OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 22 January 1987 *

Mr President,
Members of the Court,

1. Proceedings are currently pending between Mario Roviello and the Landesversicherungsanstalt Schwaben (Regional Insurance Office, Swabia), Augsburg, in which the former is seeking to obtain an occupational invalidity pension. The parties are in dispute as to: (a) the relevance for the purpose of determining entitlement to such a pension of the occupation pursued by the plaintiff in a Member State other than the Federal Republic of Germany; (b) the aggregation of periods of insurance completed by the plaintiff in another Member State with those completed by him in Germany.

The Bundessozialgericht (Federal Social Court), before which the dispute was brought, has asked the Court of Justice to interpret Point 15 of Section C (Germany) of Annex VI to Regulation No 1408/71 of the Council on the application of social security schemes to migrant workers and their families (Official Journal, English Special Edition 1971 (II), p. 416), as amended by Council Regulation No 2000/83 of 2 June 1983 (Official Journal L 230, p. 1).

2. The facts. Born in 1935, Mr Roviello is an Italian national and, it appears, has no specific professional qualifications. From 1960 to 1974 he worked in Italy as a tiler, initially as the employee of an undertaking, occupying a post in respect of which insurance contributions had to be paid, and later as a self-employed person. After he came to the Federal Republic of Germany, he pursued the same activity from May 1976 to June 1980, although not continuously. He thus completed in that country a period of compulsory insurance of 48 months.

In 1980, since he considered that he was suffering from an illness which entitled him to an occupational invalidity pension, Mr Roviello applied for such a pension to the competent Italian and German institutions. Both of those applications were refused. In particular, the Regional Insurance Office for Swabia gave as the ground for its refusal the fact that the plaintiff was still able to do a full day's work of any kind, as long as the work was not heavy. Mr Roviello responded to that decision, dated 16 October 1981, by bringing an action before the Sozialgericht (Social Court) Stuttgart and subsequently appealed to the Landessozialgericht (Higher Social Court) Baden-Württemberg. In a decision of 22 August 1983, the latter court also dismissed his action. It pointed out that the plaintiff had no formal qualification as a tiler and had not pursued that occupation continuously. He was therefore to be regarded as a semi-skilled worker and, as such, was not entitled to be assigned to a specific activity.

At that point, Mr Roviello appealed on a point of law to the Bundessozialgericht. He argued that the appeal court's findings concerning the occupation hitherto pursued by him were inadequate, claimed in that

* Translated from the Italian.

context that a tiler is a skilled worker and complained that the judgment did not specify the jobs to which he could have been assigned. Consequently, he sought: (a) the annulment of the judgments at first and second instance, (b) the annulment of the decision of 16 October 1981, and (c) an order directing the Landesversicherungsanstalt Schwaben to pay him a severance grant for the period from 1 December 1980 to 11 January 1982 and the pension in question from 17 February 1982.

By an order of 28 November 1984, the Fourth Senate of the Bundessozialgericht stayed the proceedings and referred the following questions to this Court for a preliminary ruling under Article 177 of the EEC Treaty:

'(1) For the purpose of determining entitlement to an occupational invalidity pension, is Point 15 of Section C in Annex VI of Regulation No 1408/71, as amended by Regulation No 2000/83, to be interpreted as meaning that account must be taken of the occupation hitherto pursued by an insured person only where the periods of insurance necessary for the acquisition of entitlement to that pension were completed solely in activities which are subject to compulsory insurance under German legislation?

(2) If the first question is answered in the affirmative, is Point 15 also applicable to contingencies which materialized before Regulation No 2000/83 entered into force (1 July 1982)?

(3) If the second question is answered in the negative, does it follow from Point 15 that entitlement to a pension which has not yet been established must be restricted to the period prior to the date on which the regulation entered into force (1 July 1982)?'

3. In order to place the facts which I have summarized in their proper context, it is necessary to consider the national rules applying at the time of the events and the Community rules referred to in the three questions.

The basis of the national rules is the Reichsversicherungsordnung (German Insurance Code) of 1911, which is the German legislation on social security. Paragraph 1246 of that measure provides that an occupational invalidity pension is due to an insured person: (a) in respect of whose occupation or activity prior to the materialization of the contingency compulsory insurance contributions had been paid for at least 36 months out of the preceding 60; (b) who had completed a 'waiting period' of at least 60 months of insurance (subparagraph 1). An insured person is regarded as an 'occupational invalid' if, as a result of illness, infirmity or loss of physical or mental capacity, his ability to earn is reduced to less than half of what would be appropriate for a worker in good physical and mental health and having similar training and equivalent knowledge and abilities (subparagraph 2, first sentence). Capacity to earn is assessed in the light of all the occupations which correspond to the capacity and aptitudes of the insured person and which he could be asked to engage in, having regard to the length and level of his training, to the occupation hitherto pursued and to the requirements of that occupation (subparagraph 2, second sentence).

It should also be pointed out that the German courts have developed a system of classification of invalids with a view to assigning them to other activities. That system is composed of four categories based on various criteria, among which is to be found principally the amount of the salary: the top category comprises foremen and/or highly skilled workers ('Vorarbeiter mit Leistungsfunktion bzw. besonders hoch qualifizierter Arbeiter'), skilled workers ('Facharbeiter'), semi-skilled workers ('angelernter Arbeiter'), and unskilled workers ('ungelernter Arbeiter') (*Entscheidungen des Bundessozialgerichts* BSGE 41, pp. 129 *et seq.*; 43, pp. 243 *et seq.*; 45, pp. 276 *et seq.*; and 49, pp. 54 *et seq.*).

On the basis of that classification, the competent institution may refuse to grant the pension only if: (a) the insured person may be assigned to an occupation included among the activities characteristic of the category immediately below that to which the occupation hitherto pursued by him belongs; (b) the salary for that occupation is at least equal to half that paid to those pursuing the insured person's former occupation. An assessment of the activity pursued by the insured person before he became an invalid is thus of particular importance in determining the category in which the institution must place him. It would appear that the German courts require not merely that the insured person should have done work corresponding to his job but also that he should have possessed the theoretical knowledge and practical aptitudes normally required of persons in that category. In other words, the insured person is supposed to have been 'competitive' in regard to other workers in the same group (*Entscheidungen des Bundessozialgerichts* BSGE 41, pp. 129 *et seq.*, *Bundessozialgericht Sozialrecht* 2200, Paragraph 1246, No 53, p. 163).

That is the complex framework of legal rules and decisions in the light of which the Bundessozialgericht must decide (a) whether a worker not holding the required qualification but having pursued his occupation for many years may be assimilated to workers who have completed the required period of training, and (b) whether the pursuit of an occupation in another Member State has any effect on the conditions to which the German rules make the right to a pension subject. The first problem is extraneous to the subject on which the Court has been asked to rule. I will go into the second in detail after examining the relevant Community rules.

4. As the Court will be aware, Article 89 of Regulation No 1408/71 provides that 'special procedures for implementing the legislations of certain Member States are set out in Annex VI'. Article 1 of Regulation No 2000/83 added a Point 15 to Section C, Federal Republic of Germany, of that Annex. It reads as follows:

'Where under German legislation account must be taken of the occupation hitherto pursued by the person concerned for the purpose of determining his entitlement to a pension in respect of occupational invalidity . . . that occupation shall be determined by taking account only of insurable activities under German legislation.' [1]

The process leading to the adoption of the rules cited above is of great importance for the Court's decision. According to the Commission and the Landesversicherungsanstalt Schwaben, the origin of those rules is to be found in the difficulties encountered by the German social security institutions in determining occupational invalidity pensions by applying the case-law of the Bundessozialgericht (see the judgment of 29 November 1978, *Entscheidungen des Bundessozialgerichts* 47, pp. 183 *et seq.*). That involved taking account not only of the last

1 — *Translator's note:* the German version of Point 15 says, more precisely, '. . . that right shall be determined by taking account only of activities which are subject to compulsory insurance under German legislation'.

occupation pursued by the claimant in Germany but also of the activities he had pursued in other Member States and of periods of insurance which he had completed there. In particular, the institutions in question were required to carry out difficult and laborious enquiries to determine whether those activities presupposed training similar to that required under German legislation for the same or analogous activities.

The German Government drew the Community's attention to the problem in a note of 18 November 1980. However, the Commission does not appear to have regarded it as very serious. In the proposal which it submitted to the Council on 21 December 1982 and which is the source of Regulation No 2000/83 is to be found an addition to Section C, Germany, designated Point 14 (which is among other things practically identical to the provision under the same number in the final text) but no Point 15 (Official Journal C 27, 2.2.1983, p. 3). Both the Economic and Social Committee, by way of an Opinion prepared at its 205th Plenary Session held in Brussels on 23 and 24 January 1983 (Official Journal C 90, p. 29), and the European Parliament at the sitting on 11 March 1983 (Official Journal C 96, p. 89) adopted decisions on the document thus drafted, that is to say, without the provision which is of interest here.

Point 15 emerged at a later stage of the procedure. It was proposed by the German delegation in the context of the Working Party on Social Questions in the Council (January 1983). The group recommended the insertion of the point in Regulation No 1408/71. The proposal was accepted by the Permanent Representatives Committee (27 May 1983) and was finally adopted unanimously by the Council at the sitting at which Regulation No 2000/83 was adopted (2 June 1983).

5. After that introduction let me point out that although it has not formally asked the Court to rule on the validity of Point 15, the Bundessozialgericht deals at length with its origins (pp. 8 and 9 of the order for reference) and thereby shows clearly that it considered the problem. The plaintiff in the main proceedings is more explicit: in his written observations, he asks whether the provision is valid, having regard to the fact that it was not proposed by the Commission and the Parliament was not consulted on it.

For its part, in reply to a question put by the Court, the Commission correctly described the procedure leading to the adoption of the contested provision but also maintained that it was lawful. Citing the judgment of 15 July 1970 in Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661, paragraphs 68 and 69 of the decision, it observes that: '(a) When the Council has consulted the Assembly on a proposal for a regulation and has subsequently modified the text thereof, a new consultation is not necessary if the amendment does not substantially change the proposal as a whole; (b) Point 15 contains a provision which, being designed to resolve certain problems which arose out of the application of German legislation, is merely technical and, as such, not likely to bring about the abovementioned substantial alteration'.

I shall consider that argument shortly. I think it is important to emphasize at this stage that the Court's case-law does not in any way prevent it from ruling on the validity of Point 15. It could be argued that, according to the judgment of 9 December 1965 in Case 44/65 (*Hessische Knappschaft* v *Singer* [1965] ECR 965), a party to the main action cannot, in the context of an application for a preliminary ruling, ask the

Court to decide whether the measure to be interpreted is valid. However, such an objection would not be well founded if it is true, as I have just pointed out, that in this case it is primarily the Bundessozialgericht which raised the problem, and thereby put it before the Court. In such a situation, it would seem to me that the principle laid down by the Court in its judgment of 1 December 1965 in Case 16/65 (*Firma C. Schwarze* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1965] ECR 877) is the relevant one.

That decision states that: 'the conclusion to be drawn from the . . . questions . . . is that the [national] court is concerned less with the interpretation of the Treaty or of a measure adopted by a Community institution than with obtaining a preliminary ruling on the validity of such a measure, which the Court is empowered to give by subparagraph (b) of the first paragraph of Article 177'. In such cases, 'it is appropriate for the Court to inform the national court at once of its view without compelling the national court to comply with purely formal requirements which would uselessly prolong the procedure . . . and would be contrary to [the] very nature [of Article 177]. Although [such] strict adherence to formal requirements may be defended in the case of litigation between two parties whose mutual rights must be subject to strict rules, it would be inappropriate to the special field of judicial cooperation under Article 177 which requires the national court and the Court of Justice . . . to make direct and complementary contributions to the working out of a decision' (p. 886).

A later and particularly incisive application of the same principle was made by the Court in its judgment of 3 February 1977 in Case 62/76 (*Strehl* v *Nationaal Pensioenfonds voor Mijnwerkers* [1977] ECR 211). The Court was asked to interpret Article 46 (3) of Regulation No 1408/71 and Decision No 91 of the Administrative Commission on Social Security for Migrant Workers. However, the Court first considered the validity of those provisions and, as the Court will be aware, declared them incompatible with Article 51 of the Treaty. In regard more generally to the raising by the Court of its own motion of defects not raised by the national court (that case was concerned with a breach of essential procedural requirements), it is also useful to bear in mind the judgment of 18 February 1964 in Joined Cases 73 and 74/63 *NV Internationale Krediet- en Handelsvereniging Rotterdam and Others* v *Netherlands Minister for Agriculture and Fisheries* [1964] ECR 1).

6. In the light of those considerations, I propose to assess the validity of Point 15 from three aspects. The first two concern the breach of essential procedural requirements (absence of a proposal from the Commission and failure to consult the Parliament) and the third concerns a breach of the Treaty.

In regard to the first aspect, I note that Regulation No 2000/83 is based on two provisions, Articles 51 and 235, according to which the Council is to act *on a proposal* from the Commission. However, it is clear that the Council may always amend the proposal provided that it acts unanimously (Article 149, first paragraph) and, I would add, provided that the modification or addition does not distort the Commission's proposal and thereby encroach upon the power of initiative which the Treaty reserves to the latter. According to the better view among legal writers, that power is not diminished if the amendment remains within the scope of the subject to which the proposal refers (see, for further comment, Dewost, 'Commentaire à l'article 149' in *Le droit de la Communauté économique européenne*, Vol. 9, Brussels, 1979, p. 133).

If that argument is correct (and it seems to me that it is) it is sufficient, in order to conclude that in this context Point 15 may be regarded as valid, to observe (a) that Regulation No 2000/83, in which the provision is contained, was adopted unanimously, and (b) that the provision certainly forms part of the subject-matter with which the Commission's proposal dealt, namely the Community rules on social security.

7. Consideration of the second aspect raises more complex questions. As the Court will be aware, consultation of the European Parliament is a very important requirement. It is, as was stated in the famous *Isoglucose* case, 'an essential factor in the institutional balance intended by the Treaty' because it 'allows the Parliament to play an active part in the legislative process of the Community' and thus, 'although limited, it reflects . . . the fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly'. It follows that 'due consultation of the Parliament in the cases provided for by the Treaty . . . constitutes an essential formality disregard of which means that the measure concerned is void' and that observance of that requirement 'implies that the Parliament has expressed its opinion' (judgments of 29 October 1980 in Case 138/79 *Roquette frères* v *Council* [1980] ECR 3333, paragraph 33, and Case 139/79 *Maïzena* v *Council* [1980] ECR 3393, paragraph 34).

However, the proposal on which the Parliament expressed its opinion may be amended, as occurred in this case, and the Court has never ruled in general and abstract terms on the need to submit such an amendment for the approval of the Assembly. It has, however, laid down a series of criteria which, if applied in a flexible and reasonable manner, make it possible in the great majority of cases to provide a satisfactory solution to the problem.

The leading case in that regard is *Chemiefarma*, cited above. The applicant alleged that two provisions of Regulation No 17/62 of the Council were invalid: Article 15 because it provided for a system of fines different from that provided for in the proposal considered by the Assembly, and Article 24 because it gave the Commission powers which had not been mentioned in that proposal. The Court rejected those two complaints, observing in regard to the first that '*considered as a whole [,] the substance* of the draft regulation on which the Parliament was consulted *has not been altered*' (paragraph 178) and, in regard to the second, that 'in Article 20 of the . . . draft in the version approved by the Parliament . . . *there is a provision substantially identical* to Article 24 of Regulation No 17' (paragraph 69).

Then followed three judgments of 4 February 1982 (Case 817/79 *Buyl* v *Commission* [1982] ECR 245, Case 828/79 *Adams* v *Commission* [1982] ECR 269 and Case 1253/79 *Battaglia* v *Commission* [1982] ECR 297). In those cases also the applicants claimed that Council Regulation No 3085/78 was too different from the proposal on which the Assembly had expressed its opinion to be considered valid, whereas the Commission defended the validity of the regulation by arguing that with regard to measures adopted unanimously, the question whether or not it is necessary to consult the Parliament again is 'pointless'. Impliedly rejecting the defendant's argument, the Court compared closely the initial proposal of the Commission, the Parliament's opinion and the definitive text adopted by the Council. It concluded that the latter conformed 'to the proposal submitted . . . *apart from* the

substitution of updated exchange rates for the EUA and the transitional provisions intended to alleviate the effect of . . . the regulation . . . with regard to certain pensioners'. However, such divergences did not deprive the measure of validity: the former constituted in reality a 'change of *method*' rather than 'of *substance*' and the latter '*corresponded broadly to the wish expressed by the Parliament*' (Case 817/79, cited above, paragraph 23).

The lessons which may be drawn from those judgments as regards the question with which the Court is concerned seem evident. A proposal in which provisions are amended or in which a new provision is inserted will escape the need to be submitted once again to the Parliament only if the amendment or addition fulfils one of the following conditions: (a) it leaves unaltered the essential aspects of the broadest provision on which it has an effect (*Chemiefarma*, cited above, paragraph 69); (b) it is of a merely technical nature, that is to say, it involves changes of method and not of substance (*Buyl*, paragraph 23 and *Chemiefarma*, paragraph 178, cited above); and (c) it corresponds to the wishes of the Parliament (*Buyl, ibidem*).

8. Thus enlightened by the Court's case-law, let me turn to the contested provision. I would point out that the Commission's proposal envisaged adding to Part C, Germany, of Annex VI to Regulation No 1408/71 a single point, No 14. That provision was advantageous to migrant workers because it required the German authorities to calculate the net earnings to be taken into account for the determination of the benefit to be paid to insured persons not residing in Germany as though they did reside there. On the other hand, the Court has seen that Point 15 is distinctly unfavourable to the same workers. Its addition thus makes it impossible to regard condition (a) as being satisfied, that is to say, to consider the provision in which it is contained (Article 1 of Regulation No 2000/83) unaltered in its essential aspects or, to employ the expression used by the Court, 'substantially identical' to the corresponding provision in the proposal. Moreover, condition (c) is also not satisfied. As can be seen from the minutes of the Sitting of 11 March 1983, the Parliament approved the proposal under the procedure without a report. Consequently, it is not possible to say that Point 15 corresponds to the wishes of the Parliament.

There remains condition (b) and it is precisely on that condition that the Commission relies most heavily. In the view of the institution, Point 15 contains a provision of a merely technical nature which, as is stated in Article 89 of Regulation No 1408/71, takes account of certain particular features of the German legal situation.

That argument must be rejected. For one thing, Article 89 could not possibly require that account be taken of the special technical characteristics of national legislation. As the Court has seen, that article merely refers to Annex VI in which the special procedures for implementing national legislation (or, better, the legislation of certain Member States) are to be found. However, the fundamental point is that the contested provision does not lay down a merely 'technical rule' and the Commission itself accepts that: in its observations, it claimed that far from merely clarifying a legal situation likely to produce anomalies or undesired effects, that provision lays down 'new rules', that is to say, it modifies the system in force up to

that time — according to which the occupation hitherto pursued was determined by taking account of activities pursued in other Member States — by laying down a formula which requires that account should be taken only of activities pursued in Germany (p. 20).

If those statements are justified, it seems to me evident that the failure to consult the Parliament a second time constitutes a breach of essential procedural requirements and renders Point 15 invalid.

9. The conclusion thus arrived at makes it unnecessary to consider the compatibility of the provision in question with the relevant provisions of the Treaty. However, I do not intend to shirk that task both because the parties to the main proceedings, as well as the Commission, concentrated their efforts on that problem and because it is a good rule that the Advocate General should express an opinion on all aspects of the case assigned to him.

Let me therefore begin by ascertaining the exact scope of the provision. The order for reference puts forward two possible interpretations: (a) the provision affects the conditions governing entitlement to a pension under Paragraph 1246 of the Reichsversicherungsordnung and excludes insured persons who have not completed the 60-month waiting period in Germany; (b) the provision affects only the identification of the category to which the insured person is to be assigned, providing for that purpose that account should be taken solely of activities pursued by him in Germany.

The Bundessozialgericht appears to prefer the first of those interpretations. In its opinion, the provision determines 'entitlement to a pension . . . only by the activities taken into account under the German social security scheme', excludes from consideration 'activities subject to compulsory insurance in other Member States' and does not permit aggregation of insurance periods 'at any rate if entitlement is based on the occupation hitherto pursued' (order for reference, p. 5). That approach, which is based on national law alone, is supported by a particularity of the German system: the idea that, in the context of a relationship based essentially on an exchange of advantages, the pension must correspond to a sufficiently long period of skilled or semi-skilled work requiring payment of compulsory insurance contributions.

The Landesversicherungsanstalt Schwaben and the Commission favour the second interpretation. They maintain that Point 15 must be interpreted as meaning that the expression 'insurable activities under German legislation' does not refer to the waiting period but merely serves to identify the occupation hitherto pursued by the insured person. Support for that proposition is to be found in the reasons for which it was adopted. It was introduced to circumvent the case-law of the Bundessozialgericht which by requiring social security institutions to take account of the migrant worker's activities before his arrival in Germany made it necessary for them to undertake difficult research into the equivalence of those activities to activities pursued in Germany, thus delaying payment of pensions.

Let me say immediately that I prefer the approach adopted by the court making the reference. I consider, however, that even more than the arguments advanced by it, it

is supported by the letter and the purpose of the contested provision. The wording of the provision is sufficiently explicit. As the Court will recall, Paragraph 1246 of the Reichsversicherungsordnung provides that in order to be entitled to a pension, the worker must fulfil two conditions: the activity hitherto pursued by him must have been subject to compulsory insurance for at least 36 months and the waiting period must have been completed. However, when referring to the benefit thus regulated, the Community legislature employed the expression 'entitlement' and 'for the purpose of *determining* his entitlement' (see 4, *supra*, first paragraph), thus showing that it was contemplating the conditions on the basis of which the benefit was being granted. The reasons on which Point 15 is based, to be found in the fourth recital of the preamble to Regulation No 2000/83, may be cited as pointing in the same direction: 'provision should . . . be made that for *entitlement* (in the German version the term employed is "*Anspruchsvoraussetzungen*", that is to say "conditions for entitlement", and in the French version it is "ouverture à un droit") to a German invalidity pension only the insurable activities under German legislation should be taken into account'.

Consideration of the objectives which Point 15 seeks to achieve leads to a similar result. As the Court has seen, the defendant in the main proceedings and the Commission take the view that the provision is intended merely to free the German social security institutions from the task of making a decision on the equivalence of the activities which the migrant worker pursued in other Member States to the work which he performed in Germany. In fact, the Bundessozialgericht did a great deal more than require consideration of such activities. Thus the judgment of 29 November 1978 (cited above) stated that in order to acquire a right to a miner's pension (governed by Paragraph 45 of the Reichsknappschaftsgesetz in terms identical to those of Paragraph 1246) the waiting period was to be calculated by taking into account the insurance periods completed by the migrant worker before his arrival in Germany. It is therefore highly probable that Point 15 was also, or even principally, intended to refer to the condition concerning the 60 months and to overrule the interpretation favourable to the interests of migrant workers which had been given to it by the courts.

10. Can a rule which produces that effect be in conformity with the Treaty? I note that Regulation No 1408/71 is based on Articles 7 and 51. As the Court will be aware, the former prohibits discrimination on grounds of nationality and the second provides that 'the Council shall . . . adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers . . . : (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of several countries'. Let me also point out that according to the Court's case-law the aim of Article 51 is to 'allow the migrant worker to acquire the right to benefit for all periods of employment or periods treated as such which have been completed by him in various Member States, without discrimination as against other workers by reason of the exercise of his right to freedom of movement' (judgment of 9 July 1975 in Case 20/75 *D'Amico* v *Landesversicherungsanstalt Rheinland-Pfalz* [1975] ECR 891, paragraph 10; judgment of 23 April 1986 in Case 153/84 *Ferraioli* v *Deutsche Bundespost* [1986] ECR 1401, paragraph 16).

In the light of those principles, Point 15 is manifestly incompatible with the Treaty. As I have said, it does not permit the aggregation which the Council is required to ensure for workers coming from other Member States and for that very reason treats them in a discriminatory manner. That can be shown by a fairly simple example. A migrant worker who has not completed in Germany the period of 60 months required by Paragraph 1246 of the Reichsversicherungsordnung cannot rely on insurance periods completed before he came to the Federal Republic even if, as in Mr Roviello's case, they amount to a total of 15 years. On the other hand, a German worker obtains a pension even if he has worked for only 60 months.

11. However, that is not all. Point 15 would be contrary to Article 51 of the Treaty even if the Court accepted the (somewhat implausible) 'minimalist' interpretation of it put forward by the Commission and the Swabian insurance institution.

Let us imagine that by requiring account to be taken only of activities insured under German legislation, the Council was in fact contemplating the determination of the occupation pursued by the insured person up to the time at which the contingency materialized. The migrant worker would still be placed at a disadvantage even though in this situation it would be because of the impossibility of relying on the highest qualification he had acquired before coming to Germany. That effect, excluded in Mr Roviello's case but entirely possible, is surely contrary to the principle prohibiting discrimination against a worker 'by reason of the exercise of his right to freedom of movement' (see *D'Amico*, *supra*).

12. On the basis of the foregoing considerations, it would appear that there are two possibilities open to the Court: (a) to declare void Point 15 of Section C, Germany, in Annex VI to Regulation No 1408/71 of the Council on the ground that it is vitiated by a breach of essential procedural requirements; (b) to declare the same provision incompatible with Articles 7 and 51 of the Treaty.

Whichever alternative it chooses, the Court must rule on the validity of a regulation (Regulation No 2000/83) adopted unanimously by the Council. I therefore suggest that the Court apply Article 95 (4) of the Rules of Procedure and refer the case to the Full Court for it to decide after hearing the Council and, if it sees fit, the Parliament.