

## ANNEX 12

### JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES RELATED TO SOCIAL SECURITY

#### A.

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. 18(1) Art. 35(3)  EC Treaty Art. 51	Art. 18(1) of the Reg. must, in the light of the objective laid down by Art. 51 of the Treaty, be interpreted as meaning that, where the applicable leg. of a MS makes the grant of cash sickness benefits subject to the condition that the insured person was not already unfit for work at the time when he became insured under the scheme which it establishes, the competent institution must also take into account periods of insurance completed by that person under the leg. of another MS, as if those periods had been completed under the leg. which it administers.  The fact that, having transferred his residence from one MS to another MS, the person concerned was for a short period neither employed nor registered as seeking employment in the latter State does not interrupt the continuity of the insurance periods completed by that person or preclude the application of the rule on the aggregation of insurance periods.  It is inherent in the normal exercise of the right to exercise freedom of movement for a migrant worker to be out of work for a short period during which he is physically moving from one MS to another.	NL	26.10.1995	C-482/93 (Klaus)	1995, I-3551
Art. 19 Arts 4(1), 28(1)  EC Treaty	The Reg., 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	NL	10.1.1980	69/79 (Jordens- Vosters)	1980, 75

Art. 51	MS.				
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) Arts 4(1)(a), 25(1), 28(1) EC Treaty Arts 6, 48(2)	In its judgement in the case 61/65 the Court has already stated that the term 'benefits in kind' does not exclude the possibility that such benefits may comprise payments made by the debtor institution, in particular in the form of direct payments or the reimbursement of expenses, and that 'cash benefits' are essentially those designed to compensate for a worker's loss of earnings through illness. A benefit such as the German care allowance, however, although designed to cover certain costs rather than to compensate for loss of earnings on the part of the recipient, takes the form of financial aid which enables the standard of living of persons requiring care to be improved as a whole, so as to compensate for the additional expense brought about by their condition (the payment is periodical and not subject to certain expenditure or to the production of receipts for the expenditure incurred, the amount is fixed and independent of the costs actually incurred and the recipients are to a large extent unfettered in their use of the sums thus allocated to them), and therefore constitutes a sickness insurance 'cash benefit' as referred to in Arts 19(1)(b), 25(1)(b) and 28(1)(b).	D	5.3.1998	C-160/96 Molenaar	1998, 0000
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. 19(2) Art. 1(f)	Art. 19(2) of the Reg. is to be understood as meaning that when a worker resides with the members of his family in the territory of a MS other than the MS in which he works, under whose leg. he is insured by virtue of the Reg., the conditions for entitlement to sickness benefits in kind for members of that person's family provided by their State of residence are governed, in the same way as for the worker himself, by the leg. of the State in which that person works in so far as the members of his family are not entitled to those benefits under the leg. of their State of residence. Art. 1(f) ... does not deal with the conditions of affiliation or of entitlement to social-security benefits for members of the family of a worker, but merely refers to the leg. under which benefits are provided for determining the persons considered to be family members.	D	8.6.1995	C-451/93 (Delavant)	1995, I-1545
Art. 22 Reg. 1408/71 in general	The fact that a national measure may be consistent with a provision of secondary legislation, in this case Art. 22 of Reg. 1408/71, does not have the effect of removing that measure from the scope of the provisions of the Treaty, in this case Arts 30 and 36. Art. 22, interpreted in the light of its purpose, is not intended to regulate and hence does not in any way prevent the reimbursement by MS, at the tariffs in force in the competent State, of the cost of medical products purchased in another MS, even without prior authorisation.	L	28.4.1998	C-120/95 (Decker)	1998, 0000

Art.22 Reg. 1408/71 in general	The fact that a national measure may be consistent with a provision of secondary legislation, in this case Article 22 of Reg. 1408/71, does not have the effect of removing that measure from the scope of the provisions of the Treaty, in this case Arts 59 and 60. Art. 22, interpreted in the light of its purpose, is not intended to regulate and hence does not in any way prevent the reimbursement by MS, at the tariffs in force in the competent State, of costs incurred in connection with treatment provided in another MS, even without prior authorisation.	L	28.4.1998	C-158/96 (Kohll)	1998, 0000
Art. 22(1)(a)  Reg 574, Art. 18	Art. 22(1)(a)(iii) is to be interpreted as covering national leg. under which an employee is entitled, on becoming incapacitated for work, to continued payment of his wages for a certain period, even where those wages are not payable until a given period has elapsed since the incapacity commenced. By laying down the condition that the sick worker's state of health must "necessitate immediate benefits", that provision requires confirmation of a pressing medical need for such benefits and not only encompasses "benefits in kind" needed forthwith, but further implies that, in urgent situations, the worker concerned must also be entitled to any corresponding "cash benefits" which are essentially designed to compensate for the sick worker's loss of earnings and are therefore intended to cover his maintenance, which might otherwise be jeopardised.	D	2.5.1996	C-206/94 (Brennet AG)	1996, I- 2357
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 selfemployed 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	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	NL	16.3.1978	117/77 (Pierik I)	1978, 825

	<p>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. 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 are to be fully refunded.</p>				
<p>Art. 22(1)(c) and (2) Art. 1(a)</p>	<p>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.</p> <p>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).</p> <p>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.</p>	NL	31.5.1979	182/78 (Pierik II)	1979, 1977
<p>Art. 25(1)  Arts 4(1)(a), 19(1), 28(1)  EC Treaty Arts 6, 48(2)</p>	<p>In its judgement in the case 61/65 the Court has already stated that the term 'benefits in kind' does not exclude the possibility that such benefits may comprise payments made by the debtor institution, in particular in the form of direct payments or the reimbursement of expenses, and that 'cash benefits' are essentially those designed to compensate for a worker's loss of earnings through illness.</p> <p>A benefit such as the German care allowance, however, although designed to cover certain costs rather than to compensate for loss of earnings on the part of the recipient, takes the form of financial aid which enables the standard of living of persons requiring care to be improved as a whole, so as to compensate for the additional expense brought about by their condition (the payment is periodical and not subject to certain expenditure or to the production of receipts for the expenditure incurred, the amount is fixed and independent of the costs actually incurred and the recipients are to a large extent unfettered in their use of the sums thus allocated to them), and therefore constitutes a sickness insurance 'cash benefit' as referred to in Arts 19(1)(b), 25(1)(b) and 28(1)(b).</p>	D	5.3.1998	C-160/96 Molenaar	1998, 0000
<p>Art. 25(1) and (4)  Reg. 574/72 Art. 26(6)</p>	<p>Art. 25(4) of the Reg. requires the competent institution to decide on a request for the extension of the period in respect of which sickness benefits are payable to an unemployed person who has availed himself of the option of going to a MS other than the competent State in order to seek employment there, even though that request has not been made expressly by that person but may be inferred from an application for cash sickness benefits lodged shortly before the expiry of the period referred to in Art. 25(1) of the Reg. with the sickness</p>	D	13.7.1995	C-391/93 (Perrotta)	1995, I-2079

	<p>insurance institution of the place where the unemployed person has gone. Neither Art. 25(4) of the Reg. nor Art. 26(6) of Reg. 574/72 requires the unemployed person to lodge a formal application for extension of the period in respect of which sickness benefits are payable; moreover, among the cases of illness which may justify extending the period some may by their nature prevent the lodging of a formal application.</p> <p>The concept of force majeure to which Art. 25(4) of the Reg. refers in order to limit the cases in which sickness benefits continue to be payable after the expiry of the period referred to in Art. 25(1) to an unemployed person who has gone to a MS other than the competent State in order to seek employment there must, in the light of the consideration to be given to the unemployed person's state of health, be understood as designating abnormal and unforeseeable circumstances, outside his control, the consequences of which could not be avoided except at the cost of excessive sacrifice. In ascertaining whether there is a case of force majeure, the competent institution must therefore conduct an appraisal of the circumstances of the case in order to determine whether the unemployed person may reasonably be required to return to the competent State, regard being had not only to the risks that his state of health may significantly deteriorate or his chances of recovery diminish as a result of the return journey, but also to the severity of the ordeal which he would thereby be forced to endure, given, first, that the concept of force majeure cannot be limited to the absolute impossibility of returning to the competent State and, second, that physical ability to travel cannot as such preclude a finding of force majeure.</p>				
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. 28(1) Arts 4(1)(a), 19(1), 25(1) EC Treaty Arts 6, 48(2)	<p>In its judgement in the case 61/65 the Court has already stated that the term 'benefits in kind' does not exclude the possibility that such benefits may comprise payments made by the debtor institution, in particular in the form of direct payments or the reimbursement of expenses, and that 'cash benefits' are essentially those designed to compensate for a worker's loss of earnings through illness.</p> <p>A benefit such as the German care allowance, however, although designed to cover certain costs rather than to compensate for loss of earnings on the part of the recipient, takes the form of financial aid which enables the standard of living of persons requiring care to be improved as a whole, so as to compensate for the additional expense brought about by their condition (the payment is periodical and not subject to certain expenditure or to the production of receipts for the expenditure incurred, the amount is fixed and independent of the costs actually incurred and the recipients are to a large extent unfettered in their use of the sums thus allocated to them), and therefore constitutes a sickness insurance 'cash benefit' as referred to in Arts 19(1)(b), 25(1)(b) and 28(1)(b).</p>	D	5.3.1998	C-160/96 Molenaar	1998, 0000

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 <i>ratione materiae</i> 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. 35(3) Art. 18(1)  EC Treaty Art. 51	Art. 35(3) of the Reg., which provides that where, under the leg. of a MS, the granting of sickness benefits is conditional upon the origin of the illness, that condition is not to apply to a worker to whom the Reg. applies, regardless of the MS in whose territory he resides, does not apply to a situation in which the applicable leg. precludes, in whole or in part, the grant of sickness benefits if the worker was already unfit for work at the time when he became insured under the scheme which it establishes.	NL	26.10.1995	C-482/93 (Klaus)	1995, I- 3551
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

B.

**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 preceding 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	D	12.7.1979	266/78 (Brunori)	1979, 2705

	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.				
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 'leg.' 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) and Art. 46 of the Reg. do not prevent the application of a national	B	2.8.1993	C-31/92	1993,

Art. 12(2)	<p>rule against overlapping in the determination of a pension under national leg. alone. These Arts, however, do prevent such application for the determination of a pension in accordance with the provisions of Art. 46.</p> <p>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.</p> <p>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.</p>			(Larsy)	I-4543
Art. 46 Art. 12(2), Chapter 3  Reg. 574/72 Arts 15, 46	<p>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.</p> <p>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.</p>	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	<p>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.</p> <p>On the latter supposition, paragraph 3 of Art. 46 is applicable to the exclusion of rules against overlapping laid down by national leg.</p> <p>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.</p>	NL	5.5.1983	238/81 (Van der Bunt-Craig)	1983, 1385
Art. 46 Art. 12(2)	<p>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.</p>	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	<p>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</p>	F	5.7.1983	171/82 (Valentini)	1983, 2157

Arts 48, 51	<p>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.</p> <p>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.</p> <p>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.</p>				
<p>Art. 46</p> <p>Art. 1(j)</p> <p>Annex V, Part H, paragraph 4</p> <p>Reg. 574/72</p> <p>Art. 15</p>	<p>For the application of Art. 46 of the Reg. and of Art. 15 of Reg. 574/72:</p> <p>(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.;</p> <p>(b) a period of paid employment completed in the Netherlands before 1 July 1967 in respect of which no contributions were paid;</p> <p>are to be regarded as periods of insurance and not as periods treated as such.</p>	NL	2.2.1984	285/82 (Derks)	1984, 433
<p>Art. 46</p> <p>Art. 12(2)</p> <p>EC Treaty</p> <p>Arts 48, 51</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	B	15.12.1993	Joined cases C-113/92 C-114/92 C-156/92 (Fabrizii, Neri and Grosso)	1993, I-6707

	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.				
Art. 46 Arts 12, 45(2)	<p>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.</p> <p>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.</p> <p>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).</p>	B	13.3.1986	296/84 (Sinatra II)	1986, 1047
Art. 46 Art. 51	<p>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).</p> <p>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.</p>	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	B	6.10.1987	197/85 (Stefanutti)	1987, 3855

	<p>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.</p> <p>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.</p>				
Art. 46 Art. 12(2)	<p>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.</p>	B	24.9.1987	37/86 (Van Gastel, born Coenen)	1987, 3589
Art. 46	<p>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.</p>	B	16.5.1979	236/78 (Mura II)	1979, 1819
Art. 46 Art. 12(2)	<p>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.</p> <p>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</p>		18.2.1992	C-5/91 (Di Prinzio)	1992, I-897

	<p>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:</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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);</p> <p>(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 Art. 46 of the Reg. and the higher of those amounts is to be taken into consideration.</p>				
Art. 46	<p>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).</p>	B	17.12.1987	323/86 (Collini)	1987, 5489
Art. 46 Art. 12(2)	<p>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</p>	B	5.4.1990	C-109/89 (Bianchin Ernesto)	1990, I- 1619

	<p>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.</p> <p>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.</p> <p>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.</p> <p>[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).]</p>				
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)	<p>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.</p> <p>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.</p> <p>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.</p> <p>[The grounds of this judgment are identical to those of the judgment of the</p>	B	5.4.1990	C-108/89 (Pian)	1990, I- 1599

	same date, 5 April 1990, in Case C-109/89 (Bianchin Ernesto).]				
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
Arts 46 Art. 1(u)(i), 51	Where benefits paid in one MS by way of an invalidity pension are calculated in accordance with Art. 46 of Reg. 1408/71, Art. 51 of that Reg. is to be interpreted as precluding a recalculation of the benefits in question in the event of the grant in another MS of an allowance which is in the nature of a family benefit for the purposes of Art. 1(u)(i) of the Reg. or which, being granted automatically to families meeting certain objective criteria, relating in particular to their size, income and capital resources, may be considered a family benefit.	B	22.9.1994	C-301/93 (Bettaccini)	1994, I- 4361

	It is apparent from the wording, structure and objective of Art. 51 that it relates only to benefits governed by Chapter 3 of Title III of the Reg., which applies to pensions in respect of old age, death and invalidity. Since family benefits fall within the scope of Chapter 7 of Title III of the Reg., they are outside that of Chapter 3. It follows that the grant of a family benefit does not give rise to the application of Art. 51 of the Reg. and neither obliges nor authorizes the institution concerned to recalculate an invalidity pension in accordance with Art. 46 of the Reg.				
Arts 46, Art. 12(2), 46a	A retirement pension granted under the leg. of one MS, on the basis of periods of insurance personally completed in that State by the person concerned, and a retirement pension obtained under the leg. of another MS by that person as a divorcee, on the basis of periods of insurance completed by that person's former spouse, are not benefits of the same kind within the meaning of Arts. 12(2) and 46(a) of Reg. 1408/71, as amended by Reg. 1248/92. Those benefits do not have the same purpose and object, since the aim of the benefit granted to a divorcee is to ensure that that person has adequate means of subsistence in view of the fact that he or she no longer has access to the income of his or her former spouse, whereas the personal retirement pension is intended to ensure that a worker has adequate income from the time at which he or she personally retires. Furthermore, the two benefits are calculated or provided on the basis of the periods of employment of two different persons, since that payable to a divorcee takes account of the period of employment and remuneration of the former spouse, whereas that payable in respect of personal retirement is calculated on the basis of periods of insurance completed by the person concerned.	B	11.8.1995	C-98/94 (Schmidt)	1995, I-2559
Art. 46 Arts 3(1), 51(1)	Arts 46 and 51(1) must be interpreted as precluding the share of an employed person's old-age pension granted to that person's separated spouse under the leg. of a MS from being recalculated downwards by reference to alterations arising from general economic and soc. developments in an invalidity benefit received by that separated spouse under the leg. of another MS. Art. 51(1) applies not only where the benefit to be reduced due to index-linked increases in another benefit has been calculated according to Art. 46, but also where it has been calculated in accordance with national provisions. Moreover, since the benefit granted to a separated spouse does not form part of a scheme designed to offset the inadequacy of the recipient's resources so as to allow that person a guaranteed statutory minimum, the application of Art. 51(1) does not cause any disruption in the functioning of such a scheme.	B	2.10.1997	C-144/96 (Cirotti)	1997, I-5349
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(1)	An "independent benefit" must be understood to mean a benefit calculated in	B	6.4.1995	C-325/93	1995,

Art. 12(2)	accordance with Art. 46(1) of the Reg., that is to say, the amount of which corresponds to the total length of insurance periods or periods of residence to be taken into account under the leg. of the MS in which the competent institution is situated, without regard to the periods completed under the leg. of other MS to which the beneficiary has been subject. That definition does not cover an invalidity benefit calculated in accordance with the system of aggregation of insurance periods and apportionment of benefits.			(del Grosso)	I-0939
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 (2) Annex V, point 4(a)  EC Treaty Art. 51	Point 4(a) of the section on the Netherlands contained in Annex V of Reg. 1408/71 [currently Annex VI, J Netherlands, point 4(c)] on the application of soc. sec. schemes to employed persons and their families moving within the Community, in the version applicable as from 1 February 1982, is to be interpreted as meaning that periods of paid employment include periods in which a person worked as a teacher under a contract of employment concluded with a private educational establishment, even if that person was insured during that period under a special scheme for civil servants and persons treated as such excluded from the scope of the Reg.. If the period of paid employment subject in that way to that special scheme was not treated as a period of insurance for the purposes of Annex V to the Reg., the person completing it would thereby suffer a disadvantage contrary to Art. 51 of the Treaty, whereas to take that period into account does not entail any overlapping of different entitlements.	NL	17.10.1995	C-227/94 (Olivieri-Coenen)	1995, I-3301
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 (Menziez)	1980, 2085
Art.	In view of the fact that migrant workers must not lose their right to soc. sec.	B	9.8.1994	C-406/93	1994,

46(2)(a)	benefits or have the amount of those benefits reduced because they have exercised the right to freedom of movement conferred on them by the Treaty, Art. 46(2)(a) of Reg. 1408/71 must be interpreted as meaning that where under the applicable leg. of a MS the amount of the invalidity benefit depends on the remuneration received by the worker at the time when invalidity occurred, and the worker in question was not at that time subject to the soc. sec. system of that State because he was working in another MS, the competent institution must calculate the theoretical amount of benefit on the basis of the remuneration last received by the worker in the other MS.			(Reichling)	I-4061
Art 46(2)(c) Art 47(1)(e) EC Art 51	1. Art. 47(1)(e) covers a system for calculating invalidity benefits such as that laid down by Spanish leg., which uses an average basis for contributions and consists in principle in calculating the amount of pension by reference to the average of the worker's contribution bases over a reference period immediately preceding the date on which invalidity commenced. 2. Art. 47(1)(e) must be interpreted in concordance with the objective laid down by Art. 51 of the Treaty, which implies in particular that migrant workers must not suffer a reduction in the amount of their soc. sec. benefits as a result of having exercised their right of free movement. That implies that, where invalidity occurs in a MS whose leg. is of a different type from that under which benefits are sought and contributions have not been paid under the latter leg. during the period used to determine the average basis for contributions on which the amount of benefit is calculated, that amount is to be the same as if the worker had remained liable to pay contributions under the leg. concerned. Thus, in such a situation, the theoretical amount of the benefit obtained by calculating solely on the basis of contributions paid under that leg. must be revalorized and increased as if the person concerned had continued to work under the same conditions in the MS in question. 3. Art. 46(2)(c) which in the version applicable in July 1990 provides that, when applying the totalization and proratisation rules in certain circumstances, the maximum period required for receipt of full pension benefit is to be taken into consideration instead of the total length of insurance periods completed, does not cover the calculation of invalidity benefits under a scheme, such as that provided for by Spanish leg., whereby the amount of benefit does not depend on the duration of the insurance periods. Since that rule concerns, it can only apply to leg.s whereunder benefits are, in principle, calculated by reference to the duration of the periods completed	ES	12.09.1996	C-251/94 (Lafuente Nieto)	1996, I-4187
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)	An application of Art. 46(3) of the Reg. which would lead to a diminution of	B	13.10.1977	112/76	1977,

EC Treaty Art. 51	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.			(Manzoni)	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
Arts 46a Art. 12(2), 46	A retirement pension granted under the leg. of one MS, on the basis of periods of insurance personally completed in that State by the person concerned, and a retirement pension obtained under the leg. of another MS by that person as a divorcee, on the basis of periods of insurance completed by that person's former spouse, are not benefits of the same kind within the meaning of Arts. 12(2) and 46(a) of Reg. 1408/71, as amended by Reg. 1248/92. Those benefits do not have the same purpose and object, since the aim of the benefit granted to a divorcee is to ensure that that person has adequate means of subsistence in view of the fact that he or she no longer has access to the income of his or her former spouse, whereas the personal retirement pension is intended to ensure that a worker has adequate income from the time at which he or she personally retires. Furthermore, the two benefits are calculated or provided on the basis of the periods of employment of two different persons, since that payable to a divorcee takes account of the period of employment and remuneration of the former spouse, whereas that payable in respect of personal retirement is calculated on the basis of periods of insurance completed by the person concerned.	B	11.8.1995	C-98/94 (Schmidt)	1995, I- 2559
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	NL	29.11.1984	181/83 (Weber)	1984, 4007

	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).				
Art 47(1)(e) Art 46(2)(c) EC Treaty Art 51	<p>1. Art. 47(1)(e) covers a system for calculating invalidity benefits such as that laid down by Spanish leg., which uses an average basis for contributions and consists in principle in calculating the amount of pension by reference to the average of the worker's contribution bases over a reference period immediately preceding the date on which invalidity commenced.</p> <p>2. Art. 47(1)(e) must be interpreted in concordance with the objective laid down by Art. 51 of the Treaty, which implies in particular that migrant workers must not suffer a reduction in the amount of their soc. sec. benefits as a result of having exercised their right of free movement. That implies that, where invalidity occurs in a MS whose leg. is of a different type from that under which benefits are sought and contributions have not been paid under the latter leg. during the period used to determine the average basis for contributions on which the amount of benefit is calculated, that amount is to be the same as if the worker had remained liable to pay contributions under the leg. concerned. Thus, in such a situation, the theoretical amount of the benefit obtained by calculating solely on the basis of contributions paid under that leg. must be revalorized and increased as if the person concerned had continued to work under the same conditions in the MS in question.</p> <p>3. Art. 46(2)(c) which in the version applicable in July 1990 provides that, when applying the totalization and proratisation rules in certain circumstances, the maximum period required for receipt of full pension benefit is to be taken into consideration instead of the total length of insurance periods completed, does not cover the calculation of invalidity benefits under a scheme, such as that provided for by Spanish leg., whereby the amount of benefit does not depend on the duration of the insurance periods. Since that rule concerns, it can only apply to leg.s whereunder benefits are, in principle, calculated by reference to the duration of the periods completed.</p>	ES	12.09.1996	C-251/94 (Lafuente Nieto)	
Art. 47(1)(g) (former Art. 47(1)(e)) EC Treaty Arts 48 to 51	<p>Art. 47(1)(g) implies that, where retirement and invalidity pensions are calculated under the leg. of a MS whereby the amount of those pensions is calculated from an average contribution basis corresponding to the salary received over a certain number of years preceding retirement or the onset of invalidity, calculation of the average basis for contributions rests, in the case of workers who, after having been subject to the legislation of that MS, resumed employment in another MS and carried it on until the end of their working lives, solely on the amount of contributions actually paid under the legislation concerned, and further implies that the theoretical amount of the benefit thus obtained is to be duly revalorized and increased as if the persons concerned had continued to work under the same conditions in the MS in question.</p> <p>However, where application of that provision so interpreted proves less advantageous, for workers who were already employed in another MS before the Reg. entered into force in the first MS, than the application of a previous convention between those two States, the rules laid down by that convention should, pursuant to Arts 48 and 51 of the EC Treaty, by way of exception, be applied.</p>	ES	9.10.1997	Joined cases C-31/96, C-32/96, C-33/96 (Arjona, Mateos and Lazaro)	1997, I-5501
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	D	20.11.1975	49/75 (Borella)	1975, 1461

	the MS in question.				
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. 49 Art. 3(1)	Art. 3(1) and Art. 49 of the Reg. must be interpreted, where entitlement to an old-age pension is available from the age of 60 under the basic statutory scheme of a MS to a worker under the age of 65 who has completed periods of employment in that State and in another MS where there is no entitlement to a pension before the age of 65, as not precluding the taking into account of the periods completed in the latter State solely in order to determine the rate of the pension which may be paid immediately by the institution of the former State. Firstly, if the person concerned does not, on the date when he requests payment of his pension, satisfy the conditions laid down by all the leg. under	F	7.7.1994	C-146/93 (McLachlan)	1994, I- 3229

	which he has completed periods of insurance, the taking into account for the calculation of the amount of the pension, by the national leg. whose conditions are satisfied, of the periods completed under the leg. of another MS is excluded by Art. 49 of the Reg. which does not, however, preclude the leg. of a MS whose conditions are satisfied from taking periods of insurance completed under the leg. of another MS into account for the purposes of acquisition of the right to an old-age pension and for determining the rate of that pension. Secondly, such national rules do not constitute direct or indirect discrimination on the grounds of nationality. They are applicable without distinction and it has not been shown that, among workers who have completed periods of insurance in that State and in another MS, they affect nationals of other MS more severely than nationals of that State. Moreover, the failure of the national institutions to take into account the periods of insurance completed in another MS in calculating the amount of the pension payable by them is inherent in the system under the Reg., which allowed different schemes to continue to exist, creating different claims on different institutions against which the claimant possesses direct rights.				
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	B	21.3.1990	C-85/89 (Ravida)	1990, I-1063

	on account of the general evolution in the economic and social situation.				
Art. 51 EC Treaty Art. 51	<p>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.</p>	B	22.4.1993	C-65/92 (Levatino)	1993, I- 2005
Art. 51 Art. 46	<p>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.</p>	B	18.2.1993	C-193/92 (Bogana)	1993, I-755
Art. 51 Arts 1(u)(i), 46	<p>Where benefits paid in one MS by way of an invalidity pension are calculated in accordance with Art. 46 of the Reg., Art. 51 of that Reg. is to be interpreted as precluding a recalculation of the benefits in question in the event of the grant in another MS of an allowance which is in the nature of a family benefit for the purposes of Art. 1(u)(i) of the Reg. or which, being granted automatically to families meeting certain objective criteria, relating in</p>	B	22.9.1994	C-301/93 (Bettaccini)	1994, I- 4361

	<p>particular to their size, income and capital resources, may be considered a family benefit.</p> <p>It is apparent from the wording, structure and objective of Art. 51 that it relates only to benefits governed by Chapter 3 of Title III of the Reg., which applies to pensions in respect of old age, death and invalidity. Since family benefits fall within the scope of Chapter 7 of Title III of the Reg., they are outside that of Chapter 3. It follows that the grant of a family benefit does not give rise to the application of Art. 51 of the Reg. and neither obliges nor authorizes the Administrative Commission to recalculate an invalidity pension in accordance with Art. 46 of the Reg.</p>				
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(1) Arts 3(1), 46	Arts 46 and 51(1) must be interpreted as precluding the share of an employed person's old-age pension granted to that person's separated spouse under the leg. of a MS from being recalculated downwards by reference to alterations arising from general economic and soc. developments in an invalidity benefit received by that separated spouse under the leg. of another MS. Art. 51(1) applies not only where the benefit to be reduced due to index-linked increases in another benefit has been calculated according to Art. 46, but also where it has been calculated in accordance with national provisions. Moreover, since the benefit granted to a separated spouse does not form part of a scheme designed to offset the inadequacy of the recipient's resources so as to allow that person a guaranteed statutory minimum, the application of Art. 51(1) does not cause any disruption in the functioning of such a scheme. The application of Art. 51(1) is not precluded by Art. 3(1) on the ground that it might confer an advantage on a recipient whose benefit cannot be recalculated, since the latter provision is not intended to establish equality of treatment between spouses, nor does it preclude the application of national leg. treating non-migrant workers less favourably than migrant workers	B	2.10.1997	C-144/96 (Cirotti)	1997, I-5349
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

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