7 has submitted observations to the Court, are not recoverable, and as these proceedings are, insofar as the parties to the main action are concerned, a step in the action before the national court, costs are a matter for that court.

On these grounds,

THE COURT

in answer to the question referred to it by the Bundessozialgericht by order of that court dated 22 August 1974, hereby rules:

The word 'directly' in Article 56 (2) of Regulation No 4 of the Council must be interpreted as meaning that the notification referred to in the provision must be effected without an intermediary and that despatch by the postal and telecommunication services meets this condition.

Lecourt Mertens de Wilmars Mackenzie Stuart Donner Monaco
Pescatore Kutscher Sørensen O'Keeffe

Delivered in open court in Luxembourg on 18 February 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 29 JANUARY 1975 [1]

Mr President,
Members of the Court,

1. An Italian worker had drawn a pension for the period April 1962 to November 1965 in respect of an accident at work in Germany. At the beginning of 1971, he claimed, on the basis of medical certificates, that the effects of the accident had become more serious and

1 — Translated from the Italian.

applied for restoration of the pension. The competent German insurance organization, being unable to agree that there had been any significant deterioration in the victim's physical condition, rejected his application by letter of 26 January 1971, which reached the addressee, who is resident in Sicily, in its original German text on 29 January 1971.

As is clear from the judgment of the Düsseldorf Sozialgericht of 21 December 1971, the worker received a translation of the document in his own language through the offices of the INAIL (Italian insurance organization) of Agrigento only on 31 March 1971. That judgment dismissed the worker's appeal against the decision and refused his application, without ruling on its substance. It did so on the ground that the application initiated by him by letter of 5 May 1971, which was received by the INAIL of Agrigento on 19 May and subsequently forwarded by that organization to the Düsseldorf Sozialgericht and was received by the latter on 9 June 1971, must be held to be inadmissible as having been made outside the three-month period laid down in paragraph 87 of the German law on the Sozialgericht. Incidentally, it should be noted that the court of first instance does not appear to have considered the possibility of any extension of the time-limits on the ground that the applicant was not in a position to take effective cognizance of the nature and contents of the disputed instrument before receiving the Italian translation.

The competent Landessozialgericht, granting the applicant's appeal, quashed the judgment in the court below, holding that the period in which an action must be brought before the Sozialgericht had not even started to run because the notification of the German insurance organization's decision not to grant the pension was irregular since it was not given through the authorities prescribed by national legislation governing the form in which notice of administrative acts must be given in a foreign country.

The final ruling on this point, which must now be given by the Bundessozialgericht, depends on the interpretation of Article 56 (2) Regulation (EEC) No 4 of the Council on social security for migrant workers. This provision, which deals with workers' applications for benefit, provides that the decision of the competent institution shall be communicated 'directly' to the applicant. It was on the basis of this rule that the Sozialgericht decided that there was no need for notice of a disputed decision to be given in the form laid down by paragraph 14 (1) of the German law governing notice of administrative acts (Verwaltungszustellungsgesetz), which requires notice in a foreign country to be given by special request thorugh the competent authorities of the foreign state or by the local consular or diplomatic representatives of the Federal Republic; in specific application of Article 56 (2), the Court held it to be sufficient that a copy of a document should be dispatched to the individual concerned by registered letter with acknowledgement for return to the sender.

The Landessozialgericht held, on the contrary, that Article 56 (2) of Regulation No 4 serves merely to identify the person to whom the notice must be sent and not to lay down the form which it should take. Accordingly, the form in which the notice is given remains wholly subject to internal law.

Though not, in its order of reference, committing itself to a definite viewpoint, the Bundessozialgericht seems to favour the interpretation adopted by the court of first instance. It notes, however, that support may be forthcoming for the interpretation of the appeal court from the subsequent amendment of the Community provision in question because, in Article 75 (2) of Regulation No 574/72 (EEC) of 21 March 1972, provision is in fact made for notification through the liaison body in the

competent state in addition to direct notification to the claiment. Thus, direct communication, for which alone provision was made under Article 56, constitutes the 'counterpart' of notification through the liaison body. This rule is not therefore concerned with the form of notice and the procedure for giving it but merely with the person to whom notice must be given.

On the other hand, the Bundessozialgericht, in view of the fact that an insurance organization could not give notice through one of its own officials to insured persons resident abroad, recognizes that notice by post bears a closer resemblance to direct notification than notice through diplomatic channels.

While favouring the contention that Article 56 (2) does not have the effect of removing the requirements as to the form of notice from the ambit of national law, the Commission does not conceal the possibility that this interpretation may give rise to problems of a legal as well as of practical character. One particular consequence is to rule out the simplification of the procedure of notification in a way which avoids administrative complication and delay even though, as in the case of the postal services, there are adequate guarantees as regards proof of receipt. But, in the Commission's view, the conciseness of Article 56 (2) and the absence of detail argue against the possibility of its being interpreted as a rule governing notification.

2. I must first of all challenge the Commission's contention that the question of interpretation is concerned only with the past. If one does, in fact, accept the interpretation for which the Commission has stated a preference, albeit tentatively, and one therefore regards Article 56 of Regulation No 4 as a rule which merely coordinates without affecting the national rules concerning the form of notice and the ways in which it may be given, one would, as a consequence of the amendment of the rule by Regulation No 574/72, be faced with the same difficulty which led the Commission to avoid a literal interpretation of the word 'directly' in Article 56 (2) of Regulation No 4; indeed, as we have seen, this other regulation authorizes notification through the liaison bodies without, however, indicating the form or manner in which, in that case, it must be given.

There is another reason why the question referred to us cannot be considered merely in terms of the past. If the interpretation proposed by the Commission is in fact accepted it would still be possible, even under the provisions of the Community legislation currently in force, for insurance organizations to make use of the traditional diplomatic channels to inform the insured of their decisions, whereas the different interpretation upheld by the court of first instance and which the Bundessozialgericht appears to favour would have, once and for all, made substantial progress in simplifying the relationships between insurance organizations and those entitled to benefit. Furthermore, this interpretation, which avoids a conflict between legislative provisions governing notice and the new provision for notice abroad through liaison bodies provided under Article 65 (2) of Regulation of the Council No 574/72, has the additional advantage of making all decisions on insurance questions governed by the Community decisions on social security subject to a uniform system of notice.

3. On a literal interpretation, the concept of *direct* notice to the claimant is, as is, incidentally, recognized by the Commission, clearly distinguished from notification through intermediaries. The fact that, in the case of notice to be given abroad, provision is made under the national legislation concerned for the involvement of the authorities of the foreign state or of the home country's consular or diplomatic representatives in that state, means precisely that this is a method of notification through

intermediaries, whereas, by definition, direct notification rules out the involvement of any other authority. From this standpoint, notification through the post is comparable with notification by a messenger.

Notice of the decision of the insurance organization cannot be regarded as having been validly given until it has reached the claimant. This also applies in cases where it is given through the liaison body of the worker's country of residence. In other words, in the circumstances provided for under the rule concerned, notice of the decision cannot in any event be given to the liaison body; it must always be given to the worker making the claim, either directly or through the liaison body, which is therefore never the addressee of the notice, any more than it is the addressee of the decision to be notified, but is merely an instrument used for giving the notice. Against this background, I do not think there would be any justification for setting up communication through the liaison body against direct communication to the claimant, as though we were dealing with notices to different recipients.

It follows that, if Article 56 (2) is to have any meaning, it cannot be confined to identifying the person to whom the decision must be communicated, as that person must always be the claimant, but must serve to govern the method of notification.

4. The argument contended for by the Commission is that the sole purpose of the rule in Article 56 (2) of Regulation No 4 is to exclude the liaison bodies, thus creating an exception to the general rule in Article 45 (3) of Regulation No 3, under which national institutions and authorities may, for the purposes of applying the regulation, communicate directly with each other as well as with the individuals interested or their agents; but this argument does not affect the correctness of the interpretation I placed on the word 'directly' as it appears in Article 56.

That provisions, which is in the nature of an implementing clause for the contingencies set out in the general rule in Article 45 (3), must in fact be interpreted in the light of that rule. The concept of 'direct communication' embodied in the implementing clause cannot be different from that in the basic rule. To have any meaning in the context of Regulation No 3, the general provision for the aforesaid right to communicate direct must add something new to the previous national arrangements governing notification of acts of the institutions and authorities to which reference is made in Article 45 (3). The novelty can consist only of making it possible for the said bodies to avoid the delays and complications of traditional procedures for notification abroad provided for under internal law.

This concept of 'direct communication' also holds good for the provision made in Article 56 (2) of Regulation No 4. But whereas the aforesaid basic rule in Article 45 (3) provides that national institutions and authorities may, as a general rule, have the *right* to communicate *directly* with the individuals concerned, Article 56 (2) of Regulation No 4 provides, that on the specific subject of decisions regarding application from workers or their survivors who claim entitlement to a pension or supplementary benefit, notification *must* be given *direct* to the claimant.

5. In the present case, this interpretation may at first sight appear of necessity to produce an effect which is inconsistent with the requirements of equity. The unfortunate worker who, is, let us assume, entitled to a pension, would not be able to defend his right in the courts owing to an insistence on formality which, in view of the way developments have occurred in this case, seems manifestly in conflict with the spirit of the Community's social legislation. It should not be forgotten that the workers concerned, resident in a village in a remote province of Sicily,

received notification of the decision rejecting his application in a language other than his own, and that he could take cognizance of the nature of the decision, thanks to the translation provided for him by the Italian insurance organization, only after more than a month had elapsed since he had received the document.

If the interpretation which I propose is placed upon Article 56 (2), this rule would have the effect of substantially simplifying the customary notification procedures by overcoming national barriers in the relationships between insurance bodies and the insured and, in this way, meeting the practical need for expedition and close contact. This anti-formalistic attitude should, however, involve also the adoption of a sounder basis for ensuring respect for workers' interests.

If one adopts the principle that notice of a decision of a public body in another country is validly given to an addressee who resides in another State of the Community as soon as the addressee *becomes aware* of it, even if only through the post, it would be consonant with a system which paid greater attention to substance than to form to hold that the limitation period could begin to run only when the worker had really been in a position to know the contents of the notification received. The introduction, thanks to Community law, of the right of direct contact between insurance organizations and foreign workers in receipt of benefit residing in another state, and the effect it has of overruling the formalities provided for under national legislation for notification abroad of the acts of public institutions, takes for granted that notice given outside these customary channels must ensure effective contact between the insurance organization and the insured. This requirement cannot be satisfied by transmission of a document in a form which does not enable the addressee to have immediate cognizance of it. In the case of an instrument expressed in a language other than that of the country where the addressee resides, and which he is not expected to understand, mere physical receipt of the instrument by the person affected by the decision therein contained cannot therefore be regarded as sufficient in itself to activate the time-limit which national law lays down for notification made under Article 56 (2) of Regulation No 4.

In other words, such *direct* notification will be validly made under that Article only when the addressee is placed in a position to become *directly* aware of the contents of the instrument. If this were not so, there would be little justification for depriving the worker of the right, which would be of assistance to him in the present case, to plead the formalities required under the relevant national law covering notification.

The effect of such an interpretation is in perfect consonance with the spirit of Community social legislation, aimed at helping workers to overcome the various kinds of difficulty which are inherent in migration and can arise not only from the existence of different insurance schemes in the various States of the Community but also, among other things, from language differences. Proof of this is furnished both by the provision made by Article 48 (1) of Regulation No 574/72 which, on the subject of invalidity, old age and death benefits, provides that decisions shall be notified to the person concerned in his own language, and, in more general terms, by the provision in Article 45 (4) of Regulation No 3 conferring on migrant workers the right to communicate in their own language with the institutions and authorities of another Member State, provided that it is the official language of a Member State.

That provision has a substantial effect on ordinary national procedures in the judicial as well as in the administrative field, and this follows the precedents established by this Court (Judgment in *Guerra vedova Pace,* Case 6/67 Rec. 1967, p. 284; Judgment in *Merola,* Case

45/72 Rec. 1972, p. 1255) establishing uniform rules throughout the Community for the benefit of workers who are entitled under Community legislation on social security. Moreover, the provision takes away any right which the national authorities may have had under their own internal law not to accept 'claims and other documents' written in an official language of another Member State. While in itself not necessarily imposing the contrary principle in favour of the worker in his relationships with a foreign insurance organization, a provision in these terms, which was incorporated in its entirety in Article 84 of Regulation No 1408/71 of the Council, which replaced Regulation No 3, is nevertheless indicative of the general desire of Community draftsmen to resolve in favour of the worker the language problems which arise during the application of Community social legislation. It would accord with this desire on the part of the legislators to recognize that, when a document written in the language of one State is addressed to a worker resident in another and this document is liable to set in motion the period within which he must do something necessary to safeguard his rights, he should be able to regard notice as having been validly given, within the meaning of Article 56 (2) of Regulation No 4 only from the time when he is actually placed in a position to be aware of its contents. This would also accord with the need, which Community social legislation is designed to meet, to overcome obstacles in the way of full achievement of the free movement of workers in the Community, especially obstacles arising from inequality of treatment which, even if only *de facto,* places the foreign worker at a disadvantage compared with a national of the country concerned. The foreign worker would thus be fully guaranteed the protection of his rights by the courts on terms of real equality with the nationals of the state concerned and without being in danger of losing his rights by reason of formalities connected with a position of inferiority.

For these reasons, I submit that the Court should, in answer to the question of the Bundessozialgericht, rule that the word 'directly' in Article 56 (2) of Regulation No 4 implementing and supplementing Regulation No 3 on social security for migrant workers refers to the method of communicating the decisions, therein mentioned, of the insurance organizations, to the exclusion of the interposition as intermediaries of national or foreign authorities, but that, nevertheless, notice of a decision adversely affecting the addressee, which, if he is abroad, can normally be given by post, is without effect if the instrument is not in a form which enables the addressee to understand it.