

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 4 March 2014 (1)

Case C-114/13

Theodora Hendrika Bouman
v
Rijksdienst voor Pensioenen

(Request for a preliminary ruling from the Arbeidshof te Antwerpen (Belgium))

(Reference for a preliminary ruling – Regulation No 1408/71 – Article 46a(3)(c) – Social security for migrant workers – Old-age and survivor’s insurance – Calculation of benefit – National rules against overlapping – Concept of ‘voluntary or continued optional insurance’ – National pension under a compulsory insurance scheme with the option of requesting an exemption from the scheme for a certain period – Scope of the statement issued by the competent institution of another Member State – Regulation No 574/72 – Article 47)

I – Introduction

1. This request for a preliminary ruling provides the Court with a first opportunity to interpret the concept of ‘benefits awarded on the basis of voluntary insurance or continued optional insurance’ under Article 46a(3)(c) of Regulation (EEC) No 1408/71, (2) which exempts such benefits from the application of national rules against overlapping.

2. In the main proceedings, the Arbeidshof te Antwerpen (Higher Labour Court, Antwerp, Belgium) addresses the question of whether that provision covers the specific case of the Dutch old age pension resulting from an insurance scheme which is compulsory in principle but which provides for an exemption under certain conditions.

II – Legal framework

A – *EU law*

3. As its heading indicates, Article 46a of Regulation No 1408/71 contains the general provisions on reduction, suspension or withdrawal applicable to benefits in respect of invalidity, old age or survivors under the legislation of the Member States.

4. Article 46a(3) of the regulation provides:

‘The following rules shall be applicable for the application of provisions on reduction, suspension or withdrawal laid down by the legislation of a Member State in the case of overlapping of a benefit in respect of invalidity, old age or survivors with a benefit of the same kind or a benefit of a different kind or with other income:

...

c) no account shall be taken of the amount of benefits acquired under the legislation of another Member State which are awarded on the basis of voluntary insurance or continued optional insurance;

...’

5. Article 47 of Regulation (EEC) No 574/72, (3) entitled ‘Calculation of the amounts due corresponding to the periods of voluntary or optional continued insurance’ provides:

‘In accordance with the legislation it applies, the institution of each Member State shall calculate the amount corresponding to the periods of voluntary or optional continued insurance which, under Article 46a(3)(c) of [Regulation No 1408/71], is not subject to the provisions for withdrawal, reduction or suspension of another Member State.’

B – *National law*

1. Belgian law

6. Article 52(1)(1) of the Koninklijk Besluit van 21 december 1967 tot vaststelling van het algemeen reglement betreffende het rust- en overlevingspensioen voor werknemers (Royal Decree of 21 December 1967 laying down general rules concerning retirement and survivors’ pensions for employed persons) (*Belgisch Staatsblad*, 16 January 1968, p. 441, provides:

‘Where the surviving spouse can claim both a survivor’s pension under the pension scheme for employed persons and one or more retirement pensions, or any other benefit taking the place thereof under the pension scheme for employed persons or

one or more other pension schemes, the survivor's pension may be aggregated with the said retirement pensions only up to a sum equal to 110% of the amount of the survivor's pension which would have been awarded to the surviving spouse for a complete contributions record.'

2. Netherlands law

7. The Algemene Ouderdomswet (General Law on Old Age Pensions, 'the AOW') provides for compulsory insurance, in particular, for all Netherlands nationals residing in the territory of the Kingdom of the Netherlands.

8. Article 22 of the Besluit beperking en uitbreiding kring verzekerden volksverzekeringen (Decree on the restriction and extension of the category of insured persons in respect of national insurance, the 'Dutch Decree') provides:

'For as long as he is not employed in the Netherlands, a person who is residing in the Netherlands and is entitled to a benefit under a foreign statutory or extra-statutory social security scheme or under a scheme operated by an international organisation shall be exempted by the Rijksdienst voor Pensioenen at his request from insurance under the [AOW], as long as he:

- a) is permanently entitled only to a benefit as referred to in the opening words of this provision and the monthly amount of that benefit is at least 70% of the sum referred to in Article 8(1)(a) of the Wet minimumloon en minimumvakantiebijslag (Minimum Wage and Minimum Holiday Allowance Act);

...'

III – Main proceedings

9. Mrs Bouman, a national of the Netherlands, married a Belgian national and lived in Belgium from 1957 to 1974.

10. Her husband having died in 1968, she has been receiving a Belgian survivor's pension since 1 September 1969.

11. Following her return to the Netherlands in 1974, Mrs Bouman paid contributions towards a Dutch old age pension under the AOW.

12. For the last four years prior to retirement age, i.e. from 1 August 2003, Mrs Bouman requested and obtained an exemption from insurance under the AOW in accordance with Article 22 of the Dutch Decree. She therefore ceased contributing to the Dutch social security scheme, with the consequence that her pension contributions record under the AOW was not complete.

13. Since 1 June 2007, having reached retirement age, she has been receiving a partial pension under the AOW.

14. By decision of 4 February 2009, the Rijksdienst voor Pensioenen reviewed the amount of the survivor's pension awarded to Mrs Bouman and decided to reduce it with effect from 1 June 2007, taking into account the amount of the pension under the AOW, and to recover the excess paid.

15. On 4 May 2009, Mrs Bouman lodged an appeal against that decision with the Arbeidsrechtbank te Antwerpen (Labour Court, Antwerp).

16. The Netherlands Sociale Verzekeringsbank (Social Insurance Bank, 'SVB') was asked to determine whether the benefit which Mrs Bouman receives was awarded on the basis of voluntary insurance or optional continued insurance.

17. As is apparent from the order for reference, the SVB found, by letters dated 31 July 2009 and 15 June 2010, that the AOW is in principle a compulsory insurance and that there are only two situations in which voluntary or optional continued insurance can be said to exist. One is when, within a year after the commencement of the first compulsory insurance, there is a request to regularise historical uninsured periods; the other is when, within one year after the end of the compulsory insurance, there is a request to voluntarily continue the insurance. A request to the SVB is essential in both cases and, according to the SVB, there is no doubt that Mrs Bouman never made use of that option of voluntary or optional continued insurance.

18. The SBV concludes that Mrs Bouman's pension under the AOW 'is not in whole or in part based on any voluntary insured period but was totally built up during periods of compulsory insurance'.

19. The Arbeidsrechtbank te Antwerpen having dismissed the appeal on the substance by judgment of 6 May 2010, Mrs Bouman lodged a further appeal against that judgment before the Arbeidshof te Antwerpen (Higher Labour Court, Antwerp).

20. The Arbeidshof te Antwerpen has doubts as to whether the SVB's position is in accordance with Article 46a(3)(c) of Regulation No 1408/71 and considers itself competent to settle this question within the context of the main proceedings.

IV – The question referred for a preliminary ruling and the proceedings before the Court of Justice

21. It is in the above circumstances that the Arbeidshof te Antwerpen decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is the part of the [benefit under the AOW] which is paid to a Netherlands resident and which is based on an insurance period during which that Netherlands resident, simply by making an application, may refrain from joining the Netherlands scheme and thus from paying the premium, and in fact did so for a limited period, to be regarded as a benefit which is awarded on the basis of a voluntary or optional continued insurance within the meaning of Article 46a(3)(c) of Regulation 1408/71, so that no account may be taken of it when applying the provision against overlapping as laid down in Article 52(1)(1) of [the Royal Decree of 21 December 1967 laying down general rules concerning retirement and survivors’ pensions for employed persons]?’

22. The order for reference of 4 March 2013 was received at the Court Registry on 11 March 2013. Written observations were submitted by Mrs Bouman, the Kingdom of Belgium and the European Commission. In the absence of any request for a hearing, no hearing took place.

V – Appraisal

A – Introductory observations

23. An unusual aspect of the present case is that the interpretation of European Union law is requested by the Belgian referring court, which doubts whether the position set out in the document issued by the SVB, the Netherlands Social Insurance Bank, is in accordance with EU law.

24. The document issued by the SVB states that all of the insurance periods completed by Mrs Bouman were compulsory insurance periods, thus rejecting the hypothesis that her Dutch pension is based in whole or in part on a period of voluntary insurance or optional continued insurance.

25. Note that, under Article 47 of Regulation No 574/72, the competent national institution is to calculate the amount corresponding to the periods of voluntary or optional continued insurance for the purposes of the rules against overlapping of another Member State.

26. In order to provide the referring court with a useful answer in these circumstances, I consider it appropriate to start by examining the question whether the certificate issued in accordance with Article 47 of Regulation No 574/72 is binding on the institutions of another Member State.

27. The issue of the recognition of administrative documents in the social security field is governed by the duty of the competent institutions of the Member States to cooperate in good faith, to give full effect to the provisions of European Union law and to ensure fulfilment of the objectives of Articles 45 TFEU to 48 TFEU. This general duty derives from the principle of sincere cooperation

enshrined in the first subparagraph of Article 4(3) of the Treaty on European Union (TEU). (4)

28. In the case-law arising from the *FTS* judgment, (5) which the Commission cites in this case in order to argue that the Belgian referring court is bound by the SVB's position, the Court held that a certificate concerning the applicable legislation, drawn up in accordance with the provisions of Title III of Regulation No 574/72 (E 101 certificate), (6) is binding on the social security institutions of other Member States in so far as it certifies that workers on postings are covered by the social security system of the Member State in which their undertaking is established.

29. This solution excludes that certificate from review by the courts of a host Member State, by subjecting the resolution of any disputes to the conciliation procedure introduced by European Union legislation, (7) without prejudice to any legal remedies existing in the Member State to which the issuing institution belongs or the option the host Member State has of bringing infringement proceedings against that Member State. (8)

30. While this restriction of judicial review is justified on grounds of legal certainty which apply to an administrative document certifying that the person concerned belongs to the insurance scheme of a Member State, it cannot in my opinion be extended automatically to other certificates issued in the area governed by Regulation No 1408/71.

31. In my view, this position is supported by the approach taken by the Court in its judgment in *Adanez-Vega*, concerning a certified statement of insurance periods completed in another Member State which was used to establish the existence of entitlement to unemployment benefit. Referring to the *FTS* judgment, the Court ruled that a certified statement issued by the competent Spanish institution specifying the periods of insurance or employment completed as an employed person does not constitute irrefutable proof as regards the competent German institution or as regards the German courts, which presupposes that the latter remain entirely free to verify the content of the statement. (9)

32. In my view, therefore, the dividing line can be drawn between, on the one hand, administrative documents certifying that the person concerned is a member of a scheme and, on the other hand, documents aiming to specify events occurring or periods completed under the legislation of the Member State of origin for the purposes of determining the rights arising under the legislation of the host Member State.

33. In the latter case, the authorities of the host Member State, which are responsible for determining the rights of the person concerned, remain free to

verify all the relevant information, including that confirmed by the authority issuing the certificate.

34. This is precisely the case here, since the Belgian authorities must take account of insurance periods completed under Dutch legislation in order to determine the extent of Mrs Bouman's rights resulting from the application of the Belgian rules against overlapping. In these circumstances, the Belgian court may verify the content of the certificate issued by the Dutch authority under Article 47 of Regulation No 574/72, especially regarding its compliance with European Union law.

35. The Belgian court may therefore usefully refer a question arising in the context of such verification to the Court of Justice for a preliminary ruling.

B – *The concept of 'voluntary or optional continued insurance' within the meaning of Article 46a(3)(c) of Regulation No 1408/71*

36. The Court has consistently held that, in interpreting a provision of European Union law, it is necessary to consider not only its wording but also the context in which it occurs and the objects of the rules of which it forms part. (10) The origins of a provision of European Union law may also provide information relevant to its interpretation. (11)

37. I would like to state at the outset that Regulation No 1408/71 contains no legal definition of the concept of 'voluntary or optional continued insurance'.

38. Regarding the wording of Article 46a(3)(c) of Regulation No 1408/71, the different language versions of the regulation use slightly different terms to refer to the concept of 'voluntary or optional continued insurance', although they agree in emphasising the voluntary nature of the insurance membership. (12)

39. Regarding the context in which the provision concerned occurs, note that the provisions of Title II of Regulation No 1408/71 constitute a complete and uniform system of conflict rules based on the principle that the legislation of only one Member State should be applicable. (13)

40. This system of coordination does not extend in principle to voluntary or optional continued insurance, which, in accordance with Article 15(1) of Regulation No 1408/71, remains excluded from the application of Articles 13 to 14d of that regulation, except where a Member State has only a voluntary scheme for the sector concerned. (14)

41. Article 46a(3)(c) of Regulation No 1408/71 excludes voluntary or optional continued insurance from the application of the rules on overlapping if they are provided for by the legislation of a Member State.

42. This provision is a logical consequence of excluding voluntary or optional continued insurance from the system of coordination based on the principle of only one applicable legislation. It enables a person who has moved within the European Union and has chosen to build up an old age, invalidity or survivor's pension voluntarily in another Member State to preserve the additional social security cover associated with that choice.

43. This view is supported by the origins of the provision in question, which was inserted into Regulation No 1408/71 by Regulation No 1248/92.

44. As can be seen from the proposal submitted by the Commission at the time, (15) the restriction introduced by inserting Article 46a(3)(c) of Regulation No 1408/71 was intended as a response to a tendency arising from the *Schaap* (16) judgment concerning the interpretation of Article 46(2) of Regulation No 574/72. (17) The latter provision, repealed by Regulation No 1248/92, exempted benefits corresponding to periods of voluntary or optional continued insurance for the purposes of the national rules on overlapping in the context of Article 46(3) of Regulation No 1408/71.

45. Mr Schaap, a Netherlands national, maintained that Article 46(2) of Regulation No 574/72, the heading of which article contained an explicit reference to the overlapping of periods of voluntary and compulsory insurance, prevented the Dutch authorities from deducting from his Dutch pension the part of his German pension which had been acquired on the basis of periods of voluntary insurance, even though the insurance periods had not overlapped in his case.

46. The Court held that Regulation No 1408/71 'allows the worker the benefits corresponding to any period of voluntary or optional insurance', even where there is no question of overlapping periods, and consequently extended the application of Article 46(2) of Regulation No 574/72 to all cases of accumulation of pensions coming under Article 46(3) of Regulation No 1408/71. (18)

47. In view of the origins of the provision in question and the objectives behind its introduction into the system of Regulation No 1408/71, the expression 'voluntary or optional continued insurance' should, in my opinion, be interpreted sufficiently broadly to avoid depriving the person concerned of the benefit of any period of voluntary or optional continued insurance completed under the legislation of another Member State.

48. This position is supported by the objective of Regulation No 1408/71, which aims to facilitate mobility within the European Union, while respecting the special characteristics of national social security legislation, and not to penalise those who exercise their right to free movement. (19)

49. The provisions of Regulation No 1408/71 should therefore be interpreted in the light of Article 48 TFEU, which implies in particular that migrant workers must not lose their right to social security benefits or have the amount of those benefits reduced because they have exercised the right to freedom of movement conferred on them by the TFEU. (20)

50. As the Commission also maintains in its observations in this case, for the provision in question to be inserted harmoniously into the pursuit of that objective underlying Regulation No 1408/71, it should be interpreted in such a way as to exclude the possibility of the worker or a member of his family with a derivative right to benefits being deprived, by the effect of national rules against overlapping, (21) of the benefit of insurance periods completed voluntarily under the legislation of another Member State.

51. Finally, a broad interpretation of the expression ‘voluntary or optional continued insurance’ is supported by the position adopted by the Court concerning the interpretation of Article 9(2) of Regulation No 1408/71.

52. In the context of that provision, which aims to facilitate access to voluntary or optional continued insurance by requiring the recognition of periods of insurance completed in another Member State, the Court gave a broad interpretation of the expression concerned, ruling that it covers ‘every type of insurance incorporating a voluntary element’, and that it matters little whether or not there is any continuation of existing insurance. (22)

53. In my opinion, all of the above considerations clearly support a broad interpretation of the concept of ‘voluntary or optional continued insurance’.

54. In this case, as is apparent from the order for reference, the pension under the AOW is based in principle on a compulsory insurance scheme to which Mrs Bouman was automatically subject on returning to the Netherlands in 1974.

55. The order for reference also shows that, for part of her membership, Mrs Bouman’s situation fell within the circumstances referred to in Article 22 of the Dutch Decree, allowing an exemption from membership to be obtained at the request of the person concerned. Mrs Bouman requested and obtained that exemption only in respect of the last four years prior to her retirement age.

56. In these circumstances it is appropriate, in essence, to address the question of whether insurance which is applied automatically but provides for an option of exemption at the request of the person concerned comes under the concept of ‘voluntary or optional continued insurance’ within the meaning of the provision in question.

57. Contrary to the position set out in its observations by the Kingdom of Belgium, I do not consider that recognition of the voluntary nature of the general

scheme, membership of which is automatic but which provides for an option of exemption, as is the case here, conflicts with the principle of voluntary insurance.

58. In my view, the voluntary nature of membership of the insurance scheme stems both from the fact that the person concerned has to request membership of the scheme or continuation of the insurance, and from the fact that he has the right to apply for an exemption from membership. In essence, both situations imply a choice on the part of the insured person and attest to the fact that membership, if it continues, comprises a voluntary element.

59. I would like to emphasise in this regard that the order for reference indicates that the contributions paid by Mrs Bouman during the period in which she was entitled to request an exemption affected the amount of her pension under the AOW, by affording her additional social protection.

60. It is therefore my opinion that the concept of 'benefits awarded on the basis of voluntary or continued optional insurance' within the meaning of Article 46a(3)(c) of Regulation No 1408/71 covers the part of the benefit based on a period in which the person concerned was entitled to request an exemption from membership but did not do so, if the continuation of membership during the period concerned affects the amount of their future benefits.

61. In this regard, I am not convinced by the more limited approach proposed by the Kingdom of Belgium, according to which the expression 'continued optional insurance' refers solely to mechanisms allowing the insured person to cover periods without coverage, in order to fill gaps in his pension contributions record.

62. In my opinion, it does not follow from either the terms or the scheme of Article 46a(3)(c) of Regulation No 1408/71 that the filling of such gaps is an intrinsic characteristic of 'voluntary or optional continued insurance' within the meaning of that provision.

63. In view of the objective underlying the provision in question, which is to avoid depriving the person concerned of the benefit of any period of voluntary or continued optional insurance completed under the legislation of another Member State, (23) this expression lends itself in my opinion to a more open interpretation, leaving aside the different aims that may be pursued by the national legislation concerned.

64. Consequently, it can also cover the option granted to the person concerned of requesting an exemption from membership in respect of certain periods, in so far as this voluntary choice would have consequences for the amount of his future social security benefits.

65. This is the situation in this case, bearing in mind that Mrs Bouman had the choice of continuing her membership under the AOW or of requesting an

exemption, which, as is apparent from the order for reference, had consequences for her periods of membership and also for the amount of her old age pension.

66. In the light of all of the above observations, it is my view that Article 46a(3)(c) of Regulation No 1408/71 covers the part of the benefit based on an insurance period during which the person concerned was entitled to request an exemption from membership of the compulsory insurance scheme, in the situation where membership during the period in question affects the amount of the social security benefit.

VI – Conclusion

67. In the light of the foregoing considerations, I propose that the Court answer the question referred for a preliminary ruling by the Arbeidshof te Antwerpen as follows:

‘Article 46a(3)(c) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 should be interpreted as covering the part of the benefit based on an insurance period during which the person concerned was entitled to request an exemption from membership of the compulsory insurance scheme, in the situation where membership during the period in question affects the amount of the social security benefit’.

1 – Original language: French.

2 – Regulation of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1, ‘Regulation No 1408/71’).

Regulation No 1408/71 was repealed and replaced with effect from 1 May 2010 by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, p. 1). However, it remains applicable to the main proceedings here, which concern a contested administrative decision adopted on the basis of the old rules. Article 53(3)(c) of Regulation (EC) No 883/2004 contains a provision which is essentially identical to the provision to be interpreted in this case.

3 – Council Regulation of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 (OJ L 74, p. 1), as amended by Council Regulation (EEC) No 1248/92 of 30 April 1992 (OJ L 136, p. 7, ‘Regulation No 574/72’). Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ L 284, p. 1), which repeals Regulation No 574/72 with effect from 1 May 2010, adopts the same provision in the first subparagraph of Article 43(3).

4 – See Opinion of Advocate General Jacobs in Case C-202/97 *FTS* [2000] ECR I-883, point 56.

5 – Judgment in *FTS*, paragraph 59, and judgments in Case C-178/97 *Banks and Others* [2000] ECR I-2005, paragraph 46, and Case C-2/05 *Herbosch Kiere* [2006] ECR I-1079, paragraphs 30 and 31.

6 – Now replaced by the A1 form issued under Article 19(2) of Regulation No 987/2009.

7 – The conciliation procedure is currently governed by Article 5 of Regulation No 987/2009 and by Decision No A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 (OJ 2010 C 106, p. 1).

8 – Judgments in *FTS*, paragraphs 57 and 58, and *Herbosch Kiere*, paragraphs 28 and 29.

9 – Case C-372/02 *Adanez-Vega* [2004] ECR I-10761, paragraphs 36 and 48. See also Case C-102/91 *Knoch* [1992] ECR I-4341, paragraphs 53 and 54.

10 – See in particular the judgments in Case 292/82 *Merck* [1983] ECR 3781, paragraph 21, and Case C-84/12 *Koushkaki* ECR [2013], paragraph 34.

11 – Judgment in Case C-583/11 P *Inuit Tapiriit Kanatami and Others v Parliament and Council* ECR [2013], paragraph 50.

12 – There is a difference between, on the one hand, language versions which distinguish between the concept of ‘voluntary’ and that of ‘optional (continued)’ insurance (notably the Polish, Lithuanian, French, English, Italian and Spanish language versions) and, on the other hand, those which use the same term to refer to ‘voluntary’ and ‘continued voluntary’ insurance or insurance that is ‘continued voluntarily’ (notably the German, Dutch, Swedish and Danish language versions).

13 – See judgments in Case 102/76 *Perenboom* [1977] ECR 815 and Case C-115/11 *Format Urządzenia i Montaż Przemysłowe* ECR [2012], paragraph 29.

14 – For a commentary on the similar provision in Article 14(1) of Regulation No 883/2004, see Ślebzak, K., *Koordinacja zabezpieczenia społecznego*, LEX Wolters Kluwer, Warsaw, 2012, p. 256, and Steinmeyer, H.-D., *Europäisches Sozialrecht*, M. Fuchs (ed.), 6th edition, Nomos, Baden-Baden, 2013, p. 209.

15 – Proposal for a Council Regulation (EEC) amending Regulation No 1408/71 and Regulation No 574/72 (COM(89) 370 final, p. 23).

16 – Judgment in Case 176/78 *Schaap*, known as ‘*Schaap II*’, [1979] ECR 1673, with a note by Wyatt, D., *European Law Review*, 1981, p. 54-55.

17 – Article 46 of Regulation No 574/72, as amended by Council Regulation (EEC) No 1392/74 of 4 June 1974 (OJ 1974 L 152, p. 1) provided as follows in paragraph 2: ‘For the purposes of Article 46(3) of Regulation [No 1408/71 (initial version)], the amounts of benefit corresponding to periods of voluntary or optional continued insurance shall not be taken into account’.

18 – *Schaap II*, paragraphs 10 and 11.

[19](#) – Judgments in Case C-50/05 *Nikula* [2006] ECR I-7029, paragraph 20, and Case C-440/09 *Tomaszewska* [2011] ECR I-1033, paragraph 28.

[20](#) – Judgments in Case C-406/93 *Reichling* [1994] ECR I-4061, paragraph 24; Case C-205/05 *Nemec* [2006] ECR I-10745, paragraphs 37 and 38; Case C-352/06 *Bosmann* [2008] ECR I-3827, paragraph 29; and Joined Cases C-611/10 and C-612/10 *Hudzinski and Wawrzyniak* ECR [2012], paragraph 46.

[21](#) – The Court of Justice confirmed recently that Regulation No 1408/71 does not prevent the application of a national rule against overlapping such as that concerned in this case, provided that the conditions imposed by that regulation are observed, and without prejudice to the solution which might flow from the potential applicability of provisions of primary law (judgment in Case C-127/11 *Van den Booren* ECR [2013], paragraphs 34 and 38).

[22](#) – Judgments in Case 93/76 *Liégeois* [1977] ECR 543, paragraphs 14 and 17, and Case 368/87 *Hartmann Troiani* [1989] ECR 1333, paragraph 12. The Court interpreted the concept of ‘voluntary or optional continued insurance’ slightly differently from the usual sense of the term, ruling that this concept covers the assimilation of periods of study and periods of employment, irrespective of whether or not there is any continuance of existing insurance, and also covers the retroactive purchase of pension rights. For an analytical commentary, see Mavridis, P., *La sécurité sociale à l’épreuve de l’intégration européenne*, Sakkoulas-Bruylant, Athens-Brussels, 2003, p. 515 to 518.

[23](#) – See point 47 of this Opinion.