for such leg. not to provide for the possibility of prolongation where the events or circumstances corresponding to those which make prolongation possible arise in another MS since, by failing to do so, such leg., even if formally applicable to all Community workers, is liable to have a much greater adverse effect on migrant workers, who, particularly in case of sickness or unemployment, tend to return to their countries of origin, and may dissuade them from exercising their right of free movement.**	D	4.10.1991	349/87 (Paraschi)	1991, I-4501

Art. 51 Reg.1408/71 Arts 51(2), 46 EC Treaty Art. 51	Art. 46(3) of Reg. 1408/71 must be interpreted as meaning that the highest theoretical amount of benefits calculated according to Art. 46(2)(a) constitutes the limit on the benefits which may be claimed by a migrant worker under Community leg., even where that theoretical amount is equal to the full benefit payable under the legislation of a single MS. On that interpretation, the provisions in question are not incompatible with Art. 51 of the EC Treaty, since Art. 46 of Reg. 1408/71 is applicable only if it allows a migrant worker to be granted benefits at least as high as those payable under the leg. of one State alone.	B	21.3.1990	199/88 (Cabras)	1990, I-1023
Art. 51 Art. 48(2) Reg. 1408/71 Arts 6, 7	Arts 48(2) and 51 of the EC Treaty must be interpreted as precluding the loss of soc. sec. advantages for workers who have exercised their right to freedom of movement which would result from the inapplicability, following the entry into force of Reg. 1408/71, of conventions operating between two or more MS and incorporated in their national law. Although the replacement of the soc. sec. conventions between MS by Reg. 1408/71 is mandatory in nature, it cannot have the effect of allowing the purpose of Arts 48 to 51 of the EC Treaty to be disregarded; that would be the case if workers who had availed themselves of their right to freedom of movement were to lose the soc. sec. advantages previously conferred on them by national leg., whether alone or in conjunction with international soc. sec. conventions operating between two or more MS.	D	7.2.1991	C-227/89 (Rönfeldt)	1991, I-323
Art. 51 Reg. 1408/71 Arts 12, 73	In accordance with the aim of Art. 51 of the Treaty, to which reference should be made when the Community rules do not provide for a specific situation, Arts 12 and 73 of Reg. 1408/71 must be interpreted as meaning that a worker's right to family benefits in the MS of employment in respect of members of his family residing in a second MS, when family benefits are already being paid in respect of the same members of the family to his or her spouse in a third MS in which the spouse is employed, may be exercised where the amount of family benefits actually received in the third MS is lower than the amount of benefit in the first MS, in which case the worker is entitled to an additional benefit, payable by the competent institution of the first State, equal to the difference between the two amounts.	B	14.12.1989	168/88 (Dammer)	1989, 4553

Art. 51 Reg. 1408/71 Arts 67(3), 69(1)	**By making provision, on the one hand, for Community nationals moving to another MS to be credited, in that MS, with periods of contributions or employment under the laws of any other MS for the purpose of acquiring, maintaining or recovering entitlement to unemployment benefit and, on the other, for unemployed workers seeking employment in another MS to maintain, for a limited period, the entitlement to unemployment benefit provided for in the laws of the country of last employment despite not being available for employment in that country, Reg. 1408/71 grants such workers rights which they would otherwise not have and which therefore help guarantee the freedom of movement of workers, in conformity with Art. 51 of the Treaty.** **In attaching conditions, Arts 67(3) and 69(1) of the aforementioned Reg. to the facilities granted to unemployed persons who are actively seeking work, the Community legislature has made correct use of its discretionary powers in respect of the implementation of freedom of movement for workers.**	UK	8.4.1992	C-62/91 (Gray)	1992, I-2737
Art. 51 Reg. 1408/71 Arts 73(1) and (2), 99 Act of Accession of Spain, 1985 Art. 60	The uniform solution for all the MS provided for in Art. 99 of Reg. 1408/71, in the version enacted in Reg. 2001/83, entered into force on 15 January 1986 following the judgment of the Court of the same date in which Art. 73(2) of that Reg. was declared to be void *ab initio*; that declaration of invalidity entailed that, in the absence of new rules in conformity with Art. 51 of the Treaty, the system for the payment of family benefits laid down in Art. 73(1) was of general application. The entry into force of that uniform solution meant that, under Art. 60 of the Act of Accession of Spain, the application of Art. 73(1) of Reg. 1408/71 could, with effect from 15 January 1986, be relied on by Spanish workers employed in a MS other than Spain the members of whose families reside in Spain.	D	13.11.1990	C-99/89 (Yanez-Campoy)	1990, I-4097
Art. 51 Reg. 1408/71 Arts 4(1)(a), 19, 28 Reg. 1408/71 in general	The essential object of Reg. 1408/71 adopted under Art. 51 of the Treaty is to ensure that soc. sec. schemes governing workers in each MS moving within the Community are applied in accordance with uniform Community criteria. To this end it lays down a whole set of rules founded in particular upon the prohibition of discrimination on grounds of nationality or residence and upon the maintenance by a worker of his rights acquired by virtue of one or more soc. sec. schemes which are or have been applicable to him. To interpret the Reg. as prohibiting national leg. to grant a worker soc. sec. broader than that provided by the application of the said Reg. would therefore be going beyond that objective, and also outside the purpose and scope of Art. 51.	NL	10.1.1980	69/79 (Jordens-Vosters)	1980, 75

Art. 51	Art. 51 of the Treaty refers only to soc. sec. benefits, so that the Council is not required to adopt provisions relating to benefits not covered by soc. sec. benefits of the type provided by the German leg. on substitute pensions (*Fremdrentengesetz*) by reason on insurance periods completed, prior to 1945, outside the territory of the Federal Republic of Germany are not to be regarded as coming within the sphere of soc. sec., regard being had to the fact that the competent insurance institutions to which the persons referred to by the provision in question were affiliated are no longer in existence or are outside the territory of the Federal Republic of Germany, and the fact that that leg. has the purpose of alleviating certain situations which arose out of the events connected with the national socialist regime and the Second World War, and finally that the payment of the benefits in question is of a discretionary nature where such nationals are residing abroad. This exclusion from the field of soc. sec. applies to an invalidity pension following an accident at work in the same way as it applies to an invalidity pension not following such accident.	D	22.2.1979	144/78 (Tinelli)	1979, 757
Art. 51 **Art. 48** **Reg. 1408/71** **Art. 73**	The Court's declaration that Art. 73(2) of the Reg. is invalid – attributable to the fact that that provision, which creates a system applicable specifically to workers subject to the leg. of one of the MS, does not satisfy the requirement of equal treatment laid down in Art. 48 of the Treaty and therefore can have no place in the context of the coordination of national leg. prescribed by Art. 51 of the Treaty with a view to promoting the free movement of workers – means that until such time as the Council adopts new rules which are in conformity with Art. 51 the system for the payment of family benefits laid down in Art. 73(1) of the aforesaid Reg. is of general application.	F	2.3.1989	359/87 (Pinna II)	1989, 585
Art. 51 **Reg. 1408/71** **Arts 1(u)(ii), 73**	Since it relates only to employed persons, Art. 51 of the Treaty does not require a MS on whose territory a self-employed person works to pay allowances within the meaning of Art. 1(u)(ii) of the Reg. if the members of the person's family reside in another MS. However, with effect from 15 January 1986, in accordance with Art. 73 of the Reg. as amended by Reg. 3427/89, a self-employed person subject to the leg. of a MS is entitled, in respect of members of his family who are residing in another MS, to the family benefits provided for by the leg. of the former State, as if they were residing in that State.	F	5.12.1989	114/88 (Delbar)	1989, 4067

Art. 51 **Art. 48** **Reg. 1408/71** **Arts 12(2), 46**	**Neither Arts 12(2) and 46 of the Reg. nor Arts 48 and 51 of the Treaty prevent the application of a national provision against overlapping limiting the length of an employed person's work history to 45 years and, irrespective of the nationality of the persons concerned and of the MS to which the retirement scheme belongs under which the insurance periods exceeding the length of the working life of the person concerned have been completed, leading to a reduction of the insurance period actually completed by a migrant worker in the MS of the paying institution because of insurance years completed in another MS in so far as the reduction of the migrant worker's rights acquired in the MS to which the paying institution belongs is counterbalanced by the retirement pension rights acquired through the Reg. in the second MS.**	B	15.12.1993	Joined cases C-113/92 C-114/92 C-156/92 (Fabrizii, Neri and Grosso)	**1993, I-6707**
Art. 51(1) **Art. 48** **Reg. 1408/71** **Arts 3, 84(4)**	**Arts 48 and 51(1) of the EC Treaty, and Reg. 1408/71 as amended and updated by Reg. 2001/83, and in particular Arts 3 and 84(4) thereof, do not apply to situations of which every element is confined within a single MS.**	B	22.9.1992	C-153/91 (Petit)	**1992, I-4973**
Art. 51(b) **Art. 7** **Reg. 1408/71** **Arts 2(1), 3(1), 10**	**According to Art. 51(b) of the EC Treaty, which was implemented by Art. 10 of Reg. 1408/71, the payment of benefits acquired under the soc. sec. scheme of one or more MS is guaranteed in Community law only to persons who reside in the territory of a MS.** **It follows that Community law does not preclude national leg. which provides that a self-employed person's retirement pension is payable abroad only to beneficiaries residing in the territory of a non-member country where a self-employed person's pension could be paid to them pursuant to a reciprocity agreement, provided that such leg. takes effect only outside the Community.**	B	14.11.1990	C-105/89 (Buhari Haji)	**1990, I-4211**
Art. 52 **Art. 58**	**Where a company has exercised its right of freedom of establishment, Arts 52 and 58 of the EC Treaty must be interpreted as prohibiting the authorities of a MS from excluding the company's director from a national sickness insurance benefit scheme solely on the ground that the company was formed in accordance with the law of another MS, where it also has its registered office but does not conduct any business.**	NL	10.7.1986	79/85 (Segers)	**1986, 2375**
Art. 52 **Reg. 1408/71** **Arts 1(a)(i) and (ii), 73(1)**	**Art. 51 of the Treaty does not preclude the application to one of its nationals of leg. of a MS which restricts child benefits to children residing in the territory of that State, during a period where, after having been employed in another MS and had a child there, that person returns alone to his MS of origin and works there as a self-employed person.**	UK	4.10.1991	C-15/90 (Middleburgh)	**1991, I-4655**

Art. 52 **Art. 48**	**Freedom of establishment is not confined to the right to create a single establishment within the Community but entails the right to set up and maintain, subject to the observance of the relevant professional rules of conduct, more than one place of work within the Community. That applies also to a person who is employed in one MS and wishes, in addition, to work in another MS in a self-employed capacity.** **Arts 48 and 52 of the Treaty preclude national leg. which might place Community citizens at a disadvantage when they wish to extend their activities beyond the territory of a single MS. Those Arts must therefore be interpreted as meaning that a MS may not refuse to exempt self-employed persons working within its territory from the contributions provided for under the national leg. on soc. sec. for self-employed persons, where employment is coupled with a self-employed activity, on the ground that the employment which is capable of giving entitlement to such exemption is pursued within the territory of another MS.**	B	7.7.1988	143/87 (Stanton)	1988, 3877
Art. 52 **Art. 48**	**Freedom of establishment is not confined to the right to create a single establishment within the Community, but entails the right to set up and maintain, subject to the observance of the relevant professional rules of conduct, more than one place of work within the Community. That applies also to a person who is employed in one MS and wishes, in addition, to work in another MS in a self-employed capacity.** **Arts 48 and 52 of the Treaty preclude national leg. which might place Community citizens at a disadvantage when they wish to extend their activities beyond the territory of a single MS. Those Arts must therefore be interpreted as meaning that a MS may not refuse to exempt self-employed persons working within its territory from the contributions provided for under the national leg. on soc. sec. for self-employed persons, where employment is coupled with a self-employed activity, on the ground that the employment which is capable of giving entitlement to such exemption is pursued within the territory of another MS.**	B	7.7.1988	Joined cases 154 and 155/87 (Wolf and others)	1988, 3897

Art. 52 Reg. 1408/71 Arts 4, 18 Reg. 1612/68 Art. 7(2)	A MS practises discrimination of nationals of other MS if it makes the payment of birth grants and maternity allowances subject to conditions of prior residence within its territory as these conditions are more readily fulfilled by its own nationals. This discrimination in the grant of allowances which for employed persons constitute social advantages amounts to an infringement of Art. 7(2) of Reg. 1612/68. It also infringes Art. 52 of the Treaty since in the case of self-employed persons, while it is not practised in the field of specific rules relating to the pursuit of an occupation, it nevertheless hampers the pursuit of occupational activities by nationals of other MS. The residence requirement in respect of the birth allowance cannot be justified on grounds of considerations of public health since the obligation to undergo various medical examinations to which the grant of the allowance is likewise subject could be dissociated from it.	L	10.3.1993	C-111/91 (Co v Luxembourg)	1993, I-817
Art. 58 Art. 52	Where a company has exercised its right of freedom of establishment, Arts 52 and 58 of the EC Treaty must be interpreted as prohibiting the authorities of a MS from excluding the company's director from a national sickness insurance benefit scheme solely on the ground that the company was formed in accordance with the law of another MS, where it also has its registered office but does not conduct any business.	NL	10.7.1986	79/85 (Segers)	1986, 2375
Art. 155 Arts 51, 173, 177 Reg. 1408/71 Art. 81	It follows both from Art. 155 of the Treaty and the judicial system created by the Treaty, and in particular by Arts 173 and 177 thereof, that a body such as the Administrative Commission may not be empowered by the Council to adopt acts having the force of law. Whilst a decision of the Administrative Commission may provide aid to soc. sec. institutions responsible for applying Community law in this field, it is not of such a nature as to require those institutions to use certain methods or adopt certain interpretations when they come to apply the Community rules. A decision of the Administrative Commission does not therefore bind national courts.	B	14.5.1981	98/80 (Romano)	1981, 1241
Art. 169 Reg. 1408/71 Art. 33	A MS cannot plead the provisions, practices or circumstances existing in its internal legal order to justify a failure to comply with obligations resulting from Community Regs.	B	28.3.1985	275/83 (Co v Belgium)	1985, 1097
Art. 169 Reg. 1408/71 Arts 13(2)(a), 73	The scope of an action brought under Art. 169 of the Treaty is delimited both by the preliminary administrative procedure provided for by that Art. and by the form of order sought in the application. The scope of the action cannot be extended after the issue of the reasoned opinion, since the application and the reasoned opinion must be founded on the same grounds and submissions.	NL	28.11.1991	C-198/90 (Co v Netherlands)	1991, I-5799

Art. 173 **Arts 51, 155, 177** **Reg. 1408/71** **Art. 81**	**It follows both from Art. 155 of the Treaty and the judicial system created by the Treaty, and in particular by Arts 173 and 177 thereof, that a body such as the Administrative Commission may not be empowered by the Council to adopt acts having the force of law. Whilst a decision of the Administrative Commission may provide aid to soc. sec. institutions responsible for applying Community law in this field, it is not of such a nature as to require those institutions to use certain methods or adopt certain interpretations when they come to apply the Community rules. A decision of the Administrative Commission does not therefore bind national courts.**	B	14.5.1981	98/80 (Romano)	1981, 1241
Art. 174 **Arts 48 to 51, 177** **Reg. 1408/71** **Art. 73(2)**	**Where it is justified by overriding considerations the second paragraph of Art. 174 of the Treaty gives the Court discretion to decide, in each particular case, which specific effects of a Reg. which has been declared void must be maintained. When the Court makes use of the possibility of limiting the effect on past events of a declaration in proceedings under Art. 177 of the Treaty that a measure is invalid, it is for the Court to decide whether an exception to that temporal limitation of the effect of its judgment may be made in favour of the party which brought the action before the national court or in favour of any other person who took similar steps before the declaration of invalidity or whether, conversely, a declaration of invalidity applicable only to the future constitutes an adequate remedy even for persons who took action at the appropriate time with a view to protecting their rights.**	F	15.1.1986	41/84 (Pinna I)	1986, 1
Art. 177 **Reg. 1408/71** **Art. 1(v)**	**The Court has not jurisdiction under Art. 177 of the EC Treaty to give a ruling on the interpretation of provisions of international law which bind MS outside the framework of Community law.**	D	27.11.1973	130/73 (Vandeweghe)	1973, 1329
Art. 177 **Reg. 1408/71** **Arts 2(1), 3(1)**	**Whilst the Court, acting within the framework of Art. 177 of the Treaty, has no jurisdiction to apply the Community rule to a specific case, nor, consequently, to pronounce on a provision of national law with regard to such rule, it can however provide the national court with the factors of interpretation depending on Community law which could be useful to it in evaluating the effects of such provisions.**	B	17.6.1975	7/75 (Fracas)	1975, 679
Art. 177 **Reg. 1408/71** **Art. 94(5)** **Reg. 3** **Art. 42(5)**	**The Court is not required to rule, within the context of a request for a preliminary ruling under Art. 177 of the Treaty, on the meaning and scope of national legislative provisions but must restrict itself to the interpretation of the provisions of Community law in question.**	B	13.10.1976	32/76 (Saieva)	1976, 1523

Art. 177 **Reg. 1408/71** **Arts 1(f), 2(1)** **Reg. 1612/68** **Art. 7**	**Whilst the court, acting within the framework of Art. 177, has no jurisdiction to pronounce on a provision of national law with regard to a Community rule, it can however provide the national court with the factors of interpretation depending on Community law which could be useful to it in evaluating the effects of such provisions.**	F	16.12.1976	63/76 (Inzirillo)	1976, 2057
Art. 177 **Arts 51, 155, 173** **Reg. 1408/71** **Art. 81**	**It follows both from Art. 155 of the Treaty and the judicial system created by the Treaty, and in particular by Arts 173 and 177 thereof, that a body such as the Administrative Commission may not be empowered by the Council to adopt acts having the force of law. Whilst a decision of the Administrative Commission may provide aid to soc. sec. institutions responsible for applying Community law in this field, it is not of such a nature as to require those institutions to use certain methods or adopt certain interpretations when they come to apply the Community rules. A decision of the Administrative Commission does not therefore bind national courts.**	B	14.5.1981	98/80 (Romano)	1981, 1241
Art. 177 **Reg. 1408/71** **Arts 73, 76** **Reg. 574/72** **Art. 10(1)**	**The task assigned to the Court by Art. 177 of the EC Treaty is not that of delivering opinions on general or hypothetical questions but of assisting in the administration of justice in the MS.**	UK	3.2.1983	149/82 (Robards)	1983, 171
Art. 177 **Reg. 1408/71** **Arts 22, 36** **Reg. 574/72** **Annex 3**	**Art. 177 of the Treaty, which is based on a clear separation of functions between national courts and the Court of Justice, does not permit the latter to pass judgment on the relevance of the questions submitted. Accordingly the question whether the provisions or concepts of Community law whose interpretation is requested are in fact applicable to the case in question lies outside the jurisdiction of the Court of Justice and falls within the jurisdiction of the national court.**	NL	16.3.1978	117/77 (Pierik I)	1978, 825
Art. 177	**In proceedings under Art. 177 of the EC Treaty the Court cannot give a ruling on a question when, in the light of the factual and legal circumstances of the main proceedings, it is not possible to glean from that question the factors necessary for an interpretation of Community law which the national court might usefully apply in order to resolve, in accordance with that law, the dispute before it.**	B	16.9.1982	132/81 (Vlaeminck)	1982, 2953

Art. 177 Reg. 1408/71 Art. 71	**Although the Court has no jurisdiction within the framework of the application of Art. 177 of the Treaty to decide upon the compatibility of a national provision with Community law, it may nevertheless extract from the wording of the question formulated by the national court, having regard to the facts stated by the latter, those elements which come within the interpretation of Community law.**	B	1.12.1977	66/77 (Kuyken)	1977, 2311
Art. 177 Arts 48, 51 Reg. 1408/71 Art. 40(4)	**The Court may not in the framework of the procedure for a preliminary ruling give a ruling on the application of provisions of national law or on the relevance of the request for a preliminary ruling. As regards the division of jurisdiction between national courts and the Court of Justice under Art. 177 of the Treaty, it is for the national court to appreciate, with full knowledge of the matter before it, the relevance of questions of law raised by the dispute before it and the necessity for a preliminary ruling so as to enable it to give judgment.**	B	10.3.1983	232/82 (Baccini II)	1983, 583
Art. 177 Arts 48 to 51, 174 Reg. 1408/71 Art. 73(2)	**Where it is justified by overriding considerations the second paragraph of Art. 174 of the Treaty gives the Court discretion to decide, in each particular case, which specific effects of a Reg. which has been declared void must be maintained. When the Court makes use of the possibility of limiting the effect on past events of a declaration in proceedings under Art. 177 of the Treaty that a measure is invalid, it is for the Court to decide whether an exception to that temporal limitation of the effect of its judgment may be made in favour of the party which brought the action before the national court or in favour of any other person who took similar steps before the declaration of invalidity or whether, conversely, a declaration of invalidity applicable only to the future constitutes an adequate remedy even for persons who took action at the appropriate time with a view to protecting their rights.**	F	15.1.1986	41/84 (Pinna I)	1986, 1
Art. 177 Arts 48 to 51 Reg. 1408/71 Arts 45, 77 to 79	**A request from a national court for a preliminary ruling may be rejected only if it is quite obvious that the interpretation of Community law or the examination of the validity of a rule of Community law sought by that court bears no relation to the actual nature of the case or to the subject matter of the main action.**	I	28.11.1991	C-186/90 (Durighello)	1991, I-5773
Art. 177 Reg. 574/72 Art. 45(4)	**It should be noted that it is not for this Court to pronounce on the expediency of the request for a preliminary ruling. As regards the division of jurisdiction between national courts and the Court of Justice under Art. 177 of the Treaty it is for the national court which is alone in having a direct knowledge of the facts of the case and of the arguments put forward by the parties, and which will have to give judgment in the case, to appreciate, with full knowledge of the matter before it, the relevance of the questions of law raised by the dispute before it and the necessity for a preliminary ruling so as to enable it to give judgment.**	B	14.2.1980	53/79 (Damiani)	1980, 273

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