JUDGMENT OF THE COURT (Second Chamber)
6 April 1995 *

In Case C-325/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail, Brussels, for a preliminary ruling in the proceedings pending before that court between

Union Nationale des Mutualités Socialistes

and

Aldo Del Grosso,

with the **Institut National d'Assurance Maladie-Invalidité,**

intervener in the main proceedings,

on the interpretation of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416),

* Language of the case: French.

THE COURT (Second Chamber),

composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini and J. L. Murray (Rapporteur), Judges,

Advocate General: W. Van Gerven,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Aldo Del Grosso, by Daniele Rossini, trade union delegate,

— the Institut National d'Assurance Maladie-Invalidité, by Jean-Jacques Masquelin, of the Brussels Bar,

— the Italian Government, by Pier Giorgio Ferri, Avvocato dello Stato, acting as Agent,

— the Commission of the European Communities, by Marie Wolfcarius, members of its Legal Service, and Théophile Margellos, a national civil servant seconded to that service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Institut National d'Assurance Maladie-Invalidité and the Commission of the European Communities at the hearing on 24 March 1994,

after hearing the Opinion of the Advocate General at the sitting on 27 April 1994,

gives the following

Judgment

1 By order of 17 June 1993, received at the Court on 24 June 1993, the Tribunal du Travail (Labour Court), Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions concerning the interpretation of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416, hereinafter 'Regulation No 1408/71').

2 The questions were raised in the course of proceedings between the Union Nationale des Mutualités Socialistes and Mr Del Grosso, an Italian national.

3 Mr Del Grosso had worked and been insured in Italy from 1938 to 1946. Subsequently he worked in Belgium, where he was covered by the Belgian social security scheme for employed persons.

4 From 10 January 1977, when he became unfit for work, he received sickness benefits (a 'primary incapacity allowance') in Belgium for one year and thereafter invalidity benefits.

5 Since the defendant in the main action had been insured in Italy, a claim for an invalidity pension was forwarded by the competent Belgian institution (the Institut National d'Assurance Maladie-Invalidité, hereinafter 'INAMI') to the competent institution in Italy (the Istituto Nazionale della Previdenza Sociale, hereinafter 'INPS'). The INPS responded by granting Mr Del Grosso an invalidity pension calculated in accordance with Article 46(2)(b) of Regulation No 1408/71 with effect from 1 February 1978.

6 When Mr Del Grosso attempted to resume work between 1 November 1978 and 8 March 1979, the Belgian authorities refused to recognize his invalidity during that period and therefore suspended payment of benefits.

7 Payment of the benefits under the Belgian sickness insurance scheme was resumed with effect from 9 March 1979. The parties are not in agreement as to the date on which he left the primary incapacity scheme to resume invalidity benefits. Mr Del Grosso considers that invalidity benefits were granted to him with effect only from 1 April 1980, whereas INAMI argues that they were granted as from 9 March 1980.

8 When Mr Del Grosso became unfit for work the second time the INPS received a fresh application for a pension from the INAMI and adopted a decision on 12 November 1980 from which it is apparent that the Italian invalidity benefit was paid without interruption, even during the period of Mr Del Grosso's resumption of work in Belgium, and that the benefit was increased between 1 November 1978 and 31 March 1980 by a supplement intended to bring the amount of the benefit up to the Italian minimum pension.

9 On the basis of the information transmitted to it the INAMI adopted a decision on 23 December 1980 recalculating the various benefits to which he was entitled in the light of the rules against overlapping of benefits contained in the Belgian Law of 9 August 1963 (Article 70(2)), as a result of which it was found that Mr Del Grosso had been overpaid by BFR 67 921.

10 Since there were no outstanding Italian payments available, the insurance body, the Union Nationale des Mutualités Socialistes, brought an action before the Tribunal du Travail, Brussels, for recovery of the overpayment.

11 Mr Del Grosso challenges the amount of the debt and, more particularly, the application of the Belgian rules against overlapping to the Italian benefit supplement which he received during the second period of his primary incapacity. He argues that the Belgian rules should be set aside in his case and those contained in Article 46(3) of Regulation No 1408/71 applied instead.

12 The national court considered that the dispute raised questions concerning the interpretation of Community law and accordingly decided to stay the proceedings pending a preliminary ruling from the Court of Justice on:

'1. whether the Italian social security benefit known as an "invalidity pension" may be categorized as an "independent" benefit;

2. whether Article 46(3) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons ... moving within the Community applies where such a benefit — calculated by the system of aggregation and apportionment in order to bring the benefit, by means of a supplement, up to the level of the minimum monthly pension provided for by the compulsory sickness and old-age pension scheme for employed persons — overlaps with a Belgian sickness and invalidity allowance (known as a "primary" allowance); or

3. whether the Italian invalidity pension "supplement" constitutes compensation for the same loss within the meaning of Article 70(2) (subsequently renumbered 76c(2) pursuant to paragraph 3 of Article 30 of the (Belgian) Law of 30 December 1988) of the Law of 9 August 1963 introducing and governing

compulsory sickness and invalidity cover, as amended by Article 1(1) of Royal Decree No 19 of 4 December 1978, and whether it is therefore of the same kind (and thus whether it may overlap therewith).'

First question

13 In the first question the national court seeks to know whether the Italian benefit known as an 'invalidity pension' constitutes an 'independent benefit' within the meaning of Article 46(1) of Regulation No 1408/71.

14 The Court of Justice has held (*inter alia* in Case 323/86 *Collini* [1987] ECR 5489, paragraphs 10 and 15, and Joined Cases C-90/91 and C-91/91 *Di Crescenzo* and *Casagrande* [1992] ECR I-3851, paragraph 20) that an 'independent benefit' must be understood to mean a benefit calculated in accordance with Article 46(1), 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 legislation of the Member State in which the competent institution is situated, without regard to the periods completed under the legislation of other Member States to which the beneficiary has been subject.

15 As the defendant in the main action himself acknowledged in the written observations submitted on his behalf to the Court, his entitlement to Italian invalidity benefit was acquired on the basis of his having been covered by the Italian and Belgian schemes consecutively, and thus in accordance with the system of aggregation of insurance periods and apportionment of benefits.

16 The fact that that benefit may subsequently have been increased by a supplement in order to reach the minimum benefit provided for by Italian legislation is irrelevant to the method in which it was calculated, and therefore to its classification.

17 The reply to the first question must therefore be that an invalidity benefit such as the Italian 'invalidity pension' is not an independent benefit within the meaning of Article 46(1) of Regulation No 1408/71 inasmuch as it is calculated in accordance with the system of aggregation of insurance periods and apportionment of benefits.

Second question

18 The information in the case-file indicates that by this question the national court is essentially seeking to know whether Community law prevents the application of a national rule against the overlapping of benefits if a migrant worker receives in one Member State benefits for incapacity for work resulting from sickness and in another Member State an invalidity benefit calculated by aggregation of insurance periods and apportionment of benefits, increased by a supplement intended to guarantee him the minimum national pension.

19 The application of national rules against the overlapping of benefits is governed by Article 12(2) of Regulation No 1408/71.

20 That article provides that the legislative provisions of a Member State for reduction, suspension or withdrawal of benefit in cases of overlapping with other social security benefits acquired under the legislation of another Member State or income arising in the territory of another Member State may be applied to the person in receipt of the first benefit.

21 There are a number of exceptions to that principle, however. It does not apply when the person concerned receives benefits of the same kind in respect of invalidity, old age, death or occupational disease which are awarded by the institutions

of two or more Member States in accordance with Articles 46, 50, 51 or 60(1)(b).

22 In order to determine whether the rule against overlapping contained in Article 70(2) of the Belgian Law of 9 August 1963 applies it is therefore necessary to determine whether the benefits in question are of the same kind, whether they each represent benefits 'in respect of invalidity, old age, death (pensions) or occupational disease' and, lastly, whether they are awarded in accordance with Articles 46, 50, 51 or 60(1)(b) of Regulation No 1408/71.

23 It must thus be ascertained, first, whether the Belgian primary incapacity allowance and the Italian benefits are benefits of the same kind.

24 The Court has consistently held that social security benefits must be regarded as being of the same kind if their subject-matter and purpose, together with their method of calculation and the conditions for granting them, are identical (see *inter alia* Case 197/85 *Stefanutti* [1987] ECR 3855, paragraph 12).

25 As far as the Belgian benefit is concerned, it should be noted that it is based on the materialization of a risk and that its purpose is to compensate for the financial loss resulting from incapacity for work attributable to sickness. It represents the portion of pay lost by the employee as a result of his incapacity for work for each working day over a period of one year commencing on the date of the commencement of his incapacity for work, and it is calculated on the basis of the insurance periods completed in Belgium.

26 As regards the main Italian benefit, it is common ground that it is an invalidity pension calculated by applying the system of aggregation of insurance periods and apportionment of benefits. It cannot, therefore, be regarded as being of the same kind as the Belgian benefit described above.

27 Similarly, it is clear that the Italian pension supplement to which Mr Del Grosso insists that the Belgian rules against the overlapping of benefits cannot apply is intended to guarantee receipt of the monthly minimum pension provided for by Italian legislation. It thus represents the arithmetical difference between the amount of the apportioned pension received and the minimum guaranteed pension in Italy. It is also awarded regardless of the periods of insurance completed by the recipient. Consequently, that, too, is not a benefit of the same kind as the Belgian benefit.

28 As far as the other two requirements referred to above are concerned, the Belgian primary incapacity allowance received by the defendant in the main action is a sickness allowance constituting a 'cash benefit' within the meaning of Article 19 et seq. of Chapter I in Title III of Regulation No 1408/71 and is calculated in accordance with Article 23 of that regulation. It is therefore not a benefit in respect of invalidity, old age, death or occupational disease which is awarded in accordance with Articles 46, 50 and 51 or 60(1)(b).

29 Consequently, Article 12(2) of Regulation No 1408/71 does not preclude the application of a national rule against overlapping of benefits where a migrant worker receives in a Member State benefits intended to compensate for loss of income as a result of incapacity for work due to sickness and in another Member State an invalidity benefit calculated by aggregating insurance periods and apportioning benefits, increased by a pension supplement intended to guarantee him the minimum national pension.

Third question

30 This question asks how the Italian benefit is to be classified for the purposes of Article 70(2) of the Belgian Law of 9 August 1963.

31 It is sufficient to recall that in Case 26/78 *INAMI* v *Viola* [1978] ECR 1771 the Court held that for the purposes of applying national rules against the overlapping of benefits it is for the national court to classify the benefits in question in accordance with the applicable national legislation, taking into account the rules relating to conflict of laws, since the Community rules are not relevant.

Costs

32 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action/proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Tribunal du Travail, Brussels, by judgment of 17 June 1993, hereby rules:

1. An invalidity benefit such as the Italian 'invalidity pension' is not an independent benefit within the meaning of Article 46(1) of Council Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community inasmuch as it is calculated in accordance with the system of aggregation of insurance periods and apportionment of benefits.

2. Article 12(2) of Regulation No 1408/71, cited above, does not preclude the application of a national rule against overlapping benefits where a migrant worker receives in a Member State benefits intended to compensate for loss of income as a result of incapacity for work due to sickness and in another Member State an invalidity benefit calculated by aggregating insurance periods and apportioning benefits, increased by a pension supplement intended to guarantee him the minimum national pension.

3. For the purposes of applying national rules against the overlapping of benefits it is for the national court to classify the benefits in question in accordance with the applicable national legislation, taking into account the rules relating to conflict of laws, since the Community rules are not relevant.

Schockweiler Mancini Murray

Delivered in open court in Luxembourg on 6 April 1995.

R. Grass
Registrar

F. A. Schockweiler
President of the Second Chamber